WISCONSIN DEPARTMENT OF JUSTICE
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SELECTED EXCERPTS FROM THE WISCONSIN STATUTES

2011-2012

Relating to the Wisconsin Criminal Code,
Criminal Procedures Code and
miscellaneous statutes
of interest to law enforcement

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2011-2012

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CHAPTER 48

CHILDREN'S CODE

SUBCHAPTER IV

HOLDING A CHILD OR AN EXPECTANT MOTHER IN CUSTODY

48.19 Taking a child into custody. (1) A child may be taken into custody under any of the following:

(a) A warrant.

(b) A capias issued by a judge under s. 48.28.

(c) An order of the judge if made upon a showing satisfactory to the judge that the welfare of the child demands that the child be immediately removed from his or her present custody. The order shall specify that the child be held in custody under s. 48.207 (1).

(cm) An order of the judge if made upon a showing satisfactory to the judge that the child is an expectant mother, that due to the child expectant mother's habitual lack of self-control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, there is a substantial risk that the physical health of the unborn child, and of the child when born, will be seriously affected or endangered unless the child expectant mother is taken into custody and that the child expectant mother is refusing or has refused to accept any alcohol or other drug abuse services offered to her or is not making or has not made a good faith effort to participate in any alcohol or other drug abuse services offered to her. The order shall specify that the child expectant mother be held in custody under s. 48.207 (1).

(d) Circumstances in which a law enforcement officer believes on reasonable grounds that any of the following conditions exists:

1. A capias or a warrant for the child's apprehension has been issued in this state, or that the child is a fugitive from justice.

2. A capias or a warrant for the child's apprehension has been issued in another state.

4. The child has run away from his or her parents, guardian or legal or physical custodian.

5. The child is suffering from illness or injury or is in immediate danger from his or her surroundings and removal from those surroundings is necessary.

7. The child has violated the conditions of an order under s. 48.21 (4) or the conditions of an order for temporary physical custody by an intake worker.

8. The child is an expectant mother and there is a substantial risk that the physical health of the unborn child, and of the child when born, will be seriously affected or endangered due to the child expectant mother's habitual lack of self-control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, unless the child expectant mother is taken into custody.

(2) When a child is taken into physical custody under this section, the person taking the child into custody shall immediately attempt to notify the parent, guardian, legal custodian, and Indian custodian of the child by the most practical means. The person taking the child into custody shall continue such attempt until the parent, guardian, legal custodian, and Indian custodian of the child are notified, or the child is delivered to an intake worker under s. 48.20 (3), whichever occurs first. If the child is delivered to the intake worker before the parent, guardian, legal custodian, and Indian custodian are notified, the intake worker, or another person at his or her direction, shall continue the attempt to notify until the parent, guardian, legal custodian, and Indian custodian of the child are notified.

(3) Taking into custody is not an arrest except for the purpose of determining whether the taking into custody or the obtaining of any evidence is lawful.

History: 1977 c. 354, 449; 1979 c. 300; 1985 a. 176; 1989 a. 31, 56, 107; 1993 a. 16, 56, 377, 490; 1995 a. 27, 77; 1997 a. 292; 2009 a. 94.

A viable fetus is not a "person" within the definition of a child under s. 48.02 (2). A court may not order protective custody of a fetus by requiring custody of the mother. State ex rel. Angela M.W. v. Kruzicki, 209 Wis. 2d 112, 561 N.W.2d 729 (1997), 95-2480.

48.193 Taking an adult expectant mother into custody. (1) An adult expectant mother of an unborn child may be taken into custody under any of the following:

(a) A warrant.

(b) A capias issued by a judge under s. 48.28.

(c) An order of the judge if made upon a showing satisfactory to the judge that due to the adult expectant mother's habitual lack of self-control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, there is a substantial risk that the physical health of the unborn child, and of the child when born, will be seriously affected or endangered unless the adult expectant mother is taken into custody and that the adult expectant mother is refusing or has refused to accept any alcohol or other drug abuse services offered to her or is not making or has not made a good faith effort to participate in any alcohol or other drug abuse services offered to her. The order shall specify that the adult expectant mother be held in custody under s. 48.207 (1m).

(d) Circumstances in which a law enforcement officer believes on reasonable grounds that any of the following conditions exists:

1. A capias or warrant for the apprehension of the adult expectant mother has been issued in this state or in another state.

2. There is a substantial risk that the physical health of the unborn child, and of the child when born, will be seriously affected or endangered due to the adult expectant mother's habitual lack of self-control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, unless the adult expectant mother is taken into custody.

3. The adult expectant mother has violated the conditions of an order under s. 48.213 (3) or the conditions of an order for temporary physical custody by an intake worker.

(2) When an adult expectant mother of an unborn child is taken into physical custody as provided in this section, the person taking the adult expectant mother into custody shall immediately attempt to notify an adult relative or friend of the adult expectant mother by the most practical means. The person taking the adult expectant mother into custody shall continue such attempt until an adult relative or friend is notified, or the adult expectant mother is delivered to an intake worker under s. 48.203 (2), whichever occurs first. If the adult expectant mother is delivered to the intake worker before an adult relative or friend is notified, the intake worker, or another person at his or her direction, shall continue the attempt to notify until an adult relative or friend of the adult expectant mother is notified.

(3) Taking into custody is not an arrest except for the purpose of determining whether the taking into custody or the obtaining of any evidence is lawful.

History: 1997 a. 292.

48.195 Taking a newborn child into custody. (1) TAKING CHILD INTO CUSTODY. In addition to being taken into custody under s. 48.19, a child whom a law enforcement officer, emergency medical technician, or hospital staff member reasonably believes to be 72 hours old or younger may be taken into custody under circumstances in which a parent of the child relinquishes custody of the child to the law enforcement officer, emergency medical technician, or hospital staff member and does not express an intent to return for the child. If a parent who wishes to relinquish custody of his or her child under this subsection is unable to travel to a sheriff's office, police station, fire station, hospital, or other place where a law enforcement officer, emergency medical technician, or hospital staff member is located, the parent may dial the telephone number "911" or, in an area in which the telephone number "911" is not available, the number for an emergency medical service provider, and the person receiving the call shall dispatch a law enforcement officer or emergency medical technician to meet the parent and take the child into custody. A law enforcement officer, emergency medical technician, or hospital staff member who takes a child into custody under this subsection shall take any action necessary to protect the health and safety of the child, shall, within 24 hours after taking the child into custody, deliver the child to the intake worker under s. 48.20, and shall, within 5 days after taking the child into custody, file a birth certificate for the child under s. 69.14 (3).

(2) ANONYMITY AND CONFIDENTIALITY. (a) Except as provided in this paragraph, a parent who relinquishes custody of a child under sub. (1) and any person who assists the parent in that relinquishment have the right to remain anonymous. The exercise of that right shall not affect the manner in which a law enforcement officer, emergency medical technician, or hospital staff member performs his or her duties under this section. No person may induce or coerce or attempt to induce or coerce a parent or person assisting a parent who wishes to remain anonymous into revealing his or her identity, unless the person has reasonable cause to suspect that the child has been the victim of abuse or neglect or that the person assisting the parent is coercing the parent into relinquishing custody of the child.

(b) A parent who relinquishes custody of a child under sub. (1) and any person who assists the parent in that relinquishment may leave the presence of the law enforcement officer, emergency medical technician, or hospital staff member who took custody of the child at any time, and no person may follow or pursue the parent or person assisting the parent, unless the person has reasonable cause to suspect that the child has been the victim of abuse or neglect or that the person assisting the parent has coerced the parent into relinquishing custody of the child.

(c) No officer, employee, or agent of this state or of a political subdivision of this state may attempt to locate or ascertain the identity of a parent who relinquishes custody of a child under sub. (1) or any person who assists the parent in that relinquishment, unless the officer, employee, or agent has reasonable cause to suspect that the child has been the victim of abuse or neglect or that the person assisting the parent has coerced the parent into relinquishing custody of the child.

(d) Any person who obtains any information relating to the relinquishment of a child under sub. (1) shall keep that information confidential and may not disclose that information, except to the following persons:

1. The birth parent of the child, if the birth parent has waived his or her right under par. (a) to remain anonymous, or the adoptive parent of the child, if the child is later adopted.

2. Appropriate staff of the department, county department, or licensed child welfare agency that is providing services to the child.

3. A person authorized to provide or providing intake or dispositional services under s. 48.067, 48.069, or 48.10.

4. An attending physician for purposes of diagnosis and treatment of the child.

5. The child's foster parent or other person having physical custody of the child.

6. A court conducting proceedings under s. 48.21, proceedings relating to a petition under s. 48.13 (2m) or 48.42, or dispositional proceedings under subch. VI or VIII relating to the child, the county corporation counsel, district attorney, or agency legal counsel representing the interests of the public in those proceedings, or the guardian ad litem representing the interests of the child in those proceedings.

7. A tribal court, or other adjudicative body authorized by an Indian tribe to perform child welfare functions, that is exercising jurisdiction over proceedings relating to the child, an attorney representing the interests of the Indian tribe in those proceedings, or an attorney representing the interests of the child in those proceedings.

(3) INFORMATION FOR PARENT. (a) Subject to par. (b), a law enforcement officer, emergency medical technician, or hospital staff member who takes a child into custody under sub. (1) shall make available to the parent who relinquishes custody of the child the maternal and child health toll-free telephone number maintained by the department under 42 USC 705 (a) (5) (E).

(b) The decision whether to accept the information made available under par. (a) is entirely voluntary on the part of the parent. No person may induce or coerce or attempt to induce or coerce any parent into accepting that information.

(4) IMMUNITY FROM LIABILITY. (a) Any parent who relinquishes custody of his or her child under sub. (1) and any person who assists the parent in that relinquishment are immune from any civil or criminal liability for any good faith act or omission in connection with that relinquishment. The immunity granted under this paragraph includes immunity for exercising the right to remain anonymous under sub. (2) (a), the right to leave at any time under sub. (2) (b), and the right not to accept any information under sub. (3) (b) and immunity from prosecution under s. 948.20 for abandonment of a child or under s. 948.21 for neglecting a child.

(b) Any law enforcement officer, emergency medical technician, or hospital staff member who takes a child into custody under sub. (1) is immune from any civil liability to the child's parents, or any criminal liability for any good faith act or omission occurring solely in connection with the act of receiving custody of the child from the child's parents, but is not immune from any civil or criminal liability for any act or omission occurring in subsequently providing care for the child.

(c) In any civil or criminal proceeding, the good faith of a person specified in par. (a) or (b) is presumed. This presumption may be overcome only by clear and convincing evidence.

(5) MEDICAL ASSISTANCE ELIGIBILITY. A child who is taken into custody under sub. (1) is presumed to be eligible for medical assistance under s. 49.46 or 49.47.

(6) RULES. The department shall promulgate rules to implement this section. In promulgating those rules, the department shall consider the different circumstances under which a parent might relinquish custody of a child under sub. (1). The rules shall include rules prescribing a means by which a parent who relinquishes custody of his or her child under sub. (1) may, until the granting of an order terminating parental rights, choose to be identified as the child's parent.

History: 2001 a. 2; 2009 a. 28, 94, 185.
Cross-reference: See also ch. DCF 39, Wis. adm. code.

48.20 Release or delivery of child from custody. (2) (ag) Except as provided in pars. (b) to (d), a person taking a child into custody shall make every effort to release the child immediately to the child's parent, guardian, legal custodian, or Indian custodian.

(b) If the child's parent, guardian, legal custodian, or Indian custodian is unavailable, unwilling, or unable to provide supervision for the child, the person who took the child into custody may release the child to a responsible adult after counseling or warning the child as may be appropriate.

(c) If the child is 15 years of age or older, the person who took the child into custody may release the child without immediate adult supervision after counseling or warning the child as may be appropriate.

(d) If the child is a runaway, the person who took the child into custody may release the child to a home authorized under s. 48.227.

(3) If the child is released under sub. (2) (b) to (d), the person who took the child into custody shall immediately notify the child's parent, guardian, legal custodian, and Indian custodian of the time and circumstances of the release and the person, if any, to whom the child was released. If the child is not released under sub. (2), the person who took the child into custody shall arrange in a manner determined by the court and law enforcement agencies for the child to be interviewed by the intake worker under s. 48.067 (2). The person who took the child into custody shall make a statement in writing with supporting facts of the reasons why the child was taken into physical custody and shall give a copy of the statement to the intake worker and to any child 12 years of age or older. If the intake interview is not done in person, the report may be read to the intake worker.

(4) If the child is believed to be suffering from a serious physical condition which requires either prompt diagnosis or prompt treatment, the person taking the child into physical custody, the intake worker or other appropriate person shall deliver the child to a hospital as defined in s. 50.33 (2) (a) and (c) or physician's office.

(4m) If the child is an expectant mother and if the unborn child or child expectant mother is believed to be suffering from a serious physical condition which requires either prompt diagnosis or prompt treatment, the person taking the child expectant mother into physical custody, the intake worker or other appropriate person shall deliver the child expectant mother to a hospital as defined in s. 50.33 (2) (a) and (c) or physician's office.

(5) If the child is believed to be mentally ill, drug dependent or developmentally disabled, and exhibits conduct which constitutes a substantial probability of physical harm to the child or to others, or a very substantial probability of physical impairment or injury to the child exists due to the impaired judgment of the child, and the standards of s. 51.15 are met, the person taking the child into physical custody, the intake worker or other appropriate person shall proceed under s. 51.15.

(6) If the child is believed to be an intoxicated person who has threatened, attempted or inflicted physical harm on himself or herself or on another and is likely to inflict such physical harm unless committed, or is incapacitated by alcohol, the person taking the child into physical custody, the intake worker or other appropriate person shall proceed under s. 51.45 (11).

(7) (a) When a child is interviewed by an intake worker, the intake worker shall inform any child who is alleged to be in need of protection or services and who is 12 years of age or older of his or her right to counsel.

(b) The intake worker shall review the need to hold the child in custody and shall make every effort to release the child from custody as provided in par. (c). The intake worker shall base his or her decision as to whether to release the child or to continue to hold the child in custody on the criteria specified in s. 48.205 (1) and criteria established under s. 48.06 (1) or (2).

(c) The intake worker may release the child as follows:

1. To a parent, guardian, legal custodian, or Indian custodian, or to a responsible adult if the parent, guardian, legal custodian, or Indian custodian is unavailable, unwilling, or unable to provide supervision for the child, counseling or warning the child as may be appropriate; or, if the child is 15 years of age or older, without immediate adult supervision, counseling or warning the child as may be appropriate.

2. In the case of a runaway child, to a home authorized under s. 48.227.

(d) If the child is released from custody, the intake worker shall immediately notify the child's parent, guardian, legal custodian, and Indian custodian of the time and circumstances of the release and the person, if any, to whom the child was released.

(8) (a) If a child is held in custody, the intake worker shall notify the child's parent, guardian, legal custodian, and Indian custodian of the reasons for holding the child in custody and of the child's whereabouts unless there is reason to believe that notice would present imminent danger to the child. The parent, guardian, legal custodian, and Indian custodian shall also be notified of the time and place of the detention hearing required under s. 48.21, the nature and possible consequences of that hearing, the right to present and cross-examine witnesses at the hearing, and, in the case of a parent or Indian custodian of an Indian child who is the subject of an Indian child custody proceeding, as defined in s. 48.028 (2) (d) 2., the right to counsel under s. 48.028 (4) (b). If the parent, guardian, legal custodian, or Indian custodian is not immediately available, the intake worker or another person designated by the court shall provide notice as soon as possible. When the child is 12 years of age or older, the child shall receive the same notice about the detention hearing as the parent, guardian, legal custodian, or Indian custodian. The intake worker shall notify both the child and the child's parent, guardian, legal custodian, or Indian custodian.

(b) If the child is an expectant mother who has been taken into custody under s. 48.19 (1) (cm) or (d) 8., the unborn child, through the unborn child's guardian ad litem, shall receive the same notice about the whereabouts of the child expectant mother, about the reasons for holding the child expectant mother in custody and about the detention hearing as the child expectant mother and her parent, guardian, legal custodian, or Indian custodian. The intake worker shall notify the child expectant mother, her parent, guardian, legal custodian, or Indian custodian and the unborn child, by the unborn child's guardian ad litem.

History: 1977 c. 354, 449; 1979 c. 300; 1983 a. 189 s. 329 (5); 1993 a. 16, 56, 98, 385; 1995 a. 27, 77; 1997 a. 292; 2009 a. 94.

48.203 Release or delivery of adult expectant mother from custody. **(1)** A person taking an adult expectant mother of an unborn child into custody shall make every effort to release the adult expectant mother to an adult relative or friend of the adult expectant mother after counseling or warning the adult expectant mother as may be appropriate or, if an adult relative or friend is unavailable, unwilling or unable to accept the release of the adult expectant mother, the person taking the adult expectant mother into custody may release the adult expectant mother under the adult expectant mother's own supervision after counseling or warning the adult expectant mother as may be appropriate.

(2) If the adult expectant mother is not released under sub. (1), the person who took the adult expectant mother into custody shall arrange in a manner determined by the court and law enforcement agencies for the adult expectant mother to be interviewed by the intake worker under s. 48.067 (2), and shall make a statement in writing with supporting facts of the reasons why the adult expectant mother was taken into physical custody and shall give the adult expectant mother a copy of the statement in addition to giving a copy to the intake worker. When the intake interview is not done in person, the report may be read to the intake worker.

(3) If the unborn child or adult expectant mother is believed to be suffering from a serious physical condition which requires either prompt diagnosis or prompt treatment, the person taking the adult expectant mother into physical custody, the intake worker or other appropriate person shall deliver the adult expectant mother to a hospital, as defined in s. 50.33 (2) (a) and (c), or physician's office.

(4) If the adult expectant mother is believed to be mentally ill, drug dependent or developmentally disabled, and exhibits conduct which constitutes a substantial probability of physical harm to herself or others, or a substantial probability of physical impairment or injury to the adult expectant mother exists due to the impaired judgment of the adult expectant mother, and the standards of s. 51.15 are met, the person taking the adult expectant mother into physical custody, the intake worker or other appropriate person shall proceed under s. 51.15.

(5) If the adult expectant mother is believed to be an intoxicated person who has threatened, attempted or inflicted physical harm on herself or on another and is likely to inflict such physical harm unless committed, or is incapacitated by alcohol, the person taking the adult expectant mother into physical custody, the intake worker or other appropriate person shall proceed under s. 51.45 (11).

(6) (a) When an adult expectant mother is interviewed by an intake worker, the intake worker shall inform the adult expectant mother of her right to counsel.

(b) The intake worker shall review the need to hold the adult expectant mother in custody and shall make every effort to release the adult expectant mother from custody as provided in par. (c). The intake worker shall base his or her decision as to whether to release the adult expectant mother or to continue to hold the adult expectant mother in custody on the criteria

specified in s. 48.205 (1m) and criteria established under s. 48.06 (1) or (2).

(c) The intake worker may release the adult expectant mother to an adult relative or friend of the adult expectant mother after counseling or warning the adult expectant mother as may be appropriate or, if an adult relative or friend is unavailable, unwilling or unable to accept the release of the adult expectant mother, the intake worker may release the adult expectant mother under the adult expectant mother's own supervision after counseling or warning the adult expectant mother as may be appropriate.

(7) If an adult expectant mother is held in custody, the intake worker shall notify the adult expectant mother and the unborn child, through the unborn child's guardian ad litem, of the reasons for holding the adult expectant mother in custody, the time and place of the detention hearing required under s. 48.213, the nature and possible consequences of that hearing, and the right to present and cross-examine witnesses at the hearing.

History: 1997 a. 292.

48.205 Criteria for holding a child or expectant mother in physical custody. (1) A child may be held under s. 48.207 (1), 48.208 or 48.209 if the intake worker determines that there is probable cause to believe the child is within the jurisdiction of the court and:

(a) Probable cause exists to believe that if the child is not held he or she will cause injury to himself or herself or be subject to injury by others.

(am) Probable cause exists to believe that if the child is not held he or she will be subject to injury by others, based on a determination under par. (a) or a finding under s. 48.21 (4) that if another child in the home is not held that child will be subject to injury by others.

(b) Probable cause exists to believe that the parent, guardian or legal custodian of the child or other responsible adult is neglecting, refusing, unable or unavailable to provide adequate supervision and care and that services to ensure the child's safety and well-being are not available or would be inadequate.

(bm) Probable cause exists to believe that the child meets the criteria specified in par. (b), based on a determination under par. (b) or a finding under s. 48.21 (4) that another child in the home meets those criteria.

(c) Probable cause exists to believe that the child will run away or be taken away so as to be unavailable for proceedings of the court or its officers.

(d) Probable cause exists to believe that the child is an expectant mother, that if the child expectant mother is not held, there is a substantial risk that the physical health of the unborn child, and of the child when born, will be seriously affected or endangered by the child expectant mother's habitual lack of self-control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, and that the child expectant mother is refusing or has refused to accept any alcohol or other drug abuse services offered to her or is not making or has not made a good faith effort to participate in any alcohol or other drug abuse services offered to her.

(1m) An adult expectant mother of an unborn child may be held under s. 48.207 (1m) if the intake worker determines that there is probable cause to believe that the adult expectant mother is within the jurisdiction of the court, to believe that if the adult expectant mother is not held, there is a substantial risk that the physical health of the unborn child, and of the child when born, will be seriously affected or endangered by the adult expectant mother's habitual lack of self-control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, and to believe that the adult expectant mother is refusing or has refused to accept any alcohol or other drug abuse services offered to her or is not making or has not made a good faith effort to participate in any alcohol or other drug abuse services offered to her.

(2) The criteria for holding a child or the expectant mother of an unborn child in custody specified in this section shall govern the decision of all persons responsible for determining whether the action is appropriate.

History: 1977 c. 354; 1979 c. 300; 1983 a. 399; 1989 a. 31, 107; 1993 a. 16, 377, 395; 1995 a. 27, 77, 275; 1997 a. 292; 1999 a. 83.

NOTE: 1993 Wis. Act 395, which creates subs. (1) (am) and (bm), contains extensive explanatory notes.

Courts may hold juveniles in contempt of court, but only under the criteria under this section and s. 48.208. 70 Atty. Gen. 98.

48.207 Places where a child or expectant mother may be held in nonsecure custody. (1) A child held in physical custody under s. 48.205 (1) may be held in any of the following places:

(a) The home of a parent or guardian, except that a child may not be held in the home of a parent or guardian if the parent or guardian has been convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of a parent of the child, and the conviction has not been reversed, set aside or vacated, unless the person making the custody decision determines by clear and convincing evidence that the placement would be in the best interests of the child. The person making the custody decision shall consider the wishes of the child in making that determination.

(b) The home of a relative, except that a child may not be held in the home of a relative if the relative has been convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of a parent of the child, and the conviction has not been reversed, set aside or vacated, unless the person making the custody decision determines by clear and convincing evidence that the placement would be in the best interests of the child. The person making the custody decision shall consider the wishes of the child in making that determination.

(c) A licensed foster home if the placement does not violate the conditions of the license.

(cm) A licensed group home provided that the placement does not violate the conditions of the license.

(d) A nonsecure facility operated by a licensed child welfare agency.

(e) A licensed private or public shelter care facility.

(f) The home of a person not a relative, if the placement does not exceed 30 days, though the placement may be extended for an additional 30 days for cause by the court, and if the person has not had a license under s. 48.62 refused, revoked, or suspended within the last 2 years.

(g) A hospital as defined in s. 50.33 (2) (a) and (c) or physician's office if the child is held under s. 48.20 (4) or (4m).

(h) A place listed in s. 51.15 (2) if the child is held under s. 48.20 (5).

(i) An approved public treatment facility for emergency treatment if the child is held under s. 48.20 (6).

(k) A facility under s. 48.58.

(1g) An Indian child held in physical custody under s. 48.205 (1) shall be placed in compliance with s. 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c), unless the person responsible for determining the placement finds good cause, as described in s. 48.028 (7) (e), for departing from the order of placement preference under s. 48.028 (7) (b) or finds that emergency conditions necessitate departing from that order. When the reason for departing from that order is resolved, the Indian child shall be placed in compliance with the order of placement preference under s. 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c).

(1m) An adult expectant mother of an unborn child held in physical custody under s. 48.205 (1m) may be held in any of the following places:

(a) The home of an adult relative or friend of the adult expectant mother.

(b) A licensed community-based residential facility, as defined in s. 50.01 (1g), if the placement does not violate the conditions of the license.

(c) A hospital, as defined in s. 50.33 (2) (a) and (c), or a physician's office if the adult expectant mother is held under s. 48.203 (3).

(d) A place listed in s. 51.15 (2) if the adult expectant mother is held under s. 48.203 (4).

(e) An approved public treatment facility for emergency treatment if the adult expectant mother is held under s. 48.203 (5).

(2) (a) If a facility listed in sub. (1) (b) to (k) is used to hold a child in custody, or if supervisory services of a home detention program are provided to a child held under sub. (1) (a), the authorized rate of the facility for the care of the child or the authorized rate for those supervisory services shall be paid by the county in a county having a population of less than 500,000 or by the department in a county having a population of 500,000 or more. If no authorized rate has been established, a reasonable sum to be fixed by the court shall be paid by the county in a county having a population of less than 500,000 or by the department in a county having a population of 500,000 or more for the supervision or care of the child.

(b) If a facility listed in sub. (1m) (b) to (e) is used to hold an expectant mother of an unborn child in custody, or if supervisory services of a home detention program are provided to an expectant mother held under sub. (1m) (a), the authorized rate of the facility for the care of the expectant mother or the authorized rate for those supervisory services shall be paid by the county in a county having a population of less than 500,000 or by the department in a county having a population of 500,000 or more. If no authorized rate has been established, a reasonable sum to be fixed by the court shall be paid by the county in a county having a population of less than 500,000 or by the department in a county having a population of 500,000 or more for the supervision or care of the expectant mother.

(3) A child taken into custody under s. 48.981 may be held in a hospital, foster home, relative's home, or other appropriate medical or child welfare facility that is not used primarily for the detention of delinquent children.

History: 1977 c. 354, 355, 447; 1979 c. 300; 1983 a. 172; 1983 a. 189 s. 329 (5); 1985 a. 332; 1993 a. 446; 1997 a. 27, 292; 1999 a. 9; 2009 a. 28, 94.

48.208 Criteria for holding a child in a juvenile detention facility. A child may be held in a juvenile detention facility if the intake worker determines that one of the following conditions applies:

(3) The child consents in writing to being held in order to protect him or her from an imminent physical threat from another and such secure custody is ordered by the judge in a protective order.

(4) Probable cause exists to believe that the child, having been placed in nonsecure custody by an intake worker under s. 48.207 (1) or by the judge or a circuit court commissioner under s. 48.21 (4), has run away or committed a delinquent act and no other suitable alternative exists.

History: 1977 c. 354; 1979 c. 300; 1985 a. 176; 1993 a. 16, 377, 385, 491; 1995 a. 27, 77; 1997 a. 292; 2001 a. 61; 2005 a. 344.

Courts may hold juveniles in contempt of court, but only under the criteria under s. 48.205 and this section. 70 Atty. Gen. 98.

48.209 Criteria for holding a child in a county jail. Subject to the provisions of s. 48.208, a county jail may be used as a juvenile detention facility if the criteria under either sub. (1) or (2) are met:

(1) There is no other juvenile detention facility approved by the department of corrections or a county which is available and:

(a) The jail meets the standards for juvenile detention facilities established by the department of corrections;

(b) The child is held in a room separated and removed from incarcerated adults;

(c) The child is not held in a cell designed for the administrative or disciplinary segregation of adults;

(d) Adequate supervision is provided; and

(e) The judge reviews the status of the child every 3 days.

(2) The child presents a substantial risk of physical harm to other persons in the juvenile detention facility, as evidenced by previous acts or attempts, which can only be avoided by transfer to the jail. The conditions of sub. (1) (a) to (e) shall be met. The child shall be given a hearing and transferred only upon order of the judge.

History: 1977 c. 354; 1989 a. 31; 1993 a. 98; 1995 a. 77; 2005 a. 344.
Cross-reference: See also s. DOC 346.01, Wis. adm. code.

48.227 Runaway homes. (1) Nothing contained in this section prohibits a home licensed under s. 48.48 or 48.75 from providing housing and services to a runaway child with the consent of the child and the consent of the child's parent, guardian or legal custodian, under the supervision of a county department, a child welfare agency or the department. When the parent, guardian or legal custodian and the child both consent to the provision of these services and the child has not been taken into custody, no hearing as described in this section is required.

(2) Any person who operates a home under sub. (1) and licensed under s. 48.48 or 48.75, when engaged in sheltering a runaway child without the consent of the child's parent, guardian or legal custodian, shall notify the intake worker of the presence of the child in the home within 12 hours. The intake

worker shall notify the parent, guardian and legal custodian as soon as possible of the child's presence in that home. A hearing shall be held under sub. (4). The child shall not be removed from the home except with the approval of the court under sub. (4). This subsection does not prohibit the parent, guardian or legal custodian from conferring with the child or the person operating the home.

(3) For runaway children who have been taken into custody and then released, the judge may, with the agreement of the persons operating the homes, designate homes licensed under ss. 48.48 and 48.75 as places for the temporary care and housing of such children. If the parent, guardian or legal custodian refuses to consent, the person taking the child into custody or the intake worker may release the child to one of the homes designated under this section; however, a hearing shall be held under sub. (4). The child shall not be removed from the home except with the approval of the court under sub. (4). This subsection does not prohibit the parent, guardian, or legal custodian from conferring with the child or the person operating the home.

(4) (a) If the child's parent, guardian or legal custodian does not consent to the temporary care and housing of the child at the runaway home as provided under sub. (2) or (3), a hearing shall be held on the issue by the judge or a circuit court commissioner within 24 hours of the time that the child entered the runaway home, excluding Saturdays, Sundays and legal holidays. The intake worker shall notify the child and the child's parent, guardian or legal custodian of the time, place and purpose of the hearing.

(b) If, in addition to jurisdiction under par. (c), the court has jurisdiction over the child under ss. 48.13 to 48.14, excluding s. 48.14 (8), or under ss. 938.12 to 938.14, a hearing may be held under s. 48.21 or 938.21.

(c) For the purposes of this section, the court has jurisdiction over a runaway child only to the extent that it may hold the hearings and make the orders provided in this section.

(d) At the hearing, the child, the child's parent, guardian or legal custodian and a representative of the runaway home may present evidence, cross-examine and confront witnesses and be represented by counsel or guardian ad litem.

(e) At the conclusion of the hearing, the court may order:

1. That the child be released to his or her parent, guardian or legal custodian; or

2. That, with the consent of the child and the runaway home, the child remain in the care of the runaway home for a period of not more than 20 days. Without further proceedings, the child shall be released whenever the child indicates, either by statement or conduct, that he or she wishes to leave the home or whenever the runaway home withdraws its consent. During this time period not to exceed 20 days ordered by the court, the child's parent, guardian or legal custodian may not remove the child from the home but may confer with the child or with the person operating the home. If, at the conclusion of the time period ordered by the court the child has not left the home, and no petition concerning the child has been filed under s. 48.13, 48.133, 938.12 or 938.13, the child shall be released from the home. If a petition concerning the child has been filed under s. 48.13, 48.133, 938.12 or 938.13, the child may be held in temporary physical custody under ss. 48.20 to 48.21 or 938.20 to 938.21.

(5) No person operating an approved or licensed home in compliance with this section is subject to civil or criminal liability by virtue of false imprisonment.

History: 1977 c. 354; 1979 c. 300; 1985 a. 176; 1995 a. 77; 1997 a. 292; 2001 a. 61.

48.396 Records. (1) Law enforcement officers' records of children shall be kept separate from records of adults. Law enforcement officers' records of the adult expectant mothers of unborn children shall be kept separate from records of other adults. Law enforcement officers' records of children and the adult expectant mothers of unborn children shall not be open to inspection or their contents disclosed except under sub. (1b), (1d), (5), or (6) or s. 48.293 or 938.396 (2m) (c) 1p. or by order of the court. This subsection does not apply to the representatives of newspapers or other reporters of news who wish to obtain information for the purpose of reporting news without revealing the identity of the child or adult expectant mother involved, to the confidential exchange of information between the police and officials of the public or private school attended by the child or other law enforcement or social welfare agencies, or to children 10 years of age or older who are subject to the jurisdiction of the court of criminal jurisdiction. A public school official who obtains information under this subsection shall keep the information confidential as required under s. 118.125, and a private school official who obtains information under this subsection shall keep the information confidential in the same manner as is required of a public school official under s. 118.125. This subsection does not apply to the confidential exchange of information between the police and officials of the tribal school attended by the child if the police determine that enforceable protections are provided by a tribal school policy or tribal law that requires tribal school officials to keep the information confidential in a manner at least as stringent as is required of a public school official under s. 118.125. A law enforcement agency that obtains information under this subsection shall keep the information confidential as required under this subsection and s. 938.396 (1) (a). A social welfare agency that obtains information under this subsection shall keep the information confidential as required under ss. 48.78 and 938.78.

(1b) If requested by the parent, guardian or legal custodian of a child who is the subject of a law enforcement officer's report, or if requested by the child, if 14 years of age or over, a law enforcement agency may, subject to official agency policy, provide to the parent, guardian, legal custodian or child a copy of that report. If requested by the parent, guardian or legal custodian of a child expectant mother of an unborn child who is the subject of a law enforcement officer's report, if requested by an expectant mother of an unborn child who is the subject of a law enforcement officer's report, if 14 years of age or over, or if requested by an unborn child through the unborn child's guardian ad litem, a law enforcement agency may, subject to official agency policy, provide to the parent, guardian, legal custodian, expectant mother or unborn child by the unborn child's guardian ad litem a copy of that report.

(1d) Upon the written permission of the parent, guardian or legal custodian of a child who is the subject of a law enforcement officer's report or upon the written permission of the child, if 14 years of age or over, a law enforcement agency may, subject to official agency policy, make available to the

person named in the permission any reports specifically identified by the parent, guardian, legal custodian or child in the written permission. Upon the written permission of the parent, guardian or legal custodian of a child expectant mother of an unborn child who is the subject of a law enforcement officer's report, or of an expectant mother of an unborn child who is the subject of a law enforcement officer's report, if 14 years of age or over, and of the unborn child by the unborn child's guardian ad litem, a law enforcement agency may, subject to official agency policy, make available to the person named in the permission any reports specifically identified by the parent, guardian, legal custodian or expectant mother, and unborn child by the unborn child's guardian ad litem in the written permission.

(2) (a) Records of the court assigned to exercise jurisdiction under this chapter and ch. 938 and of courts exercising jurisdiction under s. 48.16 shall be entered in books or deposited in files kept for that purpose only. Those records shall not be open to inspection or their contents disclosed except by order of the court assigned to exercise jurisdiction under this chapter and ch. 938 or as required or permitted under this subsection, sub. (3) (b) or (c) 1g., 1m., or 1r. or (6), or s. 48.375 (7) (e).

(ag) Upon request of the parent, guardian or legal custodian of a child who is the subject of a record of a court specified in par. (a), or upon request of the child, if 14 years of age or over, the court shall open for inspection by the parent, guardian, legal custodian or child the records of the court relating to that child, unless the court finds, after due notice and hearing, that inspection of those records by the parent, guardian, legal custodian or child would result in imminent danger to anyone.

(aj) Upon request of the parent, guardian or legal custodian of a child expectant mother of an unborn child who is the subject of a record of a court specified in par. (a), upon request of an expectant mother of an unborn child who is the subject of a record of a court specified in par. (a), if 14 years of age or over, or upon request of an unborn child by the unborn child's guardian ad litem, the court shall open for inspection by the parent, guardian, legal custodian, expectant mother or unborn child by the unborn child's guardian ad litem the records of the court relating to that expectant mother, unless the court finds, after due notice and hearing, that inspection of those records by the parent, guardian, legal custodian, expectant mother or unborn child by the unborn child's guardian ad litem would result in imminent danger to anyone.

(am) Upon the written permission of the parent, guardian or legal custodian of a child who is the subject of a record of a court specified in par. (a), or upon the written permission of the child, if 14 years of age or over, the court shall open for inspection by the person named in the permission any records specifically identified by the parent, guardian, legal custodian or child in the written permission, unless the court finds, after due notice and hearing, that inspection of those records by the person named in the permission would result in imminent danger to anyone.

(ap) Upon the written permission of the parent, guardian or legal custodian of a child expectant mother of an unborn child who is the subject of a record of a court specified in par. (a), or of an expectant mother of an unborn child who is the subject of a record of a court specified in par. (a), if 14 years of age or over, and of the unborn child by the unborn child's guardian ad litem, the court shall open for inspection by the person named in the permission any records specifically identified by the parent, guardian, legal custodian or expectant mother, and unborn child by the unborn child's guardian ad litem in the written permission, unless the court finds, after due notice and hearing, that inspection of those records by the person named in the permission would result in imminent danger to anyone.

(b) Upon request of the department or a federal agency to review court records for the purpose of monitoring and conducting periodic evaluations of activities as required by and implemented under 45 CFR 1355, 1356 and 1357, the court shall open those records for inspection by authorized representatives of the department or federal agency.

(dm) Upon request of a court having jurisdiction over actions affecting the family, an attorney responsible for support enforcement under s. 59.53 (6) (a) or a party to a paternity proceeding under subch. IX of ch. 767, the party's attorney or the guardian ad litem for the child who is the subject of that proceeding to review or be provided with information from the records of the court assigned to exercise jurisdiction under this chapter and ch. 938 relating to the paternity of a child for the purpose of determining the paternity of the child or for the purpose of rebutting the presumption of paternity under s. 891.405 or 891.41 (1), the court assigned to exercise jurisdiction under this chapter and ch. 938 shall open for inspection by the requester its records relating to the paternity of the child or disclose to the requester those records.

(dr) Upon request of the department of corrections or any other person preparing a presentence investigation under s. 972.15 to review court records for the purpose of preparing the presentence investigation, the court shall open for inspection by any authorized representative of the requester the records of the court relating to any child who has been the subject of a proceeding under this chapter.

(e) Upon request of a court of criminal jurisdiction to review court records for the purpose of conducting or preparing for a proceeding in that court or upon request of a district attorney to review court records for the purpose of performing his or her official duties in a proceeding in a court of criminal jurisdiction, the court assigned to exercise jurisdiction under this chapter and ch. 938 shall open for inspection by authorized representatives of the requester the records of the court relating to any child who has been the subject of a proceeding under this chapter.

(g) Upon request of any court assigned to exercise jurisdiction under this chapter and ch. 938, any municipal court exercising jurisdiction under s. 938.17 (2), or a district attorney, corporation counsel, or city, village, or town attorney to review court records for the purpose of any proceeding in that court or upon request of the attorney or guardian ad litem for a party to a proceeding in that court to review court records for the purpose of that proceeding, the court shall open for inspection by any authorized representative of the requester the records of the court relating to any child who has been the subject of a proceeding under this chapter.

(h) Upon request of the court having jurisdiction over an action affecting the family or of an attorney for a party or a guardian ad litem in an action affecting the family to review court records for the purpose of considering the custody of a child, the court assigned to exercise jurisdiction under this

chapter and ch. 938 shall open for inspection by an authorized representative of the requester the records of the court relating to any child who has been the subject of a proceeding under this chapter.

(3) (a) In this subsection, "court" means the court assigned to exercise jurisdiction under this chapter and ch. 938.

(b) 1. The court shall make information relating to proceedings under this chapter that is contained in the electronic records of the court available to any other court assigned to exercise jurisdiction under this chapter and ch. 938, a municipal court exercising jurisdiction under s. 938.17 (2), a court of criminal jurisdiction, a person representing the interests of the public under s. 48.09 or 938.09, an attorney or guardian ad litem for a parent or child who is a party to a proceeding in a court assigned to exercise jurisdiction under this chapter or ch. 938 or a municipal court, a district attorney prosecuting a criminal case, or the department, regardless of whether the person to whom the information is transferred is a party to or is otherwise involved in the proceedings in which the electronic records containing that information were created. The director of state courts may use the circuit court automated information systems established under s. 758.19 (4) to make information contained in the electronic records of the court available as provided in this subdivision.

2. Subdivision 1. does not authorize disclosure of any information relating to the physical or mental health of an individual or that deals with any other sensitive personal matter of an individual, including information contained in a patient health care record, as defined in s. 146.81 (4), a treatment record, as defined in s. 51.30 (1) (b), the record of a proceeding under s. 48.135, a report resulting from an examination or assessment under s. 938.295 [s. 48.295], a court report under s. 938.33 [s. 48.33], or a permanency plan under s. 938.38 [s. 48.38], except with the informed consent of a person authorized to consent to that disclosure, by order of the court, or as otherwise permitted by law.

NOTE: The correct cross-references are shown in brackets. Corrective legislation is pending.

(bm) The department may transfer to the court information contained in the electronic records of the department that are maintained in the statewide automated child welfare information system under s. 48.47 (7g). The director of state courts may use the circuit court automated information systems established under s. 758.19 (4) to facilitate the transfer of those electronic records from the department to the court. The director of state courts and the department shall specify what types of information may be transferred from the department to the court under this paragraph and made available by the court to the department under par. (b) 1.

(c) 1g. A court assigned to exercise jurisdiction under this chapter and ch. 938, a municipal court exercising jurisdiction under s. 938.17 (2), or a court of criminal jurisdiction shall keep any information made available to that court under par. (b) 1. confidential and may use or allow access to that information only for the purpose of conducting or preparing for a proceeding in that court. That court may allow that access regardless of whether the person who is allowed that access is a party to or is otherwise involved in the proceedings in which the electronic records containing that information were created.

1m. A person representing the interests of the public under s. 48.09 or 938.09, an attorney or guardian ad litem for a parent or child who is a party to a proceeding in a court assigned to exercise jurisdiction under this chapter or ch. 938 or a municipal court, or a district attorney prosecuting a criminal case shall keep any information made available to that person under par. (b) 1. confidential and may use or allow access to that information only for the purpose of performing his or her official duties relating to a proceeding in a court assigned to exercise jurisdiction under this chapter and ch. 938, a municipal court, or a court of criminal jurisdiction. That person may allow that access regardless of whether the person who is allowed that access is a party to or is otherwise involved in the proceedings in which the electronic records containing that information were created.

1r. The department shall keep any information made available to the department under par. (b) 1. confidential and may use or allow access to that information only for the purpose of providing services under s. 48.06, 48.067, 48.069, 938.06, 938.067, or 938.069. The department may allow that access regardless of whether the person who is allowed that access is a party to or is otherwise involved in the proceedings in which the electronic records containing that information were created.

2. The court or the director of state courts may allow access to any information transferred to the court under par. (bm) only to the extent that the information may be disclosed under this chapter or ch. 938.

3. An individual who is allowed under subd. 1g., 1m., 1r., or 2. to have access to any information transferred or made available under par. (b) 1. or (bm) shall keep the information confidential and may use and further disclose the information only for the purposes described in subd. 1g., 1m., or 1r. or to the extent permitted under subd. 2.

(d) Any person who intentionally uses or discloses information in violation of par. (c) may be required to forfeit not more than $5,000.

(5) (a) Any person who is denied access to a record under sub. (1), (1b), (1d), or (6) may petition the court to order the disclosure of the records governed by the applicable subsection. The petition shall be in writing and shall describe as specifically as possible all of the following:

1. The type of information sought.

2. The reason the information is being sought.

3. The basis for the petitioner's belief that the information is contained in the records.

4. The relevance of the information sought to the petitioner's reason for seeking the information.

5. The petitioner's efforts to obtain the information from other sources.

(b) The court shall notify the child, the child's counsel, the child's parents, appropriate law enforcement agencies and, if the child is an expectant mother of an unborn child under s. 48.133, the unborn child by the unborn child's guardian ad litem, or shall notify the adult expectant mother, the unborn child by the unborn child's guardian ad litem and appropriate law enforcement agencies, in writing of the petition. If any person notified objects to the disclosure, the court may hold a hearing to take evidence relating to the petitioner's need for the disclosure.

(c) The court shall make an inspection, which may be in camera, of the records of the child or expectant mother. If the court determines that the information sought is for good cause

and that it cannot be obtained with reasonable effort from other sources, the court shall then determine whether the petitioner's need for the information outweighs society's interest in protecting its confidentiality. In making that determination, the court shall balance the interest of the petitioner in obtaining access to the record against the interest of the child or expectant mother in avoiding the stigma that might result from disclosure.

(d) If the court determines that disclosure is warranted, it shall order the disclosure of only as much information as is necessary to meet the petitioner's need for the information.

(e) The court shall record the reasons for its decision to disclose or not to disclose the records of the child or expectant mother. All records related to a decision under this subsection are confidential.

(6) Records of law enforcement officers and of the court assigned to exercise jurisdiction under this chapter and ch. 938 shall be open for inspection to authorized representatives of the department of corrections, the department of health services, the department of justice, or a district attorney for use in the prosecution of any proceeding or any evaluation conducted under ch. 980, if the records involve or relate to an individual who is the subject of the proceeding or evaluation. The court in which the proceeding under ch. 980 is pending may issue any protective orders that it determines are appropriate concerning information made available or disclosed under this subsection. Any representative of the department of corrections, the department of health services, the department of justice, or a district attorney may disclose information obtained under this subsection for any purpose consistent with any proceeding under ch. 980.

History: 1971 c. 278; 1977 c. 354 s. 47; 1977 c. 449; Stats. 1977 s. 48.396; 1979 c. 300; 1979 c. 333 s. 5; 1983 a. 74 s. 32; 1983 a. 487, 538; 1985 a. 311, 332; 1987 a. 27, 180, 403; 1989 a. 31, 107, 145; 1991 a. 39, 263; 1993 a. 98, 195, 228, 334, 479, 491; 1995 a. 27 ss. 2479 to 2480m, 9126 (19); 1995 a. 77, 173, 275, 352, 440, 448; 1997 a. 35, 80, 191, 205, 252, 292; 1999 a. 32, 89; 2003 a. 82; 2005 a. 344, 434; 2005 a. 443 s. 265; 2007 a. 20 s. 9121 (6) (a); 2007 a. 97; 2009 a. 302, 338; 2011 a. 270.

In the interest of fostering fair and efficient administration of justice, a circuit court has the power to order disclosure of police records. State ex rel. Herget v. Waukesha Co. Cir. Ct. 84 Wis. 2d 435, 267 N.W.2d 309 (1978).

Section 967.06 gives the public defender the right to receive juvenile records of indigent clients notwithstanding s. 48.396 (2). State ex rel. S. M. O. 110 Wis. 2d 447, 329 N.W.2d 275 (Ct. App. 1982).

In determining whether to release juvenile court records, the child's best interests are paramount. The child's interests must be weighed against the need of the party seeking the information. The child whose confidentiality interests are at stake must be represented. State v. Bellows, 218 Wis. 2d 614, 582 N.W.2d 53 (Ct. App. 1998), 97-0977.

The juvenile court must make a threshold relevancy determination by an in camera review when confronted with: 1) a discovery request under s. 48.293 (2); 2) an inspection request of juvenile records under ss. 48.396 (2) and 938.396 (2); or 3) an inspection request of agency records under ss. 48.78 (2) (a) and 938.78 (2) (a). The test for permissible discovery is whether the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Courtney F. v. Ramiro M.C. 2004 WI App 36, 269 Wis. 2d 709, 676 N.W.2d 545, 03-3018.

Juvenile officers are not required to provide information concerning juveniles to school officials. A school does not violate sub. (1) by using information obtained from an officer to take disciplinary actions against a student as long as the school does not reveal the reason for its action. 69 Atty. Gen. 179.

A sheriff's department may, when evaluating an individual for an employment position, consider information in its possession concerning the individual's juvenile record. 67 Atty. Gen. 327 is overruled. 79 Atty. Gen. 89.

Corporation counsel may not have access to juvenile cases through the court system's electronic case management system until such time as the system can be programmed to provide for access only to individual files when access is permitted under this section. The statutes cannot be interpreted to provide corporation counsel unlimited access to juvenile records through the electronic case management system when the general rule is confidentiality and disclosure is the exception granted only after a fact-specific, case-by-case analysis. OAG 07-10.

SUBCHAPTER IX

JURISDICTION OVER PERSON 17 OR OLDER

48.44 Jurisdiction over persons 17 or older. (1) The court has jurisdiction over persons 17 years of age or older as provided under ss. 48.133, 48.355 (4) and 48.45 and as otherwise specifically provided in this chapter.

(2) The court has jurisdiction over a person subject to an order under s. 48.366 for all matters relating to that order.

History: 1971 c. 213 s. 5; 1975 c. 39; 1977 c. 354; 1987 a. 27; 1989 a. 121; 1995 a. 27; 1997 a. 35, 292.

SUBCHAPTER XVII

GENERAL PROVISIONS ON RECORDS

48.78 Confidentiality of records. (1) In this section, unless otherwise qualified, "agency" means the department, a county department, a licensed child welfare agency, or a licensed child care center.

(2) (a) No agency may make available for inspection or disclose the contents of any record kept or information received about an individual who is or was in its care or legal custody, except as provided under s. 48.371, 48.38 (5) (b) or (d) or (5m) (d), 48.396 (3) (bm) or (c) 1r., 48.432, 48.433, 48.48 (17) (bm), 48.57 (2m), 48.93, 48.981 (7), 938.396 (2m) (c) 1r., 938.51, or 938.78 or by order of the court.

(ag) Paragraph (a) does not prohibit an agency from making available for inspection or disclosing the contents of a record, upon the request of the parent, guardian, or legal custodian of the child who is the subject of the record or upon the request of the child, if 14 years of age or over, to the parent, guardian, legal custodian, or child, unless the agency determines that inspection of the record by the child, parent, guardian, or legal custodian would result in imminent danger to anyone.

(aj) Paragraph (a) does not prohibit an agency from making available for inspection or disclosing the contents of a record, upon the request of a parent, guardian, or legal custodian of a child expectant mother of an unborn child who is the subject of the record, upon the request of an expectant mother of an unborn child who is the subject of the record, if 14 years of age or over, or upon the request of an unborn child by the unborn child's guardian ad litem to the parent, guardian, legal custodian, expectant mother, or unborn child by the unborn child's guardian ad litem, unless the agency determines that inspection of the record by the parent, guardian, legal custodian, expectant mother, or unborn child by the unborn child's guardian ad litem would result in imminent danger to anyone.

(am) Paragraph (a) does not prohibit an agency from making available for inspection or disclosing the contents of a record, upon the written permission of the parent, guardian, or legal custodian of the child who is the subject of the record or upon the written permission of the child, if 14 years of age or over, to the person named in the permission if the parent, guardian, legal custodian, or child specifically identifies the record in the written permission, unless the agency determines that inspection of the record by the person named in the permission would result in imminent danger to anyone.

(ap) Paragraph (a) does not prohibit an agency from making available for inspection or disclosing the contents of a record, upon the written permission of the parent, guardian, or legal custodian of a child expectant mother of an unborn child who is the subject of the record, or of an expectant mother of an unborn child who is the subject of the record, if 14 years of age or over, and of the unborn child by the unborn child's guardian ad litem, to the person named in the permission if the parent, guardian, legal custodian, or expectant mother, and unborn child by the unborn child's guardian ad litem, specifically identify the record in the written permission, unless the agency determines that inspection of the record by the person named in the permission would result in imminent danger to anyone.

(b) Paragraph (a) does not apply to the confidential exchange of information between an agency and another social welfare agency, a law enforcement agency, a public school, or a private school regarding an individual in the care or legal custody of the agency. A social welfare agency that obtains information under this paragraph shall keep the information confidential as required under this section and s. 938.78. A law enforcement agency that obtains information under this paragraph shall keep the information confidential as required under ss. 48.396 (1) and 938.396 (1) (a). A public school that obtains information under this paragraph shall keep the information confidential as required under s. 118.125, and a private school that obtains information under this paragraph shall keep the information confidential in the same manner as is required of a public school under s. 118.125. Paragraph (a) does not apply to the confidential exchange of information between an agency and officials of a tribal school regarding an individual in the care or legal custody of the agency if the agency determines that enforceable protections are provided by a tribal school policy or tribal law that requires tribal school officials to keep the information confidential in a manner at least as stringent as is required of a public school official under s. 118.125.

(c) Paragraph (a) does not prohibit the department or a county department from using in the media a picture or description of a child in the guardianship of the department or a county department for the purpose of finding adoptive parents for that child.

(d) Paragraph (a) does not prohibit the department of health services or a county department from disclosing information about an individual formerly in the legal custody or under the supervision of that department under s. 48.34 (4m), 1993 stats., or formerly under the supervision of that department or county department under s. 48.34 (4n), 1993 stats., to the department of corrections, if the individual is at the time of disclosure any of the following:

1. The subject of a presentence investigation under s. 972.15.

2. Under sentence to the Wisconsin state prisons under s. 973.15.

3. Subject to an order under s. 48.366 and placed in a state prison under s. 48.366 (8).

4. On probation to the department of corrections under s. 973.09.

5. On parole under s. 302.11 or ch. 304 or on extended supervision under s. 302.113 or 302.114.

(e) Notwithstanding par. (a), an agency shall, upon request, disclose information to authorized representatives of the department of corrections, the department of health services, the department of justice, or a district attorney for use in the prosecution of any proceeding or any evaluation conducted under ch. 980, if the information involves or relates to an individual who is the subject of the proceeding or evaluation. The court in which the proceeding under ch. 980 is pending may issue any protective orders that it determines are appropriate concerning information made available or disclosed under this paragraph. Any representative of the department of corrections, the department of health services, the department of justice, or a district attorney may disclose information obtained under this paragraph for any purpose consistent with any proceeding under ch. 980.

(g) Paragraph (a) does not prohibit an agency from disclosing information about an individual in its care or legal custody on the written request of the department of safety and professional services or of any interested examining board or affiliated credentialing board in that department for use in any investigation or proceeding relating to any alleged misconduct by any person who is credentialed or who is seeking credentialing under ch. 448, 455 or 457. Unless authorized by an order of the court, the department of safety and professional services and any examining board or affiliated credentialing board in that department shall keep confidential any information obtained under this paragraph and may not disclose the name of or any other identifying information about the individual who is the subject of the information disclosed, except to the extent that redisclosure of that information is necessary for the conduct of the investigation or proceeding for which that information was obtained.

(h) Paragraph (a) does not prohibit the department, a county department, or a licensed child welfare agency from entering the content of any record kept or information received by the department, county department, or licensed child welfare agency into the statewide automated child welfare information system established under s. 48.47 (7g) or the department from transferring any information maintained in that system to the court under s. 48.396 (3) (bm). If the department transfers that information to the court, the court and the director of state courts may allow access to that information as provided in s. 48.396 (3) (c) 2.

(i) Paragraph (a) does not prohibit an agency from disclosing information to a relative of a child placed outside of his or her home only to the extent necessary to facilitate the establishment of a relationship between the child and the relative or a placement of the child with the relative or from disclosing information under s. 48.21 (5) (e), 48.355 (2) (cm), or 48.357 (2v) (d). In this paragraph, "relative" includes a relative whose relationship is derived through a parent of the child whose parental rights are terminated.

(j) Paragraph (a) does not prohibit an agency from disclosing information to any public or private agency in this state or any other state that is investigating a person for purposes of licensing the person to operate a foster home or placing a child for adoption in the home of the person.

History: 1979 c. 34; 1981 c. 359; 1983 a. 471 s. 7; 1985 a. 29 s. 3202 (23); 1985 a. 176, 292, 332; 1987 a. 332; 1989 a. 31, 107, 336; 1991 a. 17, 39; 1993 a. 16, 92, 95, 218, 227, 377, 385, 395, 479, 491; 1995 a. 27 ss. 2610 to 2614p, 9126 (19); 1995 a. 77, 230, 352; 1997 a. 205, 207, 283, 292; 2001 a. 38, 69, 104, 109;

2005 a. 25, 293, 344, 406, 434; 2007 a. 20 ss. 1364, 9121 (6) (a); 2009 a. 79, 185, 302, 338; 2011 a. 32, 260, 270.

The juvenile court must make a threshold relevancy determination by an in camera review when confronted with: 1) a discovery request under s. 48.293 (2); 2) an inspection request of juvenile records under ss. 48.396 (2) and 938.396 (2); or 3) an inspection request of agency records under ss. 48.78 (2) (a) and 938.78 (2) (a). The test for permissible discovery is whether the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Courtney F. v. Ramiro M.C. 2004 WI App 36, 269 Wis. 2d 709, 676 N.W.2d 545, 03-3018.

SUBCHAPTER XX

MISCELLANEOUS PROVISIONS

48.981 Abused or neglected children and abused unborn children. (1) DEFINITIONS. In this section:

(ag) "Agency" means a county department, the department in a county having a population of 500,000 or more or a licensed child welfare agency under contract with a county department or the department in a county having a population of 500,000 or more to perform investigations under this section.

(am) "Caregiver" means, with respect to a child who is the victim or alleged victim of abuse or neglect or who is threatened with abuse or neglect, any of the following persons:

1. The child's parent, grandparent, greatgrandparent, stepparent, brother, sister, stepbrother, stepsister, half brother, or half sister.

2. The child's guardian.

3. The child's legal custodian.

4. A person who resides or has resided regularly or intermittently in the same dwelling as the child.

5. An employee of a residential facility or residential care center for children and youth in which the child was or is placed.

6. A person who provides or has provided care for the child in or outside of the child's home.

7. Any other person who exercises or has exercised temporary or permanent control over the child or who temporarily or permanently supervises or has supervised the child.

8. Any relative of the child other than a relative specified in subd. 1.

(b) "Community placement" means probation; extended supervision; parole; aftercare; conditional transfer into the community under s. 51.35 (1); conditional transfer or discharge under s. 51.37 (9); placement in a Type 2 residential care center for children and youth or a Type 2 juvenile correctional facility authorized under s. 938.539 (5); conditional release under s. 971.17; supervised release under s. 980.06 or 980.08; participation in the community residential confinement program under s. 301.046, the intensive sanctions program under s. 301.048, the corrective sanctions program under s. 938.533, the intensive supervision program under s. 938.534, or the serious juvenile offender program under s. 938.538; or any other placement of an adult or juvenile offender in the community under the custody or supervision of the department of corrections, the department of health services, a county department under s. 46.215, 46.22, 46.23, 51.42, or 51.437 or any other person under contract with the department of corrections, the department of health services or a county department under s. 46.215, 46.22, 46.23, 51.42, or 51.437 to exercise custody or supervision over the offender.

(ct) "Indian unborn child" means an unborn child who, when born, may be eligible for affiliation with an Indian tribe in any of the following ways:

1. As a member of the Indian tribe.

2. As a person who is eligible for membership in an Indian tribe and the biological child of a member of an Indian tribe.

(cv) "Member of a religious order" means an individual who has taken vows devoting himself or herself to religious or spiritual principles and who is authorized or appointed by his or her religious order or organization to provide spiritual or religious advice or service.

(cx) "Member of the clergy" has the meaning given in s. 765.002 (1) or means a member of a religious order, and includes brothers, ministers, monks, nuns, priests, rabbis, and sisters.

(f) "Record" means any document relating to the investigation, assessment and disposition of a report under this section.

(g) "Reporter" means a person who reports suspected abuse or neglect or a belief that abuse or neglect will occur under this section.

(h) "Subject" means a person or unborn child named in a report or record as any of the following:

1. A child who is the victim or alleged victim of abuse or neglect or who is threatened with abuse or neglect.

1m. An unborn child who is the victim or alleged victim of abuse or who is at substantial risk of abuse.

2. A person who is suspected of abuse or neglect or who has been determined to have abused or neglected a child or to have abused an unborn child.

(i) "Tribal agent" means the person designated under 25 CFR 23.12 by an Indian tribe to receive notice of involuntary child custody proceedings under the federal Indian Child Welfare Act, 25 USC 1901 to 1963.

(2) PERSONS REQUIRED TO REPORT. (a) Any of the following persons who has reasonable cause to suspect that a child seen by the person in the course of professional duties has been abused or neglected or who has reason to believe that a child seen by the person in the course of professional duties has been threatened with abuse or neglect and that abuse or neglect of the child will occur shall, except as provided under subs. (2m) and (2r), report as provided in sub. (3):

1. A physician.

2. A coroner.

3. A medical examiner.

4. A nurse.

5. A dentist.

6. A chiropractor.

7. An optometrist.

8. An acupuncturist.

9. A medical or mental health professional not otherwise specified in this paragraph.

10. A social worker.

11. A marriage and family therapist.

12. A professional counselor.

13. A public assistance worker, including a financial and employment planner, as defined in s. 49.141 (1) (d).

14. A school teacher.

15. A school administrator

16. A school counselor.

16m. A school employee not otherwise specified in this paragraph.

17. A mediator under s. 767.405.

18. A child care worker in a child care center, group home, or residential care center for children and youth.

19. A child care provider.

20. An alcohol or other drug abuse counselor.

21. A member of the treatment staff employed by or working under contract with a county department under s. 46.23, 51.42, or 51.437 or a residential care center for children and youth.

22. A physical therapist.

22m. A physical therapist assistant.

23. An occupational therapist.

24. A dietitian.

25. A speech-language pathologist.

26. An audiologist.

27. An emergency medical technician.

28. A first responder.

29. A police or law enforcement officer.

(b) A court-appointed special advocate who has reasonable cause to suspect that a child seen in the course of activities under s. 48.236 (3) has been abused or neglected or who has reason to believe that a child seen in the course of those activities has been threatened with abuse and neglect and that abuse or neglect of the child will occur shall, except as provided in subs. (2m) and (2r), report as provided in sub. (3).

(bm) 1. Except as provided in subd. 3. and subs. (2m) and (2r), a member of the clergy shall report as provided in sub. (3) if the member of the clergy has reasonable cause to suspect that a child seen by the member of the clergy in the course of his or her professional duties:

a. Has been abused, as defined in s. 48.02 (1) (b) to (f); or

b. Has been threatened with abuse, as defined in s. 48.02 (1) (b) to (f), and abuse of the child will likely occur.

2. Except as provided in subd. 3. and subs. (2m) and (2r), a member of the clergy shall report as provided in sub. (3) if the member of the clergy has reasonable cause, based on observations made or information that he or she receives, to suspect that a member of the clergy has done any of the following:

a. Abused a child, as defined in s. 48.02 (1) (b) to (f).

b. Threatened a child with abuse, as defined in s. 48.02 (1) (b) to (f), and abuse of the child will likely occur.

3. A member of the clergy is not required to report child abuse information under subd. 1. or 2. that he or she receives solely through confidential communications made to him or her privately or in a confessional setting if he or she is authorized to hear or is accustomed to hearing such communications and, under the disciplines, tenets, or traditions of his or her religion, has a duty or is expected to keep those communications secret. Those disciplines, tenets, or traditions need not be in writing.

(c) Any person not otherwise specified in par. (a), (b), or (bm), including an attorney, who has reason to suspect that a child has been abused or neglected or who has reason to believe that a child has been threatened with abuse or neglect and that abuse or neglect of the child will occur may report as provided in sub. (3).

(d) Any person, including an attorney, who has reason to suspect that an unborn child has been abused or who has reason to believe that an unborn child is at substantial risk of abuse may report as provided in sub. (3).

(e) No person making a report under this subsection in good faith may be discharged from employment, disciplined or otherwise discriminated against in regard to employment, or threatened with any such treatment for so doing.

(2m) EXCEPTION TO REPORTING REQUIREMENT; HEALTH CARE SERVICES. (a) The purpose of this subsection is to allow children to obtain confidential health care services.

(b) In this subsection:

1. "Health care provider" means a physician, as defined under s. 448.01 (5), a physician assistant, as defined under s. 448.01 (6), or a nurse holding a certificate of registration under s. 441.06 (1) or a license under s. 441.10 (3).

2. "Health care service" means family planning services, as defined in s. 253.07 (1) (b), 1995 stats., pregnancy testing, obstetrical health care or screening, diagnosis and treatment for a sexually transmitted disease.

(c) Except as provided under pars. (d) and (e), the following persons are not required to report as suspected or threatened abuse, as defined in s. 48.02 (1) (b), sexual intercourse or sexual contact involving a child:

1. A health care provider who provides any health care service to a child.

4. A person who obtains information about a child who is receiving or has received health care services from a health care provider.

(d) Any person described under par. (c) 1. or 4. shall report as required under sub. (2) if he or she has reason to suspect any of the following:

1. That the sexual intercourse or sexual contact occurred or is likely to occur with a caregiver.

2. That the child suffered or suffers from a mental illness or mental deficiency that rendered or renders the child temporarily or permanently incapable of understanding or evaluating the consequences of his or her actions.

3. That the child, because of his or her age or immaturity, was or is incapable of understanding the nature or consequences of sexual intercourse or sexual contact.

4. That the child was unconscious at the time of the act or for any other reason was physically unable to communicate unwillingness to engage in sexual intercourse or sexual contact.

5. That another participant in the sexual contact or sexual intercourse was or is exploiting the child.

(e) In addition to the reporting requirements under par. (d), a person described under par. (c) 1. or 4. shall report as required under sub. (2) if he or she has any reasonable doubt as to the voluntariness of the child's participation in the sexual contact or sexual intercourse.

(2r) EXCEPTION TO REPORTING REQUIREMENT; PERSON DELEGATED PARENTAL POWERS. A person delegated care and custody of a child under s. 48.979 is not required to report as provided in sub. (3) any suspected or threatened abuse or neglect of the child as required under sub. (2) (a), (b), or (bm) or (2m) (d) or (e). Such a person who has reason to suspect

that the child has been abused or neglected or who has reason to believe that the child has been threatened with abuse or neglect and that abuse or neglect of the child will occur may report as provided in sub. (3).

(3) REPORTS; INVESTIGATION. (a) *Referral of report.* 1. A person required to report under sub. (2) shall immediately inform, by telephone or personally, the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department or the sheriff or city, village, or town police department of the facts and circumstances contributing to a suspicion of child abuse or neglect or of unborn child abuse or to a belief that abuse or neglect will occur.

2. The sheriff or police department shall within 12 hours, exclusive of Saturdays, Sundays, or legal holidays, refer to the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department all of the following types of cases reported to the sheriff or police department:

a. Cases in which a caregiver is suspected of abuse or neglect or of threatened abuse or neglect of a child.

b. Cases in which a caregiver is suspected of facilitating or failing to take action to prevent the suspected or threatened abuse or neglect of a child.

c. Cases in which it cannot be determined who abused or neglected or threatened to abuse or neglect a child.

d. Cases in which there is reason to suspect that an unborn child has been abused or there is reason to believe that an unborn child is at substantial risk of abuse.

2d. The sheriff or police department may refer to the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department a case reported to the sheriff or police department in which a person who is not a caregiver is suspected of abuse or of threatened abuse of a child.

2g. The county department, department, or licensed child welfare agency may require that a subsequent report of a case referred under subd. 2. or 2d. be made in writing.

3. Except as provided in sub. (3m), a county department, the department, or a licensed child welfare agency under contract with the department shall within 12 hours, exclusive of Saturdays, Sundays, or legal holidays, refer to the sheriff or police department all cases of suspected or threatened abuse, as defined in s. 48.02 (1) (b) to (f), reported to it. For cases of suspected or threatened abuse, as defined in s. 48.02 (1) (a), (am), (g), or (gm), or neglect, each county department, the department, and a licensed child welfare agency under contract with the department shall adopt a written policy specifying the kinds of reports it will routinely report to local law enforcement authorities.

4. If the report is of suspected or threatened abuse, as defined in s. 48.02 (1) (b) to (f), the sheriff or police department and the county department, department, or licensed child welfare agency under contract with the department shall coordinate the planning and execution of the investigation of the report.

(b) *Duties of local law enforcement agencies.* 1. Any person reporting under this section may request an immediate investigation by the sheriff or police department if the person has reason to suspect that the health or safety of a child or of an unborn child is in immediate danger. Upon receiving such a request, the sheriff or police department shall immediately investigate to determine if there is reason to believe that the health or safety of the child or unborn child is in immediate danger and take any necessary action to protect the child or unborn child.

2. If the investigating officer has reason under s. 48.19 (1) (c) or (cm) or (d) 5. or 8. to take a child into custody, the investigating officer shall take the child into custody and deliver the child to the intake worker under s. 48.20.

2m. If the investigating officer has reason under s. 48.193 (1) (c) or (d) 2. to take the adult expectant mother of an unborn child into custody, the investigating officer shall take the adult expectant mother into custody and deliver the adult expectant mother to the intake worker under s. 48.203.

3. If the sheriff or police department determines that criminal action is necessary, the sheriff or police department shall refer the case to the district attorney for criminal prosecution. Each sheriff and police department shall adopt a written policy specifying the kinds of reports of suspected or threatened abuse, as defined in s. 48.02 (1) (b) to (f), that the sheriff or police department will routinely refer to the district attorney for criminal prosecution.

(bm) *Notice of report to Indian tribal agent.* In a county that has wholly or partially within its boundaries a federally recognized Indian reservation or a bureau of Indian affairs service area for the Ho-Chunk tribe, if a county department that receives a report under par. (a) pertaining to a child or unborn child knows or has reason to know that the child is an Indian child who resides in the county or that the unborn child is an Indian unborn child whose expectant mother resides in the county, the county department shall provide notice, which shall consist only of the name and address of the Indian child or expectant mother and the fact that a report has been received about that Indian child or Indian unborn child, within 24 hours to one of the following:

1. If the county department knows with which Indian tribe the child is affiliated, or with which Indian tribe the Indian unborn child, when born, may be eligible for affiliation, and the Indian tribe is a Wisconsin Indian tribe, the tribal agent of that tribe.

2. If the county department does not know with which Indian tribe the child is affiliated, or with which Indian tribe the Indian unborn child, when born, may be eligible for affiliation, or the child or expectant mother is not affiliated with a Wisconsin Indian tribe, the tribal agent serving the reservation or Ho-Chunk service area where the child or expectant mother resides.

3. If neither subd. 1. nor 2. applies, any tribal agent serving a reservation or Ho-Chunk service area in the county.

(c) *Duties of county departments.* 1. a. Immediately after receiving a report under par. (a), the agency shall evaluate the report to determine whether there is reason to suspect that a caregiver has abused or neglected the child, has threatened the child with abuse or neglect, or has facilitated or failed to take action to prevent the suspected or threatened abuse or neglect of the child. Except as provided in sub. (3m), if the agency determines that a caregiver is suspected of abuse or neglect or of threatened abuse or neglect of the child, determines that a caregiver is suspected of facilitating or failing to take action to

prevent the suspected or threatened abuse or neglect of the child, or cannot determine who abused or neglected the child, within 24 hours after receiving the report the agency shall, in accordance with the authority granted to the department under s. 48.48 (17) (a) 1. or the county department under s. 48.57 (1) (a), initiate a diligent investigation to determine if the child is in need of protection or services. If the agency determines that a person who is not a caregiver is suspected of abuse or of threatened abuse, the agency may, in accordance with that authority, initiate a diligent investigation to determine if the child is in need or protection or services. Within 24 hours after receiving a report under par. (a) of suspected unborn child abuse, the agency, in accordance with that authority, shall initiate a diligent investigation to determine if the unborn child is in need of protection or services. An investigation under this subd. 1. a. shall be conducted in accordance with standards established by the department for conducting child abuse and neglect investigations or unborn child abuse investigations.

b. If the investigation is of a report of child abuse or neglect or of threatened child abuse or neglect by a caregiver specified in sub. (1) (am) 5. to 8. who continues to have access to the child or a caregiver specified in sub. (1) (am) 1. to 4., or of a report that does not disclose who is suspected of the child abuse or neglect and in which the investigation does not disclose who abused or neglected the child, the investigation shall also include observation of or an interview with the child, or both, and, if possible, an interview with the child's parents, guardian, or legal custodian. If the investigation is of a report of child abuse or neglect or threatened child abuse or neglect by a caregiver who continues to reside in the same dwelling as the child, the investigation shall also include, if possible, a visit to that dwelling. At the initial visit to the child's dwelling, the person making the investigation shall identify himself or herself and the agency involved to the child's parents, guardian, or legal custodian. The agency may contact, observe, or interview the child at any location without permission from the child's parent, guardian, or legal custodian if necessary to determine if the child is in need of protection or services, except that the person making the investigation may enter a child's dwelling only with permission from the child's parent, guardian, or legal custodian or after obtaining a court order permitting the person to do so.

2. a. If the person making the investigation is an employee of the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department and he or she determines that it is consistent with the child's best interest in terms of physical safety and physical health to remove the child from his or her home for immediate protection, he or she shall take the child into custody under s. 48.08 (2) or 48.19 (1) (c) and deliver the child to the intake worker under s. 48.20.

b. If the person making the investigation is an employee of a licensed child welfare agency which is under contract with the county department and he or she determines that any child in the home requires immediate protection, he or she shall notify the county department of the circumstances and together with an employee of the county department shall take the child into custody under s. 48.08 (2) or 48.19 (1) (c) and deliver the child to the intake worker under s. 48.20.

2m. a. If the person making the investigation is an employee of the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department and he or she determines that it is consistent with the best interest of the unborn child in terms of physical safety and physical health to take the expectant mother into custody for the immediate protection of the unborn child, he or she shall take the expectant mother into custody under s. 48.08 (2), 48.19 (1) (cm) or 48.193 (1) (c) and deliver the expectant mother to the intake worker under s. 48.20 or 48.203.

b. If the person making the investigation is an employee of a licensed child welfare agency which is under contract with the county department and he or she determines that any unborn child requires immediate protection, he or she shall notify the county department of the circumstances and together with an employee of the county department shall take the expectant mother of the unborn child into custody under s. 48.08 (2), 48.19 (1) (cm) or 48.193 (1) (c) and deliver the expectant mother to the intake worker under s. 48.20 or 48.203.

3. If the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department determines that a child, any member of the child's family or the child's guardian or legal custodian is in need of services or that the expectant mother of an unborn child is in need of services, the county department, department or licensed child welfare agency shall offer to provide appropriate services or to make arrangements for the provision of services. If the child's parent, guardian or legal custodian or the expectant mother refuses to accept the services, the county department, department or licensed child welfare agency may request that a petition be filed under s. 48.13 alleging that the child who is the subject of the report or any other child in the home is in need of protection or services or that a petition be filed under s. 48.133 alleging that the unborn child who is the subject of the report is in need of protection or services.

4. The county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department shall determine, within 60 days after receipt of a report that the county department, department, or licensed child welfare agency investigates under subd. 1., whether abuse or neglect has occurred or is likely to occur. The determination shall be based on a preponderance of the evidence produced by the investigation. A determination that abuse or neglect has occurred may not be based solely on the fact that the child's parent, guardian, or legal custodian in good faith selects and relies on prayer or other religious means for treatment of disease or for remedial care of the child. In making a determination that emotional damage has occurred, the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department shall give due regard to the culture of the subjects. This subdivision does not prohibit a court from ordering medical services for the child if the child's health requires it.

5. The agency shall maintain a record of its actions in connection with each report it receives. The record shall include a description of the services provided to any child and to the parents, guardian or legal custodian of the child or to any

expectant mother of an unborn child. The agency shall update the record every 6 months until the case is closed.

5m. If the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department determines under subd. 4. that a specific person has abused or neglected a child, the county department, department or licensed child welfare agency, within 15 days after the date of the determination, shall notify the person in writing of the determination, the person's right to appeal the determination and the procedure by which the person may appeal the determination, and the person may appeal the determination in accordance with the procedures established by the department under this subdivision. The department shall promulgate rules establishing procedures for conducting an appeal under this subdivision. Those procedures shall include a procedure permitting an appeal under this subdivision to be held in abeyance pending the outcome of any criminal proceedings or any proceedings under s. 48.13 based on the alleged abuse or neglect or the outcome of any investigation that may lead to the filing of a criminal complaint or a petition under s. 48.13 based on the alleged abuse or neglect.

5r. If the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department determines under subd. 4. that a specific person has abused or neglected a child, the county department, department, or licensed child welfare agency, within 15 days after the date of the determination, shall provide the subunit of the department that administers s. 48.685 with information about the person who has been determined to have abused or neglected the child.

6. The agency shall, within 60 days after it receives a report from a person required under sub. (2) to report, inform the reporter what action, if any, was taken to protect the health and welfare of the child or unborn child who is the subject of the report.

6m. If a person who is not required under sub. (2) to report makes a report and is a relative of the child, other than the child's parent, or is a relative of the expectant mother of the unborn child, that person may make a written request to the agency for information regarding what action, if any, was taken to protect the health and welfare of the child or unborn child who is the subject of the report. An agency that receives a written request under this subdivision shall, within 60 days after it receives the report or 20 days after it receives the written request, whichever is later, inform the reporter in writing of what action, if any, was taken to protect the health and welfare of the child or unborn child, unless a court order prohibits that disclosure, and of the duty to keep the information confidential under sub. (7) (e) and the penalties for failing to do so under sub. (7) (f). The agency may petition the court ex parte for an order prohibiting that disclosure and, if the agency does so, the time period within which the information must be disclosed is tolled on the date the petition is filed and remains tolled until the court issues a decision. The court may hold an ex parte hearing in camera and shall issue an order granting the petition if the court determines that disclosure of the information would not be in the best interests of the child or unborn child.

7. The county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department shall cooperate with law enforcement officials, courts of competent jurisdiction, tribal governments and other human services agencies to prevent, identify and treat child abuse and neglect and unborn child abuse. The county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department shall coordinate the development and provision of services to abused and neglected children, to abused unborn children to families in which child abuse or neglect has occurred, to expectant mothers who have abused their unborn children, to children and families when circumstances justify a belief that abuse or neglect will occur and to the expectant mothers of unborn children when circumstances justify a belief that unborn child abuse will occur.

8. Using the format prescribed by the department, each county department shall provide the department with information about each report that the county department receives or that is received by a licensed child welfare agency that is under contract with the county department and about each investigation that the county department or a licensed child welfare agency under contract with the county department conducts. Using the format prescribed by the department, a licensed child welfare agency under contract with the department shall provide the department with information about each report that the child welfare agency receives and about each investigation that the child welfare agency conducts. The department shall use the information to monitor services provided by county departments or licensed child welfare agencies under contract with county departments or the department. The department shall use nonidentifying information to maintain statewide statistics on child abuse and neglect and on unborn child abuse, and for planning and policy development purposes.

9. The agency may petition for child abuse restraining orders and injunctions under s. 48.25 (6).

(cm) Contract with licensed child welfare agencies. A county department may contract with a licensed child welfare agency to fulfill the county department's duties specified under par. (c) 1., 2. b., 2m. b., 5., 5r., 6., 6m., and 8. The department may contract with a licensed child welfare agency to fulfill the department's duties specified under par. (c) 1., 2. a., 2m. b., 3., 4., 5., 5m., 5r., 6., 6m., 7., 8,. and 9. in a county having a population of 500,000 or more. The confidentiality provisions specified in sub. (7) shall apply to any licensed child welfare agency with which a county department or the department contracts.

(d) *Independent investigation.* 1. In this paragraph, "agent" includes a foster parent or other person given custody of a child or a human services professional employed by a county department under s. 51.42 or 51.437 or by a child welfare agency who is working with a child or an expectant mother of an unborn child under contract with or under the supervision of the department in a county having a population of 500,000 or more or a county department under s. 46.22.

2. If an agent or employee of an agency required to investigate under this subsection is the subject of a report, or if the agency determines that, because of the relationship between the agency and the subject of a report, there is a substantial probability that the agency would not conduct an unbiased investigation, the agency shall, after taking any action necessary

to protect the child or unborn child, notify the department. Upon receipt of the notice, the department, in a county having a population of less than 500,000 or a county department or child welfare agency designated by the department in any county shall conduct an independent investigation. If the department designates a county department under s. 46.22, 46.23, 51.42 or 51.437, that county department shall conduct the independent investigation. If a licensed child welfare agency agrees to conduct the independent investigation, the department may designate the child welfare agency to do so. The powers and duties of the department or designated county department or child welfare agency making an independent investigation are those given to county departments under par. (c).

(3m) ALTERNATIVE RESPONSE PILOT PROGRAM. (a) In this subsection, "substantial abuse or neglect" means abuse or neglect or threatened abuse or neglect that under the guidelines developed by the department under par. (b) constitutes severe abuse or neglect or a threat of severe abuse or neglect and a significant threat to the safety of a child and his or her family.

(b) The department shall establish a pilot program under which an agency in a county having a population of 500,000 or more or a county department that is selected to participate in the pilot program may employ alternative responses to a report of abuse or neglect or of threatened abuse or neglect. The department shall select agencies and county departments to participate in the pilot program in accordance with the department's request-for-proposal procedures and according to criteria developed by the department. Those criteria shall include an assessment of the plan of an agency or county department for involving the community in providing services for a family that is participating in the pilot program and a determination of whether an agency or a county department has an agreement with local law enforcement agencies and the representative of the public under s. 48.09 to ensure interagency cooperation in implementing the pilot program. To implement the pilot program, the department shall provide all of the following:

1. Guidelines for determining the appropriate alternative response to a report of abuse or neglect or of threatened abuse or neglect, including guidelines for determining what types of abuse or neglect or threatened abuse or neglect constitute substantial abuse or neglect. The department need not promulgate those guidelines as rules under ch. 227.

2. Training and technical assistance for an agency or county department that is selected to participate in the pilot program.

(c) Immediately after receiving a report under sub. (3) (a), an agency or county department that is participating in the pilot program shall evaluate the report to determine the most appropriate alternative response under subds. 1. to 3. to the report. Based on that evaluation, the agency or county department shall respond to the report as follows:

1. If the agency or county department determines that there is reason to suspect that substantial abuse or neglect has occurred or is likely to occur or that an investigation under sub. (3) is otherwise necessary to ensure the safety of the child and his or her family, the agency or county department shall investigate the report as provided in sub. (3). If in conducting that investigation the agency or county department determines that it is not necessary for the safety of the child and his or her family to complete the investigation, the agency or county department may terminate the investigation and conduct an assessment under subd. 2. If the agency or county department terminates an investigation, the agency or county department shall document the reasons for terminating the investigation and notify any law enforcement agency that is cooperating in the investigation.

2. a. If the agency or county department determines that there is reason to suspect that abuse or neglect, other than substantial abuse or neglect, has occurred or is likely to occur, but that under the guidelines developed by the department under par. (b) there is no immediate threat to the safety of the child and his or her family and court intervention is not necessary, the agency or county department shall conduct a comprehensive assessment of the safety of the child and his or her family, the risk of subsequent abuse or neglect, and the strengths and needs of the child's family to determine whether services are needed to address those issues assessed and, based on the assessment, shall offer to provide appropriate services to the child's family on a voluntary basis or refer the child's family to a service provider in the community for the provision of those services.

b. If the agency or county department employs the assessment response under subd. 2. a., the agency or county department is not required to refer the report to the sheriff or police department under sub. (3) (a) 3. or determine by a preponderance of the evidence under sub. (3) (c) 4. that abuse or neglect has occurred or is likely to occur or that a specific person has abused or neglected the child. If in conducting the assessment the agency or county department determines that there is reason to suspect that substantial abuse or neglect has occurred or is likely to occur or that an investigation under sub. (3) is otherwise necessary to ensure the safety of the child and his or her family, the agency or county department shall immediately commence an investigation under sub. (3).

3. If the agency or county department determines that there is no reason to suspect that abuse or neglect has occurred or is likely to occur, the agency or county department shall refer the child's family to a service provider in the community for the provision of appropriate services on a voluntary basis. If the agency or county department employs the community services response under this subdivision, the agency or county department is not required to conduct an assessment under subd. 2., refer the report to the sheriff or police department under sub. (3) (a) 3., or determine by a preponderance of the evidence under sub. (3) (c) 4. that abuse or neglect has occurred or is likely to occur or that a specific person has abused or neglected the child.

(d) The department shall conduct an evaluation of the pilot program and, by July 1, 2012, shall submit a report of that evaluation to the governor and to the appropriate standing committees of the legislature under s. 13.172 (3). The evaluation shall assess the issues encountered in implementing the pilot program and the overall operations of the pilot program, include specific measurements of the effectiveness of the pilot program, and make recommendations to improve that effectiveness. Those specific measurements shall include all of the following:

1. The turnover rate of the agency or county department caseworkers providing services under the pilot program.

2. The number of families referred for each type of response specified in par. (c) 1. to 3.

3. The number of families that accepted, and the number of families that declined to accept, services offered under par. (c) 2. and 3.

4. The effectiveness of the evaluation under par. (c) (intro.) in determining the appropriate response under par. (c) 1. to 3.

5. The impact of the pilot program on the number of out-of-home placements of children by the agencies or county departments participating in the pilot program.

6. The availability of services to address the issues of child and family safety, risk of subsequent abuse or neglect, and family strengths and needs in the communities served under the pilot project.

7g. The rate at which children referred for each type of response specified in par. (c) 1. to 3. are subsequently the subjects of reports of suspected or threatened abuse or neglect.

7m. The satisfaction of families referred for each type of response specified in par. (c) 1. to 3. with the process used to respond to those referrals.

7r. The cost effectiveness of responding to reports of suspected or threatened abuse or neglect in the manner provided under the pilot program.

(4) IMMUNITY FROM LIABILITY. Any person or institution participating in good faith in the making of a report, conducting an investigation, ordering or taking of photographs or ordering or performing medical examinations of a child or of an expectant mother under this section shall have immunity from any liability, civil or criminal, that results by reason of the action. For the purpose of any proceeding, civil or criminal, the good faith of any person reporting under this section shall be presumed. The immunity provided under this subsection does not apply to liability for abusing or neglecting a child or for abusing an unborn child.

(5) CORONER'S REPORT. Any person or official required to report cases of suspected child abuse or neglect who has reasonable cause to suspect that a child died as a result of child abuse or neglect shall report the fact to the appropriate medical examiner or coroner. The medical examiner or coroner shall accept the report for investigation and shall report the findings to the appropriate district attorney; to the department or, in a county having a population of 500,000 or more, to a licensed child welfare agency under contract with the department; to the county department and, if the institution making the report initially is a hospital, to the hospital.

(6) PENALTY. Whoever intentionally violates this section by failure to report as required may be fined not more than $1,000 or imprisoned not more than 6 months or both.

(7) CONFIDENTIALITY. (a) All reports made under this section, notices provided under sub. (3) (bm) and records maintained by an agency and other persons, officials and institutions shall be confidential. Reports and records may be disclosed only to the following persons:

1. The subject of a report, except that the person or agency maintaining the record or report may not disclose any information that would identify the reporter.

1m. A reporter described in sub. (3) (c) 6m. who makes a written request to an agency for information regarding what action, if any, was taken to protect the health and welfare of the child or unborn child who is the subject of the report, unless a court order under sub. (3) (c) 6m. prohibits disclosure of that information to that reporter, except that the only information that may be disclosed is information in the record regarding what action, if any, was taken to protect the health and welfare of the child or unborn child who is the subject of the report.

2. Appropriate staff of an agency or a tribal social services department.

2m. A person authorized to provide or providing intake or dispositional services for the court under s. 48.067, 48.069 or 48.10.

2r. A person authorized to provide or providing intake or dispositional services under s. 938.067, 938.069 or 938.10.

3. An attending physician for purposes of diagnosis and treatment.

3m. A child's parent, guardian or legal custodian or the expectant mother of an unborn child, except that the person or agency maintaining the record or report may not disclose any information that would identify the reporter.

4. A child's foster parent or other person having physical custody of the child or a person having physical custody of the expectant mother of an unborn child, except that the person or agency maintaining the record or report may not disclose any information that would identify the reporter.

4m. A relative of a child placed outside of his or her home only to the extent necessary to facilitate the establishment of a relationship between the child and the relative or a placement of the child with the relative or to a person provided with the notice under s. 48.21 (5) (e), 48.355 (2) (cm), or 48.357 (2v) (d). In this subdivision, "relative" includes a relative whose relationship is derived through a parent of the child whose parental rights are terminated.

4p. A public or private agency in this state or any other state that is investigating a person for purposes of licensing the person to operate a foster home or placing a child for adoption in the home of the person.

5. A professional employee of a county department under s. 51.42 or 51.437 who is working with the child or the expectant mother of the unborn child under contract with or under the supervision of the county department under s. 46.22 or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department.

6. A multidisciplinary child abuse and neglect or unborn child abuse team recognized by the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department.

6m. A person employed by a child advocacy center recognized by the county board, the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department, to the extent necessary to perform the services for which the center is recognized by the county board, the county department, the department or the licensed child welfare agency.

8. A law enforcement officer or law enforcement agency or a district attorney for purposes of investigation or prosecution.

8m. The department of corrections, the department of health services, a county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 or any other person under contract with the department of corrections, the department of health services or a county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 to exercise custody or supervision over a person who is subject to community placement for purposes of investigating or providing services to a person who is subject to community placement and who is the subject of a report. In making its investigation, the department of corrections, department of health services, county department or other person shall cooperate with the agency making the investigation under sub. (3) (c) or (d).

8s. Authorized representatives of the department of corrections, the department of health services, the department of justice, or a district attorney for use in the prosecution of any proceeding or any evaluation conducted under ch. 980, if the reports or records involve or relate to an individual who is the subject of the proceeding or evaluation. The court in which the proceeding under ch. 980 is pending may issue any protective orders that it determines are appropriate concerning information made available or disclosed under this subdivision. Any representative of the department of corrections, the department of health services, the department of justice, or a district attorney may disclose information obtained under this subdivision for any purpose consistent with any proceeding under ch. 980.

9. A court or administrative agency for use in a proceeding relating to the licensing or regulation of a facility regulated under this chapter.

10. A court conducting proceedings under s. 48.21 or 48.213, a court conducting proceedings related to a petition under s. 48.13, 48.133 or 48.42 or a court conducting dispositional proceedings under subch. VI or VIII in which abuse or neglect of the child who is the subject of the report or record or abuse of the unborn child who is the subject of the report or record is an issue.

10g. A court conducting proceedings under s. 48.21, a court conducting proceedings related to a petition under s. 48.13 (3m) or (10m) or a court conducting dispositional proceedings under subch. VI in which an issue is the substantial risk of abuse or neglect of a child who, during the time period covered by the report or record, was in the home of the child who is the subject of the report or record.

10j. A court conducting proceedings under s. 938.21, a court conducting proceedings relating to a petition under ch. 938 or a court conducting dispositional proceedings under subch. VI of ch. 938 in which abuse or neglect of the child who is the subject of the report or record is an issue.

10m. A tribal court, or other adjudicative body authorized by an Indian tribe to perform child welfare functions, that exercises jurisdiction over children and unborn children alleged to be in need of protection or services for use in proceedings in which abuse or neglect of the child who is the subject of the report or record or abuse of the unborn child who is the subject of the report or record is an issue.

10r. A tribal court, or other adjudicative body authorized by an Indian tribe to perform child welfare functions, that exercises jurisdiction over children alleged to be in need of protection or services for use in proceedings in which an issue is the substantial risk of abuse or neglect of a child who, during the time period covered by the report or record, was in the home of the child who is the subject of the report or record.

11. The county corporation counsel or district attorney representing the interests of the public, the agency legal counsel and the counsel or guardian ad litem representing the interests of a child in proceedings under subd. 10., 10g. or 10j. and the guardian ad litem representing the interests of an unborn child in proceedings under subd. 10.

11m. An attorney representing the interests of an Indian tribe in proceedings under subd. 10m. or 10r., of an Indian child in proceedings under subd. 10m. or 10r. or of an Indian unborn child in proceedings under subd. 10m.

11r. A volunteer court-appointed special advocate designated under s. 48.236 (1) or person employed by a court-appointed special advocate program recognized by the chief judge of a judicial administrative district under s. 48.07 (5), to the extent necessary for the court-appointed special advocate to perform the advocacy services specified in s. 48.236 (3) that the court-appointed special advocate was designated to perform in proceedings related to a petition under s. 48.13.

12. A person engaged in bona fide research, with the permission of the department. Information identifying subjects and reporters may not be disclosed to the researcher.

13. The department, a county department under s. 48.57 (1) (e) or (hm) or a licensed child welfare agency ordered to conduct a screening or an investigation of a stepparent under s. 48.88 (2) (c).

14. A grand jury if it determines that access to specified records is necessary for the conduct of its official business.

14m. A judge conducting proceedings under s. 968.26.

15. A child fatality review team recognized by the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department.

15g. A citizen review panel established or designated by the department or a county department.

15m. A coroner, medical examiner or pathologist or other physician investigating the cause of death of a child whose death is unexplained or unusual or is associated with unexplained or suspicious circumstances.

17. A federal agency, state agency of this state or any other state or local governmental unit located in this state or any other state that has a need for a report or record in order to carry out its responsibility to protect children from abuse or neglect or to protect unborn children from abuse.

(am) Notwithstanding par. (a) (intro.), a tribal agent who receives notice under sub. (3) (bm) may disclose the notice to a tribal social services department.

(b) Notwithstanding par. (a), either parent of a child may authorize the disclosure of a record for use in a child custody proceeding under s. 767.41 or 767.451 or in an adoption proceeding under s. 48.833, 48.835, 48.837 or 48.839 when the child has been the subject of a report. Any information that would identify a reporter shall be deleted before disclosure of a record under this paragraph.

(c) Notwithstanding par. (a), the subject of a report may authorize the disclosure of a record to the subject's attorney. The authorization shall be in writing. Any information that

would identify a reporter shall be deleted before disclosure of a record under this paragraph.

(cm) Notwithstanding par. (a), an agency may disclose information from its records for use in proceedings under s. 48.25 (6), 813.122 or 813.125.

(cr) 1. In this paragraph:

a. "Incident of death or serious injury" means an incident in which a child has died or been placed in serious or critical condition, as determined by a physician, as a result of any suspected abuse or neglect that has been reported under this section or in which a child who has been placed outside the home by a court order under this chapter or ch. 938 is suspected to have committed suicide.

b. "Incident of egregious abuse or neglect" means an incident of suspected abuse or neglect that has been reported under this section, other than an incident of death or serious injury, involving significant violence, torture, multiple victims, the use of inappropriate or cruel restraints, exposure of a child to a dangerous situation, or other similar, aggravated circumstances.

2. Notwithstanding par. (a), if an agency that receives a report under sub. (3) has reason to suspect that an incident of death or serious injury or an incident of egregious abuse or neglect has occurred, within 2 working days after determining that such an incident is suspected to have occurred the agency shall provide all of the following information to the subunit of the department responsible for statewide oversight of child abuse and neglect programs:

a. The name of the agency and the name of a contact person at the agency.

b. Information about the child, including the age of the child.

c. The date of the incident and the suspected cause of the death, serious injury, or egregious abuse or neglect of the child.

d. A brief history of any reports under sub. (3) received in which the child, a member of the child's family, or the person suspected of the abuse or neglect was the subject and of any services under this chapter offered or provided to any of those persons.

e. A statement of whether the child was residing in his or her home or was placed outside the home when the incident occurred.

f. The identity of any law enforcement agency that referred the report of the incident and of any law enforcement agency, district attorney, or other officer or agency to which the report of the incident was referred.

3. a. Within 2 working days after receiving the information provided under subd. 2., the subunit of the department that received the information shall disclose to the public the fact that the subunit has received the information; whether the department is conducting a review of the incident and, if so, the scope of the review and the identities of any other agencies with which the department is cooperating at that point in conducting the review; whether the child was residing in the home or was placed in an out-of-home placement at the time of the incident; and information about the child, including the age of the child. If the information received is about an incident of egregious abuse or neglect, the subunit of the department shall make the same disclosure to a citizen review panel, as described in par. (a) 15g., and, in a county having a population of 500,000 or more, to the Milwaukee child welfare partnership council.

b. Within 90 days after receiving the information provided under subd. 2., the subunit of the department that received the information shall prepare, transmit to the governor and to the appropriate standing committees of the legislature under s. 13.172 (3), and make available to the public a summary report that contains the information specified in subd. 4. or 5., whichever is applicable. That subunit may also include in the summary report a summary of any actions taken by the agency in response to the incident and of any changes in policies or practices that have been made to address any issues raised in the review and recommendations for any further changes in policies, practices, rules, or statutes that may be needed to address those issues. If the subunit does not include those actions or changes and recommended changes in the summary report, the subunit shall prepare, transmit to the governor and to the appropriate standing committees of the legislature under s. 13.172 (3), and make available to the public a report of those actions or changes and recommended changes within 6 months after receiving the information provided under subd. 2. Those committees shall review all summary reports and reports of changes and recommended changes transmitted under this subd. 3. b., conduct public hearings on those reports no less often than annually, and submit recommendations to the department regarding those reports.

c. Subdivision 3. a. and b. does not preclude the subunit of the department that prepares the summary report from releasing to the governor, to the appropriate standing committees of the legislature under s. 13.172 (3), or to the public any of the information specified in subd. 4. or 5. before the summary report is transmitted to the governor and to those committees and made available to the public; adding to or amending a summary report if new information specified in subd. 4. or 5. is received after the summary report is transmitted to the governor and to those committees and made available to the public; or releasing to the governor, to those committees, and to the public any information at any time to correct any inaccurate information reported in the news media.

4. If the child was residing in his or her home when the incident of death or serious injury or the incident of egregious abuse or neglect occurred, the summary report under subd. 3. shall contain all of the following:

a. Information about the child, including the age, gender, and race or ethnicity of the child, a description of the child's family, and, if relevant to the incident, a description of any special needs of the child.

b. A statement of whether any services under this chapter or ch. 938 were being provided to the child, any member of the child's family, or the person suspected of the abuse or neglect, or whether any of those persons was the subject of a report being investigated under sub. (3) or of a referral to the agency for services, at the time of the incident and, if so, the date of the last contact between the agency providing those services and the person receiving those services.

c. A summary of all involvement of the child's parents and of the person suspected of the abuse or neglect in any incident reported under sub. (3) or in receiving services under this chapter or ch. 938 in the 5 years preceding the date of the incident.

d. A summary of any actions taken by the agency with respect to the child, any member of the child's family, and the person suspected of the abuse or neglect, including any investigation by the agency under sub. (3) of a report in which any of those persons was the subject and any referrals by the agency of any of those persons for services.

e. The date of the incident and the suspected cause of the death, serious injury, or egregious abuse or neglect of the child, as reported by the agency under subd. 2. c.

f. The findings on which the agency bases its reasonable suspicion that an incident of death or serious injury or an incident of egregious abuse or neglect has occurred, including any material circumstances leading to the death, serious injury, or egregious abuse or neglect of the child.

g. A summary of any investigation that has been conducted under sub. (3) of a report in which the child, any member of the child's family, or the person suspected of the abuse or neglect was the subject and of any services that have been provided to the child and the child's family since the date of the incident.

5. If the child was placed in an out-of-home placement under this chapter or ch. 938 at the time of the incident of death or serious injury or incident of egregious abuse or neglect, the summary report under subd. 3. shall contain all of the following:

a. Information about the child, including the age, gender, and race or ethnicity of the child and, if relevant to the incident, a description of any special needs of the child.

b. A description of the out-of-home placement, including the basis for the decision to place the child in that placement.

c. A description of all other persons residing in the out-of-home placement.

d. The licensing history of the out-of-home placement, including the type of license held by the operator of the placement, the period for which the placement has been licensed, and a summary of all violations by the licensee of any provisions of licensure under s. 48.70 (1) or rules promulgated by the department under s. 48.67 and of any other actions by the licensee or an employee of the licensee that constitute a substantial failure to protect and promote the health, safety, and welfare of a child.

e. The date of the incident and the suspected cause of the death, serious injury, or egregious abuse or neglect of the child, as reported by the agency under subd. 2. c.

f. The findings on which the agency bases its reasonable suspicion that an incident of death or serious injury or an incident of egregious abuse or neglect has occurred, including any material circumstances leading to the death, serious injury, or egregious abuse or neglect of the child.

6. A summary report or other release or disclosure of information under subd. 3. may not include any of the following:

a. Any information that would reveal the identity of the child who is the subject of the summary report, any member of the child's family, any member of the child's household who is a child, or any caregiver of the child.

b. Any information that would reveal the identity of the person suspected of the abuse or neglect or any employee of any agency that provided services under this chapter to the child or that participated in the investigation of the incident of death or serious injury or the incident of egregious abuse or neglect.

c. Any information that would reveal the identity of a reporter or of any other person who provides information relating to the incident of death or serious injury or the incident of egregious abuse or neglect.

d. Any information the disclosure of which would not be in the best interests of the child who is the subject of the summary report, any member of the child's family, any member of the child's household who is a child, or any caregiver of the child, as determined by the subunit of the department that received the information, after consultation with the agency that reported the incident of death or serious injury or the incident of egregious abuse or neglect, the district attorney of the county in which the incident occurred, or the court of that county, and after balancing the interest of the child, family or household member, or caregiver in avoiding the stigma that might result from disclosure against the interest of the public in obtaining that information.

e. Any information the disclosure of which is not authorized by state law or rule or federal law or regulation.

7. The subunit of the department that prepares a summary report or otherwise transmits, releases, or discloses information under subd. 3. may not transmit the summary report to the governor and to the appropriate standing committees of the legislature under s. 13.172 (3), make the summary report available to the public, or transmit, release, or disclose the information to the governor, to those standing committees, or to the public if the subunit determines that transmitting or making the summary report available or transmitting, releasing, or disclosing the information would jeopardize any of the following:

a. Any ongoing or future criminal investigation or prosecution or a defendant's right to a fair trial.

b. Any ongoing or future civil investigation or proceeding or the fairness of such a proceeding.

8. If the department fails to disclose to the governor, to the appropriate standing committees of the legislature under s. 13.172 (3), or to the public any information that the department is required to disclose under this paragraph, any person may request the department to disclose that information. If the person's request is denied, the person may petition the court to order the disclosure of that information. On receiving a petition under this subdivision, the court shall notify the department, the agency, the district attorney, the child, and the child's parent, guardian, or legal custodian of the petition. If any person notified objects to the disclosure, the court may hold a hearing to take evidence and hear argument relating to the disclosure of the information. The court shall make an in camera inspection of the information sought to be disclosed and shall order disclosure of the information, unless the court finds that any of the circumstances specified in subd. 6. or 7. apply.

9. Any person acting in good faith in providing information under subd. 2., in preparing, transmitting, or making available a summary report under subd. 3., or in otherwise transmitting, releasing, or disclosing information under subd. 3. is immune from any liability, civil or criminal, that may result by reason of those actions. For purposes of any proceeding, civil or criminal, the good faith of a person in providing information under subd. 2., in preparing, transmitting,

or making available a summary report under subd. 3., or in otherwise transmitting, releasing, or disclosing information under subd. 3. shall be presumed.

(d) Notwithstanding par. (a), the department may have access to any report or record maintained by an agency under this section.

(dm) Notwithstanding par. (a), an agency may enter the content of any report or record maintained by the agency into the statewide automated child welfare information system established under s. 48.47 (7g).

(e) A person to whom a report or record is disclosed under this subsection may not further disclose it, except to the persons and for the purposes specified in this section.

(f) Any person who violates this subsection, or who permits or encourages the unauthorized dissemination or use of information contained in reports and records made under this section, may be fined not more than $1,000 or imprisoned not more than 6 months or both.

(8) EDUCATION, TRAINING AND PROGRAM DEVELOPMENT AND COORDINATION. (a) The department, the county departments, and a licensed child welfare agency under contract with the department in a county having a population of 500,000 or more to the extent feasible shall conduct continuing education and training programs for staff of the department, the county departments, licensed child welfare agencies under contract with the department or a county department, law enforcement agencies, and the tribal social services departments, persons and officials required to report, the general public, and others as appropriate. The programs shall be designed to encourage reporting of child abuse and neglect and of unborn child abuse, to encourage self-reporting and voluntary acceptance of services and to improve communication, cooperation, and coordination in the identification, prevention, and treatment of child abuse and neglect and of unborn child abuse. Programs provided for staff of the department, county departments, and licensed child welfare agencies under contract with county departments or the department whose responsibilities include the investigation or treatment of child abuse or neglect shall also be designed to provide information on means of recognizing and appropriately responding to domestic abuse, as defined in s. 49.165 (1) (a). The department, the county departments, and a licensed child welfare agency under contract with the department in a county having a population of 500,000 or more shall develop public information programs about child abuse and neglect and about unborn child abuse.

(b) The department shall to the extent feasible ensure that there are available in the state administrative procedures, personnel trained in child abuse and neglect and in unborn child abuse, multidisciplinary programs and operational procedures and capabilities to deal effectively with child abuse and neglect cases and with unborn child abuse cases. These procedures and capabilities may include, but are not limited to, receipt, investigation and verification of reports; determination of treatment or ameliorative social services; or referral to the appropriate court.

(c) In meeting its responsibilities under par. (a) or (b), the department, a county department or a licensed child welfare agency under contract with the department in a county having a population of 500,000 or more may contract with any public or private organization which meets the standards set by the department. In entering into the contracts the department, county department or licensed child welfare agency shall give priority to parental organizations combating child abuse and neglect or unborn child abuse.

(d) 1. Each agency staff member and supervisor whose responsibilities include investigation or treatment of child abuse and neglect or of unborn child abuse shall successfully complete training in child abuse and neglect protective services and in unborn child abuse protective services approved by the department. The training shall include information on means of recognizing and appropriately responding to domestic abuse, as defined in s. 49.165 (1) (a). The department shall monitor compliance with this subdivision according to rules promulgated by the department.

2. Each year the department shall make available training programs that permit intake workers and agency staff members and supervisors to satisfy the requirements under subd. 1. and s. 48.06 (1) (am) 3. and (2) (c).

Cross-reference: See also ch. DCF 43, Wis. adm. code.

(9) ANNUAL AND QUARTERLY REPORTS. (a) *Annual reports.* Annually, the department shall prepare and transmit to the governor, and to the legislature under s. 13.172 (2), a report on the status of child abuse and neglect programs and on the status of unborn child abuse programs. The report shall include a full statistical analysis of the child abuse and neglect reports, and the unborn child abuse reports, made through the last calendar year, an evaluation of services offered under this section and their effectiveness, and recommendations for additional legislative and other action to fulfill the purpose of this section. The department shall provide statistical breakdowns by county, if requested by a county.

(b) *Quarterly reports.* 1. Within 30 days after the end of each calendar quarter, the department shall prepare and transmit to the governor, and to the appropriate standing committees of the legislature under s. 13.172 (3), a summary report of all reports received by the department under sub. (3) (c) 8. during the previous calendar quarter of abuse, as defined in s. 48.02 (1) (b) to (f), of a child who is placed in the home of a foster parent or relative other than a parent or in a group home, shelter care facility, or residential care center for children and youth. For each report included in the summary report the department shall provide the number of incidents of abuse reported; the dates of those incidents; the county in which those incidents occurred; the age or age group of the child who is the subject of the report; the type of placement in which the child was placed at the time of the incident; whether it was determined under sub. (3) (c) 4. that abuse occurred; and, if so, the nature of the relationship between the child and the person who abused the child, but may not provide any of the information specified in sub. (7) (cr) 6. or any information that would jeopardize an investigation, prosecution, or proceeding described in sub. (7) (cr) 7. a. or b.

2. In every 4th summary report prepared and transmitted under subd. 1., the department shall provide for all reports of abuse, as defined in s. 48.02 (1) (b) to (f), of a child who is placed as described in subd. 1. received by the department under sub. (3) (c) 8. during the previous year information indicating whether the abuse resulted in any injury, disease, or pregnancy that is known to be directly caused by the abuse, but may not provide any of the information specified in sub. (7) (cr) 6. or any information that would jeopardize an investigation,

prosecution, or proceeding described in sub. (7) (cr) 7. a. or b. A county department reporting under sub. (3) (c) 8. shall make an active effort to obtain that information and report the information to the department under sub. (3) (c) 8.

3. The appropriate standing committees of the legislature shall review all summary reports transmitted under subd. 1., conduct public hearings on those summary reports no less often than annually, and submit recommendations to the department regarding those summary reports. The department shall also make those summary reports available to the public.

(10) CURRENT LIST OF TRIBAL AGENTS. The department shall annually provide to each agency described in sub. (3) (bm) (intro.) a current list of all tribal agents in the state.

History: Sup. Ct. Order, 59 Wis. 2d R1, R3 (1973); 1977 c. 355; 1977 c. 447 s. 210; 1979 c. 300; 1983 a. 172, 190, 299, 538; 1985 a. 29 ss. 917 to 930m, 3200 (56); 1985 a. 176, 234; 1987 a. 27, 186, 209; 1987 a. 332 s. 64; 1987 a. 334, 355, 399, 403; 1989 a. 31, 41, 102, 316, 359; 1991 a. 160, 263; 1993 a. 16, 105, 218, 227, 230, 246, 272, 318, 395, 443, 446, 491; 1995 a. 275, 289, 369, 456; 1997 a. 27, 114, 292, 293; 1999 a. 9, 20, 32, 56, 84, 149, 192; 2001 a. 16, 38, 59, 69, 70, 103, 105; 2003 a. 33, 279, 321; 2005 a. 113, 232, 344, 406, 434; 2005 a. 443 s. 265; 2007 a. 20 ss. 1370 to 1373, 9121 (6) (a); 2007 a. 97; 2009 a. 28, 76, 78, 79, 94, 185; 2011 a. 32, 81, 87.

Even if the authority for a warrantless search can be inferred from ch. 48, those provisions cannot supersede the constitutional provisions prohibiting unreasonable searches and seizures. State v. Boggess, 115 Wis. 2d 443, 340 N.W.2d 516 (1983).

Section 48.981, 1983 stats., is not unconstitutionally vague. State v. Hurd, 135 Wis. 2d 266, 400 N.W.2d 42 (Ct. App. 1986).

Immunity under sub. (4) extends to reporters who report the necessary information to another who they expect to, and who does, report to proper authorities. Investigating the allegation prior to reporting does not run afoul of the immediate reporting requirement of sub. (3) and does not affect immunity. Allegations of negligence by reporters are not sufficient to challenge the good faith requirement of sub. (4). Phillips v. Behnke, 192 Wis. 2d 552, 531 N.W.2d 619 (Ct. App. 1995).

To overcome the presumption of good faith under sub. (4), more than a violation of sub. (3) is required. It must also be shown that the violation was "conscious" or "intentional." Drake v. Huber, 218 Wis. 2d 672, 582 N.W.2d 74 (Ct. App. 1998), 96-2964.

This section provides no basis for civil liability against a person who may, but is not required to, report abuse. Gritzner v. Michael R. 2000 WI 68, 235 Wis. 2d 781, 611 N.W.2d 906, 98-0325.

To "disclose" information under sub. (7), the recipient must have been previously unaware of the information at the time of the communication. The state has the burden to prove beyond a reasonable doubt that the disclosure took place. Sub. (7) is a strict liability statute; intent is not an element of a violation. State v. Polashek, 2002 WI 74, 253 Wis. 2d 527, 646 N.W.2d 330, 00-1570.

The duty to report suspected cases of child abuse or neglect under s. 48.981 (3) (a) prevails over any inconsistent terms in s. 51.30. 68 Atty. Gen. 342.

Consensual sexual conduct involving a 16 and 17 year old does not constitute child abuse. 72 Atty. Gen. 93.

Medical or mental health professionals may report suspected child abuse under the permissive provisions of sub. (2) when the abuser, rather than victim, is seen in the course of professional duties. Section 51.30 does not bar such reports made in good faith. 76 Atty. Gen. 39.

A county department may not contract with other agencies to obtain s. 48.981 reporting or investigatory services in situations other than the performance of independent investigations required by sub. (3) (d). A cooperative contract might be possible under ch. 66 in order to effectuate this purpose but the services must be furnished by the county department as defined in s. 48.02 (2g) and not by any other public or private agency. 76 Atty. Gen. 286.

Disclosure under sub. (7) (a) 1. and (c) is mandatory. 77 Atty. Gen. 84.

The responsibility of county departments of social services to investigate allegations of child abuse and neglect is discussed. Department staff members may interview a child on public school property and may exclude school personnel from the interview. School personnel cannot condition on-site interviews on notification of the child's parents. 79 Atty. Gen. 49.

Members of a social services board in a county with a county executive or a county administrator may be granted access to child abuse and neglect files under s. 48.981 if access is necessary for the performance of their statutory duties. 79 Atty. Gen. 212.

A district attorney or corporation counsel may reveal the contents of a report made under s. 48.981 in the course of a criminal prosecution or one of the civil proceedings enumerated under sub. (7) (a) 10. 81 Atty. Gen. 66.

County departments have authority to transport a child to a county-recognized child advocacy center for the purpose of an investigatory interview without consent of the primary caretaker, if to do so is necessary to an investigation of alleged child maltreatment. OAG 3-98.

The confrontation clause does not require a defendant's access to confidential child abuse reports; due process requires that the court undertake an in camera inspection of the file to determine whether it contains material exculpatory evidence. Pennsylvania v. Ritchie, 480 U.S. 39 (1987).

To the extent sub. (3) (c) 1. authorizes government officials to interview children suspected of being abused on private property and without a warrant, probable cause, consent, or exigent circumstances, it is unconstitutional as applied. However, it can be constitutionally applied, such as when government officials interview a child on public school property when they have definite and articulable evidence giving rise to a reasonable suspicion that a child has been abused by his or her parents or is in imminent danger of parental abuse. Doe v. Heck, 327 F.3d 492 (2003). See also Michael C. v. Gresbach, 526 F.3d 1008 (2008).

This section does not authorize a private cause of action for failure to report. Isley v. Capucian Province, 880 F. Supp. 1138 (1995).

CHAPTER 51

STATE ALCOHOL, DRUG ABUSE, DEVELOPMENTAL DISABILITIES AND MENTAL HEALTH ACT

51.15 Emergency detention. (1) BASIS FOR DETENTION. (a) A law enforcement officer or other person authorized to take a child into custody under ch. 48 or to take a juvenile into custody under ch. 938 may take an individual into custody if the officer or person has cause to believe that the individual is mentally ill, is drug dependent, or is developmentally disabled, and that the individual evidences any of the following:

1. A substantial probability of physical harm to himself or herself as manifested by evidence of recent threats of or attempts at suicide or serious bodily harm.

2. A substantial probability of physical harm to other persons as manifested by evidence of recent homicidal or other violent behavior on his or her part, or by evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them, as evidenced by a recent overt act, attempt or threat to do serious physical harm on his or her part.

3. A substantial probability of physical impairment or injury to himself or herself due to impaired judgment, as manifested by evidence of a recent act or omission. The probability of physical impairment or injury is not substantial under this subdivision if reasonable provision for the individual's protection is available in the community and there is a reasonable probability that the individual will avail himself or herself of these services or, in the case of a minor, if the individual is appropriate for services or placement under s. 48.13 (4) or (11) or 938.13 (4). Food, shelter or other care provided to an individual who is substantially incapable of obtaining the care for himself or herself, by any person other than a treatment facility, does not constitute reasonable provision for the individual's protection available in the community under this subdivision.

4. Behavior manifested by a recent act or omission that, due to mental illness or drug dependency, he or she is unable to satisfy basic needs for nourishment, medical care, shelter, or safety without prompt and adequate treatment so that a substantial probability exists that death, serious physical injury, serious physical debilitation, or serious physical disease will imminently ensue unless the individual receives prompt and adequate treatment for this mental illness or drug dependency. No substantial probability of harm under this subdivision exists if reasonable provision for the individual's treatment and protection is available in the community and there is a reasonable probability that the individual will avail himself or herself of these services, if the individual may be provided protective placement or protective services under ch. 55, or, in the case of a minor, if the individual is appropriate for services or placement under s. 48.13 (4) or (11) or 938.13 (4). The individual's status as a minor does not automatically establish a substantial probability of death, serious physical injury, serious physical debilitation or serious disease under this subdivision. Food, shelter or other care provided to an individual who is substantially incapable of providing the care for himself or herself, by any person other than a treatment facility, does not constitute reasonable provision for the individual's treatment or protection available in the community under this subdivision.

(b) The officer's or other person's belief shall be based on any of the following:

1. A specific recent overt act or attempt or threat to act or omission by the individual which is observed by the officer or person.

2. A specific recent overt act or attempt or threat to act or omission by the individual which is reliably reported to the officer or person by any other person, including any probation, extended supervision and parole agent authorized by the department of corrections to exercise control and supervision over a probationer, parolee or person on extended supervision.

(2) FACILITIES FOR DETENTION. The law enforcement officer or other person authorized to take a child into custody under ch. 48 or to take a juvenile into custody under ch. 938 shall transport the individual, or cause him or her to be transported, for detention, if the county department of community programs in the county in which the individual was taken into custody approves the need for detention, and for evaluation, diagnosis, and treatment if permitted under sub. (8) to any of the following facilities:

(a) A hospital which is approved by the department as a detention facility or under contract with a county department under s. 51.42 or 51.437, or an approved public treatment facility;

(b) A center for the developmentally disabled;

(c) A state treatment facility; or

(d) An approved private treatment facility, if the facility agrees to detain the individual.

(3) CUSTODY. Upon arrival at the facility, the individual is deemed to be in the custody of the facility.

(4) DETENTION PROCEDURE; MILWAUKEE COUNTY. (a) In counties having a population of 500,000 or more, the law enforcement officer or other person authorized to take a child into custody under ch. 48 or to take a juvenile into custody under ch. 938 shall sign a statement of emergency detention which shall provide detailed specific information concerning the recent overt act, attempt, or threat to act or omission on which the belief under sub. (1) is based and the names of the persons observing or reporting the recent overt act, attempt, or threat to act or omission. The law enforcement officer or other person is not required to designate in the statement whether the subject

individual is mentally ill, developmentally disabled, or drug dependent, but shall allege that he or she has cause to believe that the individual evidences one or more of these conditions. The law enforcement officer or other person shall deliver, or cause to be delivered, the statement to the detention facility upon the delivery of the individual to it.

(b) Upon delivery of the individual, the treatment director of the facility, or his or her designee, shall determine within 24 hours whether the individual shall be detained, or shall be detained, evaluated, diagnosed and treated, if evaluation, diagnosis and treatment are permitted under sub. (8), and shall either release the individual or detain him or her for a period not to exceed 72 hours after delivery of the individual, exclusive of Saturdays, Sundays and legal holidays. If the treatment director, or his or her designee, determines that the individual is not eligible for commitment under s. 51.20 (1) (a), the treatment director shall release the individual immediately, unless otherwise authorized by law. If the individual is detained, the treatment director or his or her designee may supplement in writing the statement filed by the law enforcement officer or other person, and shall designate whether the subject individual is believed to be mentally ill, developmentally disabled or drug dependent, if no designation was made by the law enforcement officer or other person. The director or designee may also include other specific information concerning his or her belief that the individual meets the standard for commitment. The treatment director or designee shall then promptly file the original statement together with any supplemental statement and notification of detention with the court having probate jurisdiction in the county in which the individual was taken into custody. The filing of the statement and notification has the same effect as a petition for commitment under s. 51.20.

(5) DETENTION PROCEDURE; OTHER COUNTIES. In counties having a population of less than 500,000, the law enforcement officer or other person authorized to take a child into custody under ch. 48 or to take a juvenile into custody under ch. 938 shall sign a statement of emergency detention that shall provide detailed specific information concerning the recent overt act, attempt, or threat to act or omission on which the belief under sub. (1) is based and the names of persons observing or reporting the recent overt act, attempt, or threat to act or omission. The law enforcement officer or other person is not required to designate in the statement whether the subject individual is mentally ill, developmentally disabled, or drug dependent, but shall allege that he or she has cause to believe that the individual evidences one or more of these conditions. The statement of emergency detention shall be filed by the officer or other person with the detention facility at the time of admission, and with the court immediately thereafter. The filing of the statement has the same effect as a petition for commitment under s. 51.20. When, upon the advice of the treatment staff, the director of a facility specified in sub. (2) determines that the grounds for detention no longer exist, he or she shall discharge the individual detained under this section. Unless a hearing is held under s. 51.20 (7) or 55.135, the subject individual may not be detained by the law enforcement officer or other person and the facility for more than a total of 72 hours, exclusive of Saturdays, Sundays, and legal holidays.

(6) RELEASE. If the individual is released, the treatment director or his or her designee, upon the individual's request, shall arrange for the individual's transportation to the locality where he or she was taken into custody.

(7) INTERCOUNTY AGREEMENTS. Counties may enter into contracts whereby one county agrees to conduct commitment hearings for individuals who are detained in that county but who are taken into custody under this section in another county. Such contracts shall include provisions for reimbursement to the county of detention for all reasonable direct and auxiliary costs of commitment proceedings conducted under this section and s. 51.20 by the county of detention concerning individuals taken into custody in the other county and shall include provisions to cover the cost of any voluntary or involuntary services provided under this chapter to the subject individual as a result of proceedings or conditional suspension of proceedings resulting from the notification of detention. Where there is such a contract binding the county where the individual is taken into custody and the county where the individual is detained, the statements of detention specified in subs. (4) and (5) and the notification specified in sub. (4) shall be filed with the court having probate jurisdiction in the county of detention, unless the subject individual requests that the proceedings be held in the county in which the individual is taken into custody.

(8) EVALUATION, DIAGNOSIS AND TREATMENT. When an individual is detained under this section, the director and staff of the treatment facility may evaluate, diagnose and treat the individual during detention, if the individual consents. The individual has a right to refuse medication and treatment as provided in s. 51.61 (1) (g) and (h). The individual shall be advised of that right by the director of the facility or his or her designee, and a report of any evaluation and diagnosis and of all treatment provided shall be filed by that person with the court.

(9) NOTICE OF RIGHTS. At the time of detention the individual shall be informed by the director of the facility or such person's designee, both orally and in writing, of his or her right to contact an attorney and a member of his or her immediate family, the right to have an attorney provided at public expense, as provided under s. 51.60, and the right to remain silent and that the individual's statements may be used as a basis for commitment. The individual shall also be provided with a copy of the statement of emergency detention.

(10) VOLUNTARY PATIENTS. If an individual has been admitted to an approved treatment facility under s. 51.10 or 51.13, or has been otherwise admitted to such facility, the treatment director or his or her designee, if conditions exist for taking the individual into custody under sub. (1), may sign a statement of emergency detention and may detain, or detain, evaluate, diagnose and treat the individual as provided in this section. In such case, the treatment director shall undertake all responsibilities that are required of a law enforcement officer under this section. The treatment director shall promptly file the statement with the court having probate jurisdiction in the county of detention as provided in this section.

(11) LIABILITY. Any individual who acts in accordance with this section, including making a determination that an individual has or does not have mental illness or evidences or does not evidence a substantial probability of harm under sub. (1) (a) 1., 2., 3. or 4., is not liable for any actions taken in good faith. The good faith of the actor shall be presumed in any civil action. Whoever asserts that the individual who acts in accordance with this section has not acted in good faith has the

burden of proving that assertion by evidence that is clear, satisfactory and convincing.

(11g) OTHER LIABILITY. Subsection (11) applies to a director of a facility, as specified in sub. (2), or his or her designee, who under a court order evaluates, diagnoses or treats an individual who is confined in a jail, if the individual consents to the evaluation, diagnosis or treatment.

(11m) TRAINING. Law enforcement agencies shall designate at least one officer authorized to take an individual into custody under this section who shall attend the in-service training on emergency detention and emergency protective placement procedures offered by a county department of community programs under s. 51.42 (3) (ar) 4. d., if the county department of community programs serving the law enforcement agency's jurisdiction offers an in-service training program.

(12) PENALTY. Whoever signs a statement under sub. (4), (5) or (10) knowing the information contained therein to be false is guilty of a Class H felony.

History: 1975 c. 430; 1977 c. 29, 428; 1979 c. 175, 300, 336, 355; 1985 a. 176; 1987 a. 366, 394; 1989 a. 56 s. 259; 1993 a. 451; 1995 a. 77, 175, 292; 1997 a. 35, 283; 2001 a. 16 ss. 1966d to 1966h, 4034zb to 4034zd, 4041d to 4041g; 2001 a 109; 2005 a. 264; 2007 a. 20; 2009 a. 28.

A mental health worker did not have immunity under sub. (11) for actions regarding a person already in custody and not taken into custody under an emergency detention. Kell v. Raemisch, 190 Wis. 2d 754, 528 N.W.2d 13 (Ct. App. 1994).

The time limits established by this section are triggered when a person taken into custody under this section is transported to any of the facilities designated by sub. (2), irrespective of whether the facility is one specifically chosen by the county for the receipt of persons taken into custody under this section. Milwaukee County v. Delores M. 217 Wis. 2d 69, 577 N.W.2d 371 (Ct. App. 1998), 96-2508.

The community caretaker exception that allows police officers to make a warrantless entry into a home when engaging in an activity that is unrelated to criminal activity and is for the public good applies to police activity undertaken pursuant to this section. State v. Horngren, 2000 WI App 177, 238 Wis. 2d 347, 617 N.W.2d 508, 99-2065.

Sub. (10) is not ambiguous and cannot reasonably be construed to authorize the continued detention of an involuntarily admitted individual based on a treatment director's statement of emergency detention when the individual had not been given the required probable cause hearing. Although sub. (10) refers to "voluntary patients" in its title, "otherwise admitted" in sub. (10) is not restricted to the admission of voluntary patients and encompasses involuntary admissions. Although "otherwise admitted" applies to involuntary patients, it does not necessarily follow that the term includes involuntary patients who have been detained beyond 72 hours without a probable cause hearing under s. 51.20 (7) (a). Dane County v. Stevenson L. J. 2009 WI App 84, 320 Wis. 2d 194, 768 N.W.2d 223, 08-1281.

By granting immunity to any individual acting in accordance with this section, the legislature plainly intended to expand immunity beyond those authorized to take individuals into physical custody. Subsection (11) presumes that a person participating in emergency detention decisions has acted in good faith. This presumption can be defeated only by clear, satisfactory, and convincing evidence to the contrary. Estate of Hammersley v. Wisconsin County Mutual Insurance Corporation, 2012 WI App 44, 340 Wis. 2d 557, 811 N.W.2d 878, 11-0359.

It is inadvisable to treat individuals transported across state lines for emergency medical care differently than other individuals when determining whether emergency detention proceedings should be initiated pursuant to this section. 78 Atty. Gen. 59.

While sub. (7) does not authorize contractual agreements with counties outside of Wisconsin, ss. 51.75 (11), 51.87 (3), and 66.30 (5) [now 66.0303] each contain legal mechanisms through which financial or other responsibility for care and treatment of individuals from such counties may be shared under certain specified circumstances. 78 Atty. Gen. 59.

A law enforcement officer who places an individual under emergency detention is obligated to transport the individual to one of the four categories of facilities listed under sub. (2) until custody of the individual is transferred to the facility. 81 Atty. Gen. 110.

51.37 Criminal commitments; mental health institutes

(9) If in the judgment of the director of Mendota Mental Health Institute, Winnebago Mental Health Institute or the Milwaukee County Mental Health Complex, any person who is committed under s. 971.14 or 971.17 is not in such condition as warrants his or her return to the court but is in a condition to receive a conditional transfer or discharge under supervision, the director shall report to the department of health services, the committing court and the district attorney of the county in which the court is located his or her reasons for the judgment. If the court does not file objection to the conditional transfer or discharge within 60 days of the date of the report, the director may, with the approval of the department of health services, conditionally transfer any person to a legal guardian or other person, subject to the rules of the department of health services. Before a person is conditionally transferred or discharged under supervision under this subsection, the department of health services shall so notify the municipal police department and county sheriff for the area where the person will be residing. The notification requirement does not apply if a municipal department or county sheriff submits to the department of health services a written statement waiving the right to be notified. The department of health services may contract with the department of corrections for the supervision of persons who are transferred or discharged under this subsection.

975 c. 430 s. 59; Stats. 1975 s. 51.95; 1985 a. 264.

CHAPTER 66

GENERAL MUNICIPALITY LAW

NOTE: Chapter 66 was substantially revised by 1999 Wis. Act 150, which contained extensive explanatory notes. See Laws of Wisconsin, 1999.

66.0107 Power of municipalities to prohibit criminal conduct. (1) The board or council of any town, village or city may:

(a) Prohibit all forms of gambling and fraudulent devices and practices.

(b) Seize anything devised solely for gambling or found in actual use for gambling and destroy the device after a judicial determination that it was used solely for gambling or found in actual use for gambling.

(bm) Enact and enforce an ordinance to prohibit the possession of 25 grams or less of marijuana, as defined in s. 961.01 (14), subject to the exceptions in s. 961.41 (3g) (intro.), and provide a forfeiture for a violation of the ordinance; except that any person who is charged with possession of more than 25 grams of marijuana, or who is charged with possession of any amount of marijuana following a conviction for possession of marijuana, in this state shall not be prosecuted under this paragraph.

(bn) Enact and enforce an ordinance to prohibit the possession of a controlled substance specified in s. 961.14 (4) (tb) to (ty) and provide a forfeiture for a violation of the ordinance, except that any person who is charged with possession of a controlled substance specified in s. 961.14 (4) (tb) to (ty) following a conviction for possession of a controlled substance in this state shall not be prosecuted under this paragraph.

(bp) Enact and enforce an ordinance to prohibit conduct that is the same as that prohibited by s. 961.573 (1) or (2), 961.574 (1) or (2), or 961.575 (1) or (2) and provide a forfeiture for violation of the ordinance.

(2) Except as provided in sub. (3), nothing in this section may be construed to preclude cities, villages and towns from prohibiting conduct which is the same as or similar to that prohibited by chs. 941 to 948.

(3) The board or council of a city, village or town may not, by ordinance, prohibit conduct which is the same as or similar to conduct prohibited by s. 944.21.

History: 1973 c. 198; 1979 c. 131 s. 4; 1987 a. 332 s. 64; 1987 a. 416; 1989 a. 121, 276; 1993 a. 246; 1995 a. 353, 448; 1999 a. 150 ss. 151, 153; Stats. 1999 s. 66.0107; 2005 a. 116, ss. 2 to 4; 2011 a. 31.

66.0109 Penalties under county and municipal ordinances. If a statute requires that the penalty under any county or municipal ordinance conform to the penalty provided by statute the ordinance may impose only a forfeiture and may provide for imprisonment if the forfeiture is not paid.

History: 1971 c. 278; 1999 a. 150 s. 272; Stats. 1999 s. 66.0109.

66.0111 Bond or cash deposit under municipal ordinances. (1) If a person is arrested for the violation of a city, village or town ordinance and the action is to be in circuit court, the chief of police or police officer designated by the chief, marshal or clerk of court may accept from the person a bond, in an amount not to exceed the maximum penalty for the violation, with sufficient sureties, or a cash deposit, for appearance in the court having jurisdiction of the offense. A receipt shall be issued for the bond or cash deposit.

(2) (a) If the person released fails to appear, personally or by an authorized attorney or agent, before the court at the time fixed for hearing the case, the bond and money deposited, or an amount that the court determines to be an adequate penalty, plus costs, including any applicable fees prescribed in ch. 814, may be declared forfeited by the court or may be ordered applied to the payment of any penalty which is imposed after an ex parte hearing, together with the costs. In either event, any surplus shall be refunded to the person who made the deposit.

(b) This subsection does not apply to violations of parking ordinances. Bond or cash deposit given for appearance to answer a charge under any parking ordinance may be forfeited in the manner determined by the governing body.

(3) This section shall not be construed as a limitation upon the general power of cities, villages and towns in all cases of alleged violations of city, village or town ordinances to authorize the acceptance of bonds or cash deposits or upon the general power to accept stipulations for forfeiture of bonds or deposits or pleas where arrest was had without warrant or where action has not been started in court.

(4) This section does not apply to ordinances enacted under ch. 349.

History: 1971 c. 278; 1977 c. 305; 1977 c. 449 s. 497; 1981 c. 317; 1987 a. 27, 399; 1993 a. 246; 1999 a. 150 s. 271; Stats. 1999 s. 66.0111.

A defendant arrested for an ordinance violation has the option to post either the required bond or the permitted cash bail. City of Madison v. Ricky Two Crow, 88 Wis. 2d 156, 276 N.W.2d 359 (Ct. App. 1979).

66.0113 Citations for certain ordinance violations. **(1)** ADOPTION; CONTENT. (a) Except as provided in sub. (5), the governing body of a county, town, city, village, town sanitary district or public inland lake protection and rehabilitation district may by ordinance adopt and authorize the use of a citation under this section to be issued for violations of ordinances, including ordinances for which a statutory counterpart exists.

(b) An ordinance adopted under par. (a) shall prescribe the form of the citation which shall provide for the following:

1. The name and address of the alleged violator.

2. The factual allegations describing the alleged violation.

3. The time and place of the offense.

4. The section of the ordinance violated.

5. A designation of the offense in a manner that can be readily understood by a person making a reasonable effort to do so.

6. The time at which the alleged violator may appear in court.

7. A statement which in essence informs the alleged violator:

a. That the alleged violator may make a cash deposit of a specified amount to be mailed to a specified official within a specified time.

b. That if the alleged violator makes such a deposit, he or she need not appear in court unless subsequently summoned.

c. That, if the alleged violator makes a cash deposit and does not appear in court, he or she either will be deemed to have tendered a plea of no contest and submitted to a forfeiture, plus costs, fees, and surcharges imposed under ch. 814, not to exceed the amount of the deposit or will be summoned into court to answer the complaint if the court does not accept the plea of no contest.

d. That, if the alleged violator does not make a cash deposit and does not appear in court at the time specified, the court may issue a summons or a warrant for the defendant's arrest or consider the nonappearance to be a plea of no contest and enter judgment under sub. (3) (d), or the municipality may commence an action against the alleged violator to collect the forfeiture, plus costs, fees, and surcharges imposed under ch. 814.

e. That if the court finds that the violation involves an ordinance that prohibits conduct that is the same as or similar to conduct prohibited by state statute punishable by fine or imprisonment or both, and that the violation resulted in damage to the property of or physical injury to a person other than the alleged violator, the court may summon the alleged violator into court to determine if restitution shall be ordered under s. 800.093.

8. A direction that if the alleged violator elects to make a cash deposit, the alleged violator shall sign an appropriate statement which accompanies the citation to indicate that he or she read the statement required under subd. 7. and shall send the signed statement with the cash deposit.

9. Such other information as may be deemed necessary.

(c) An ordinance adopted under par. (a) shall contain a schedule of cash deposits that are to be required for the various ordinance violations, plus costs, fees, and surcharges imposed under ch. 814, for which a citation may be issued. The ordinance shall also specify the court, clerk of court, or other official to whom cash deposits are to be made and shall require that receipts be given for cash deposits.

(2) ISSUANCE; FILING. (a) Citations authorized under this section may be issued by law enforcement officers of the county, town, city, village, town sanitary district or public inland lake protection and rehabilitation district. In addition, the governing body of a county, town, city, village, town sanitary district or public inland lake protection and rehabilitation district may designate by ordinance or resolution other county, town, city, village, town sanitary district or public inland lake protection and rehabilitation district officials who may issue citations with respect to ordinances which are directly related to the official responsibilities of the officials. Officials granted the authority to issue citations may delegate, with the approval of the governing body, the authority to employees. Authority delegated to an official or employee shall be revoked in the same manner by which it is conferred.

(b) The issuance of a citation by a person authorized to do so under par. (a) shall be deemed adequate process to give the appropriate court jurisdiction over the subject matter of the offense for the purpose of receiving cash deposits, if directed to do so, and for the purposes of sub. (3) (b) and (c). Issuance and filing of a citation does not constitute commencement of an action. Issuance of a citation does not violate s. 946.68.

(3) VIOLATOR'S OPTIONS; PROCEDURE ON DEFAULT. (a) The person named as the alleged violator in a citation may appear in court at the time specified in the citation or may mail or deliver personally a cash deposit in the amount, within the time, and to the court, clerk of court, or other official specified in the citation. If a person makes a cash deposit, the person may nevertheless appear in court at the time specified in the citation, but the cash deposit may be retained for application against any forfeiture or restitution, plus costs, fees, and surcharges imposed under ch. 814 that may be imposed.

(b) If a person appears in court in response to a citation, the citation may be used as the initial pleading, unless the court directs that a formal complaint be made, and the appearance confers personal jurisdiction over the person. The person may plead guilty, no contest, or not guilty. If the person pleads guilty or no contest, the court shall accept the plea, enter a judgment of guilty, and impose a forfeiture, plus costs, fees, and surcharges imposed under ch. 814. If the court finds that the violation meets the conditions in s. 800.093 (1), the court may order restitution under s. 800.093. A plea of not guilty shall put all matters in the case at issue, and the matter shall be set for trial.

(c) If the alleged violator makes a cash deposit and fails to appear in court, the citation may serve as the initial pleading and the violator shall be considered to have tendered a plea of no contest and submitted to a forfeiture, plus costs, fees, and surcharges imposed under ch. 814, not exceeding the amount of the deposit. The court may either accept the plea of no contest and enter judgment accordingly or reject the plea. If the court finds that the violation meets the conditions in s. 800.093 (1), the court may summon the alleged violator into court to determine if restitution shall be ordered under s. 800.093. If the court accepts the plea of no contest, the defendant may move within 10 days after the date set for the appearance to withdraw the plea of no contest, open the judgment, and enter a plea of not guilty if the defendant shows to the satisfaction of

the court that the failure to appear was due to mistake, inadvertence, surprise, or excusable neglect. If the plea of no contest is accepted and not subsequently changed to a plea of not guilty, no additional costs, fees, or surcharges may be imposed against the violator under s. 814.78. If the court rejects the plea of no contest, an action for collection of the forfeiture, plus costs, fees, and surcharges imposed under ch. 814, may be commenced. A city, village, town sanitary district, or public inland lake protection and rehabilitation district may commence action under s. 66.0114 (1) and a county or town may commence action under s. 778.10. The citation may be used as the complaint in the action for the collection of the forfeiture, plus costs, fees, and surcharges imposed under ch. 814.

(d) If the alleged violator does not make a cash deposit and fails to appear in court at the time specified in the citation, the court may issue a summons or warrant for the defendant's arrest or consider the nonappearance to be a plea of no contest and enter judgment accordingly if service was completed as provided under par. (e) or the county, town, city, village, town sanitary district, or public inland lake protection and rehabilitation district may commence an action for collection of the forfeiture, plus costs, fees, and surcharges imposed under ch. 814. A city, village, town sanitary district, or public inland lake protection and rehabilitation district may commence action under s. 66.0114 (1) and a county or town may commence action under s. 778.10. The citation may be used as the complaint in the action for the collection of the forfeiture, plus costs, fees, and surcharges imposed under ch. 814. If the court considers the nonappearance to be a plea of no contest and enters judgment accordingly, the court shall promptly mail a copy or notice of the judgment to the defendant. The judgment shall allow the defendant not less than 20 days from the date of the judgment to pay any forfeiture, plus costs, fees, and surcharges imposed under ch. 814. If the defendant moves to open the judgment within 6 months after the court appearance date fixed in the citation, and shows to the satisfaction of the court that the failure to appear was due to mistake, inadvertence, surprise, or excusable neglect, the court shall reopen the judgment, accept a not guilty plea and set a trial date.

(e) A judgment may be entered under par. (d) if the summons or citation was served as provided under s. 968.04 (3) (b) 2. or by personal service by a county, town, city, village, town sanitary district or public inland lake protection and rehabilitation district employee.

(4) RELATIONSHIP TO OTHER LAWS. The adoption and authorization for use of a citation under this section does not preclude the governing body from adopting any other ordinance or providing for the enforcement of any other law or ordinance relating to the same or any other matter. The issuance of a citation under this section does not preclude proceeding under any other ordinance or law relating to the same or any other matter. Proceeding under any other ordinance or law relating to the same or any other matter does not preclude the issuance of a citation under this section.

(5) MUNICIPAL COURT. If the action is to be in municipal court, the citation under s. 800.02 (2) shall be used.

History: 1975 c. 201, 421; 1977 c. 29, 305; 1979 c. 32 s. 92 (8), (17); 1979 c. 151, 355; 1987 a. 27, 389; 1989 a. 107; 1991 a. 39, 40, 128, 189, 315; 1993 a. 16, 167; 1995 a. 349; 1997 a. 27; 1999 a. 9; 1999 a. 150 ss. 274 to 277; Stats. 1999 s. 66.0113; 2001 a. 16; 2003 a. 139.

Cross-reference: As to (3) (d), see s. 800.093 regarding municipal court authority to order restitution.

Sub. (3) (b) only authorizes the use of citations for violations of ordinances other than those for which a statutory counterpart exists. 76 Atty. Gen. 211.

A judgment for payment of a forfeiture can be docketed, accumulates interest at 12%, and may be enforced through collection remedies available in other civil proceedings. OAG 2-95.

66.0114 Actions for violation of ordinances. (1) COLLECTION OF FORFEITURES AND PENALTIES. (a) An action for violation of an ordinance or bylaw enacted by a city, village, town sanitary district or public inland lake protection and rehabilitation district is a civil action. All forfeitures and penalties imposed by an ordinance or bylaw of the city, village, town sanitary district or public inland lake protection and rehabilitation district, except as provided in ss. 345.20 to 345.53, may be collected in an action in the name of the city or village before the municipal court or in an action in the name of the city, village, town sanitary district or public inland lake protection and rehabilitation district before a court of record. If the action is in municipal court, the procedures under ch. 800 apply and the procedures under this section do not apply. If the action is in a court of record, it shall be commenced by warrant or summons under s. 968.04 or, if applicable, by citation under s. 778.25 or 778.26. A law enforcement officer may arrest the offender in all cases without warrant under s. 968.07. If the action is commenced by warrant the affidavit may be the complaint. The affidavit or complaint is sufficient if it alleges that the defendant has violated an ordinance or bylaw, specifying the ordinance or bylaw by section, chapter, title or otherwise with sufficient plainness to identify the ordinance or bylaw. The judge may release a defendant without a cash deposit or may permit him or her to execute an unsecured appearance bond upon arrest. In arrests without a warrant or summons a statement on the records of the court of the offense charged is the complaint unless the court directs that a formal complaint be issued. In all actions under this paragraph the defendant's plea shall be guilty, not guilty or no contest and shall be entered as not guilty on failure to plead. A plea of not guilty on failure to plead puts all matters in the case at issue, any other provision of law notwithstanding. The defendant may enter a not guilty plea by certified mail.

(b) Local ordinances, except as provided in this paragraph or ss. 345.20 to 345.53, may contain a provision for stipulation of guilt or no contest of any or all violations under those ordinances, may designate the manner in which the stipulation is to be made, and may fix the penalty to be paid. When a person charged with a violation for which stipulation of guilt or no contest is authorized makes a timely stipulation and pays the required penalty, plus costs, fees, and surcharges imposed under ch. 814, to the designated official, the person need not appear in court and no witness fees or other additional costs, fees, or surcharges may be imposed under ch. 814 unless the local ordinance so provides. A court appearance is required for a violation of a local ordinance in conformity with s. 346.63 (1).

(bm) The official receiving the penalties shall remit all moneys collected to the treasurer of the city, village, town sanitary district, or public inland lake protection and rehabilitation district in whose behalf the sum was paid, except that all jail surcharges imposed under ch. 814 shall be remitted to the county treasurer, within 20 days after their receipt by the official. If timely remittance is not made, the treasurer may collect the payment of the officer by action, in the name of the

office, and upon the official bond of the officer, with interest at the rate of 12% per year from the date on which it was due. In the case of any other costs, fees, and surcharges imposed under ch. 814, the treasurer of the city, village, town sanitary district, or public inland lake protection and rehabilitation district shall remit to the secretary of administration the amount required by law to be paid on the actions entered during the preceding month on or before the first day of the next succeeding month. The governing body of the city, village, town sanitary district, or public inland lake protection and rehabilitation district shall by ordinance designate the official to receive the penalties and the terms under which the official qualifies.

(c) If the circuit court finds a defendant guilty in a forfeiture action based on a violation of an ordinance, the court shall render judgment as provided under ss. 800.09 and 800.095. If the court finds the violation meets the conditions in s. 800.093 (1) (a) and (b), the court may hold a hearing to determine if restitution shall be ordered under s. 800.093.

(2) APPEALS. Appeals in actions in courts of record to recover forfeitures and penalties imposed by any ordinance or bylaw of a city, village, town sanitary district or public inland lake protection and rehabilitation district may be taken either by the defendant or by the city, village, town sanitary district or public inland lake protection and rehabilitation district. Appeals from circuit court in actions to recover forfeitures for ordinances enacted under ch. 349 shall be to the court of appeals. An appeal by the defendant shall include a bond to the city, village, town sanitary district or public inland lake protection and rehabilitation district with surety, to be approved by the judge, conditioned that if judgment is affirmed in whole or in part the defendant will pay the judgment and all costs and damages awarded against the defendant on the appeal. If the judgment is affirmed in whole or in part, execution may issue against both the defendant and the surety.

(3) COSTS AND FEES; FORFEITURES TO GO TO TREASURY. (a) Fees in forfeiture actions in circuit court for violations of ordinances are prescribed in s. 814.63 (1) and (2).

(b) All forfeitures and penalties recovered for the violation of an ordinance or bylaw of a city, village, town, town sanitary district, or public inland lake protection and rehabilitation district shall be paid into the city, village, town, town sanitary district, or public inland lake protection and rehabilitation district treasury for the use of the city, village, town, town sanitary district, or public inland lake protection and rehabilitation district, except as provided in par. (c) and sub. (1) (bm). The judge shall report and pay into the treasury, quarterly, or at more frequent intervals if required, all moneys collected belonging to the city, village, town, town sanitary district, or public inland lake protection and rehabilitation district. The report shall be certified and filed in the office of the treasurer. The judge is entitled to duplicate receipts, one of which he or she shall file with the city, village, or town clerk, or with the town sanitary district or the public inland lake protection and rehabilitation district.

(c) The entire amount in excess of $150 of any forfeiture imposed for the violation of any traffic regulation in conformity with ch. 348 shall be transmitted to the county treasurer if the violation occurred on an interstate highway, a state trunk highway, or a highway over which the local highway authority does not have primary maintenance responsibility. The county treasurer shall then make payment to the secretary of administration as provided in s. 59.25 (3) (L).

History: 1971 c. 278; 1973 c. 336; 1975 c. 231; 1977 c. 29, 182, 269, 272, 305, 418, 447, 449; 1979 c. 32 s. 92 (17); 1979 c. 110 s. 60 (13); 1979 c. 331; 1981 c. 20, 317; 1983 a. 418 s. 8; 1987 a. 27, 389; Sup. Ct. Order, 146 Wis. 2d xiii (1988); 1989 a. 107; 1991 a. 39, 40, 189; 1993 a. 16, 167, 246, 491; 1995 a. 201, 349; 1997 a. 27; 1999 a. 9; 1999 a. 150 ss. 278 to 283; Stats. 1999 s. 66.0114; 2001 a. 16; 2003 a. 33, 139, 326.

Costs should be awarded a defendant who prevails in a municipal ordinance violation case. Milwaukee v. Leschke, 57 Wis. 2d 159, 203 N.W.2d 669 (1973).

The simultaneous sale of 4 different magazines by the same seller to the same buyer may give rise to separate violations of an obscenity ordinance. Madison v. Nickel, 66 Wis. 2d 71, 223 N.W.2d 865 (1974).

Under the rationale of *Pedersen*, 56 Wis. 2d 286, sub. (1) (c) is constitutional except when imprisonment under the statute is used as a means of collection from an indigent defendant. West Allis v. State ex rel. Tochalauski, 67 Wis. 2d 26, 226 N.W.2d 424 (1975).

Sub. (1) (a) does not authorize the issuance of arrest warrants without a showing of probable cause. State ex rel. Warrender v. Kenosha County Ct. 67 Wis. 2d 333, 231 N.W.2d 193 (1975).

An officer may make a warrantless arrest for an ordinance violation if a statutory counterpart of the ordinance exists. City of Madison v. Ricky Two Crow, 88 Wis. 2d 156, 276 N.W.2d 359 (Ct. App. 1979).

An award of costs of prosecution under sub. (1) (c) and s. 800.09 (1) does not include actual attorney fees. Town of Wayne v. Bishop, 210 Wis. 2d 218, 565 N.W.2d 201 (Ct. App. 1997), 95-2387.

The appearance required under sub. (1) (b) in an OWI action under s. 346.63 (1) may be made by mail as it is a civil action; a defendant's not guilty plea was an appearance beginning the 10 day period in which a jury trial could be requested. City of Fond du Lac v. Kaehne, 229 Wis. 2d 323, 599 N.W.2d 870 (Ct. App. 1999), 98-3619.

The defendant has the burden to raise and prove indigency when imprisonment is ordered for failure to pay fine under sub. (1) (c). 64 Atty. Gen. 94.

A judgment for payment of a forfeiture can be docketed, accumulates interest at 12%, and may be enforced through collection remedies available in other civil proceedings. OAG 2-95.

66.0119 Special inspection warrants. (1) (a) "Inspection purposes" includes such purposes as building, housing, electrical, plumbing, heating, gas, fire, health, safety, environmental pollution, water quality, waterways, use of water, food, zoning, property assessment, meter and obtaining data required to be submitted in an initial site report or feasibility report under subch. III of ch. 289 or s. 291.23, 291.25, 291.29 or 291.31 or an environmental impact statement related to one of those reports. "Inspection purposes" also includes purposes for obtaining information specified in s. 196.02 (5m) by or on behalf of the public service commission.

(b) "Peace officer" means a state, county, city, village, town, town sanitary district or public inland lake protection and rehabilitation district officer, agent or employee charged under statute or municipal ordinance with powers or duties involving inspection of real or personal property, including buildings, building premises and building contents, and means a local health officer, as defined in s. 250.01 (5), or his or her designee.

(c) "Public building" has the meaning given in s. 101.01 (12).

(2) A peace officer may apply for, obtain and execute a special inspection warrant issued under this section. Except in cases of emergency where no special inspection warrant is required, special inspection warrants shall be issued for inspection of personal or real properties which are not public buildings or for inspection of portions of public buildings which are not open to the public only upon showing that consent to entry for inspection purposes has been refused.

(3) The following forms for use under this section are illustrative and not mandatory:

AFFIDAVIT

STATE OF WISCONSIN

.... County

In the .... court of the .... of ....

A. F., being duly sworn, says that on the .... day of ...., ... (year), in said county, in and upon certain premises in the (city, town or village) of .... and more particularly described as follows: (describe the premises) there now exists a necessity to determine if said premises comply with (section .... of the Wisconsin statutes) or (section .... of ordinances of said municipality) or both. The facts tending to establish the grounds for issuing a special inspection warrant are as follows: (set forth brief statement of reasons for inspection, frequency and approximate date of last inspection, if any, which shall be deemed probable cause for issuance of warrant).

Wherefore, the said A. F. prays that a special inspection warrant be issued to search such premises for said purpose.

...(Signed) A. F.

Subscribed and sworn to before me this .... day of ...., ... (year)

.... Judge of the .... Court.

SPECIAL INSPECTION WARRANT

STATE OF WISCONSIN

.... County

In the .... court of the .... of ....

THE STATE OF WISCONSIN, To the sheriff or any constable or any peace officer of said county:

Whereas, A. B. has this day complained (in writing) to the said court upon oath that on the .... day of ...., ... (year), in said county, in and upon certain premises in the (city, town or village) of .... and more particularly described as follows: (describe the premises) there now exists a necessity to determine if said premises comply with (section .... of the Wisconsin statutes) or (section .... of ordinances of said municipality) or both and prayed that a special inspection warrant be issued to search said premises.

Now, therefore, in the name of the state of Wisconsin you are commanded forthwith to search the said premises for said purposes.

Dated this .... day of ...., ... (year),

.... Judge of the .... Court.

ENDORSEMENT ON WARRANT

Received by me ...., ... (year), at .... o'clock .... M.

.... Sheriff (or peace officer).

RETURN OF OFFICER

STATE OF WISCONSIN

.... Court

.... County.

I hereby certify that by virtue of the within warrant I searched the named premises and found the following things (describe findings).

Dated this .... day of ...., ... (year)

.... Sheriff (or peace officer).

History: 1971 c. 185 s. 7; 1981 c. 374; 1983 a. 189 s. 329 (4); 1989 a. 159; 1995 a. 27, 227; 1999 a. 150 ss. 30, 287 to 292; Stats. 1999 s. 66.0119; 2003 a. 89; 2007 a. 130.

Warrants for administrative or regulatory searches modify the conventional understanding of probable cause requirements for warrants as the essence of the search is that there is no probable cause to believe a search will yield evidence of a violation. Refusal of consent is not a constitutional requirement for issuing the warrant, although it may be a statutory violation. Suppression only applies to constitutional violations. State v. Jackowski, 2001 WI App 187, 247 Wis. 2d 430, 633 N.W.2d 649, 00-2851.

The constitutional limitations on inspections pursuant to warrants issued under this section are discussed. Platteville Area Apartment Association v. City of Platteville, 179 F.3d 574 (1999).

SUBCHAPTER III

INTERGOVERNMENTAL COOPERATION

66.0313 Law enforcement; mutual assistance. (1) In this section:

(a) "Law enforcement agency" has the meaning given in s. 165.83 (1) (b) and includes a tribal law enforcement agency.

(b) "Tribal law enforcement agency" has the meaning given in s. 165.83 (1) (e).

(2) Except as provided in sub. (4), upon the request of any law enforcement agency, including county law enforcement agencies as provided in s. 59.28 (2), the law enforcement personnel of any other law enforcement agency may assist the requesting agency within the latter's jurisdiction, notwithstanding any other jurisdictional provision. For purposes of ss. 895.35 and 895.46, law enforcement personnel, while acting in response to a request for assistance, shall be deemed employees of the requesting agency and, to the extent that those sections apply to law enforcement personnel and a law enforcement agency acting under or affected by this section, ss. 895.35 and 895.46 shall apply to tribal law enforcement personnel and a tribal law enforcement agency acting under or affected by this section.

(3) The provisions of s. 66.0513 apply to this section and, to the extent that s. 66.0513 applies to law enforcement personnel and a law enforcement agency acting under or affected by this section, it applies to tribal law enforcement personnel and a tribal law enforcement agency acting under or affected by this section.

(4) A law enforcement agency, other than a tribal law enforcement agency, may not respond to a request for assistance from a tribal law enforcement agency at a location outside the law enforcement agency's territorial jurisdiction unless all of the following apply:

(a) One of the following applies:

1. The governing body of the tribe that created the tribal law enforcement agency adopts and has in effect a resolution that includes a statement that the tribe waives its sovereign immunity to the extent necessary to allow the enforcement in the courts of this state of its liability under sub. (2) and s. 66.0513 or another resolution that the department of justice determines will reasonably allow the enforcement in the courts of this state of the tribe's liability under sub. (2) and s. 66.0513.

2. The tribal law enforcement agency or the tribe that created the tribal law enforcement agency maintains liability insurance that does all of the following:

a. Covers the tribal law enforcement agency for its liability under sub. (2) and s. 66.0513.

b. Has a limit of coverage not less than $2,000,000 for any occurrence.

c. Provides that the insurer, in defending a claim against the policy, may not raise the defense of sovereign immunity of the insured up to the limits of the policy.

3. The law enforcement agency and the tribal law enforcement agency have in place an agreement under which the law enforcement agency accepts liability under sub. (2) and s. 66.0513 for instances in which it responds to a request for assistance from the tribal law enforcement agency.

(b) The tribal law enforcement agency requesting assistance has provided to the department of justice a copy of the resolution under par. (a) 1., proof of insurance under par. (a) 2., or a copy of the agreement under par. (a) 3., and the department of justice has posted either a copy of the document or notice of the document on the Internet site it maintains for exchanging information with law enforcement agencies.

History: 1999 a. 150 ss. 81, 362, 363; Stats. 1999 s. 66.0313; 2009 a. 264.

The statutes do not permit the creation of a separate regional law enforcement agency; neither the sheriff nor the county board has power to delegate supervisory or law enforcement powers to such an agency. 63 Atty. Gen. 596.

A request for assistance may be implicit. United States v. Mattes, 687 F.2d 1039 (1982).

SUBCHAPTER V

OFFICERS AND EMPLOYEES

66.0501 Eligibility for office. (1) DEPUTY SHERIFFS AND MUNICIPAL POLICE. No person may be appointed deputy sheriff of any county or police officer for any city, village or town unless that person is a citizen of the United States. This section does not apply to common carriers or to a deputy sheriff not required to take an oath of office.

(2) ELIGIBILITY OF OTHER OFFICERS. Except as expressly authorized by statute, no member of a town, village or county board, or city council, during the term for which the member is elected, is eligible for any office or position which during that term has been created by, or the selection to which is vested in, the board or council, but the member is eligible for any elective office. The governing body may be represented on city, village or town boards and commissions where no additional compensation, except a per diem, is paid to the representatives of the governing body and may fix the tenure of these representatives notwithstanding any other statutory provision. A representative of a governing body who is a member of a city, village or town board or commission may receive a per diem only if the remaining members of the board or commission may receive a per diem. This subsection does not apply to a member of any board or council described in this subsection who resigns from the board or council before being appointed to an office or position which was not created during the member's term in office.

(3) APPOINTMENTS ON CONSOLIDATION OF OFFICES. Whenever offices are consolidated, the occupants of which are members of the same statutory committee or board and which are serving in that office because of holding another office or position, the common council or village board may designate another officer or officers or make any additional appointments as may be necessary to procure the number of committee or board members provided for by statute.

(4) COMPATIBLE OFFICES AND POSITIONS. A volunteer fire fighter, emergency medical technician, or first responder in a city, village, or town whose annual compensation from one or more of those positions, including fringe benefits, does not exceed the amount specified in s. 946.13 (2) (a) may also hold an elective office in that city, village, or town. It is compatible with his or her office for an elected town officer to receive wages under s. 60.37 (4) for work that he or she performs for the town.

(5) EMPLOYEES MAY BE CANDIDATES. (a) In this subsection:

1. "Political subdivision" means a city, village, town, or county.

2. "Public employee" means any individual employed by a political subdivision, other than an individual to whom s. 164.06 applies and other than an individual to whom 5 USC 1502 (a) (3) applies.

(b) No political subdivision may prohibit a public employee from being a candidate for any elective public office, if that individual is otherwise qualified to be a candidate. No public employee may be required, as a condition of being a candidate for any elective public office, to take a leave of absence during his or her candidacy. This subsection does not affect the authority of a political subdivision to regulate the conduct of a public employee while the public employee is on duty or otherwise acting in an official capacity.

History: 1979 c. 110; 1987 a. 27, 403; 1991 a. 316; 1993 a. 246; 1999 a. 56; 1999 a. 150 s. 267; Stats. 1999 s. 66.0501; 2001 a. 16; 2003 a. 79.

A citizenship requirement for peace officers is constitutional. 68 Atty. Gen. 61.

The offices of commissioner of a town sanitary district and supervisor of a town board are incompatible when the town board also serves as the appointing authority for the commissioners. 69 Atty. Gen. 108.

A sitting member of a county board must resign the office of supervisor before being appointed to the permanent position of county administrative coordinator under this section. OAG 1-11.

66.0511 Law enforcement agency policies on use of force and citizen complaint procedures. (1) DEFINITION. In this section, "law enforcement agency" has the meaning given under s. 165.83 (1) (b).

(2) USE OF FORCE POLICY. Each person in charge of a law enforcement agency shall prepare in writing and make available for public scrutiny a policy or standard regulating the use of force by law enforcement officers in the performance of their duties.

(3) CITIZEN COMPLAINT PROCEDURE. Each person in charge of a law enforcement agency shall prepare in writing and make available for public scrutiny a specific procedure for processing and resolving a complaint by any person regarding the conduct of a law enforcement officer employed by the agency. The writing prepared under this subsection shall include a conspicuous notification of the prohibition and penalty under s. 946.66.

History: 1987 a. 131; 1997 a. 176; 1999 a. 150 s. 366; Stats. 1999 s. 66.0511.

66.0513 Police, pay when acting outside county or municipality. (1) Any chief of police, sheriff, deputy sheriff, county traffic officer or other peace officer of any city, county, village or town, who is required by command of the governor, sheriff or other superior authority to maintain the peace, or who responds to the request of the authorities of another municipality, to perform police or peace duties outside territorial limits of the city, county, village or town where the officer is employed, is entitled to the same wage, salary, pension, worker's compensation, and all other service rights for this service as for service rendered within the limits of the city, county, village or town where regularly employed.

(2) All wage and disability payments, pension and worker's compensation claims, damage to equipment and clothing, and medical expense arising under sub. (1), shall be paid by the city, county, village or town regularly employing the officer. Upon making the payment the city, county, village or town shall be reimbursed by the state, county or other political subdivision whose officer or agent commanded the services out of which the payments arose.

History: 1975 c. 147 s. 54; 1999 a. 150 s. 367; Stats. 1999 s. 66.0513.

The use of the phrase "required by command" in sub. (1) plainly does not mean that officers who volunteer to go to another city, county, village, or town are excluded from worker's compensation and other benefits. A governmental body obligated to reimburse another for worker's compensation payments under this section is obligated under worker's compensation law for purposes of worker's compensation insurance coverage. Milwaukee County v. Juneau County, 2004 WI App 23, 269 Wis. 2d 730, 676 N.W.2d 513, 02-2880.

CHAPTER 118

GENERAL SCHOOL OPERATIONS

Cross-reference: See definitions in s. 115.001.

118.105 Control of traffic on school premises. (1) Any school board may request local authorities to control motor vehicle and pedestrian traffic on off-highway school premises located within the jurisdiction of such local authorities.

(2) If the governing body of any town, city or village by ordinance regulates the operation and parking of motor vehicles on off-highway public school premises, school drives or parking lots or pedestrian traffic on any such drives or parking lots, the school board may enter into written agreements with such governing body for reimbursement of the cost of enforcing such ordinance.

(3) Nothing in this section shall preclude the governing body of any town, city or village from repealing ordinances regulating the operation or parking of motor vehicles on off-highway public school premises, drives or parking lots or regulating pedestrian traffic on such drives or parking lots without prior consent of a school board which requested enactment of such ordinance.

History: 1975 c. 251.

118.127 Law enforcement agency information. A school district, private school, or tribal school may disclose information from law enforcement officers' records obtained under s. 938.396 (1) (c) 3. only to persons employed by the school district who are required by the department under s. 115.28 (7) to hold a license, to persons employed by the private school or tribal school as teachers, and to other school district, private school, or tribal school officials who have been determined by the school board or governing body of the private school or tribal school to have legitimate educational interests, including safety interests, in that information. In addition, if that information relates to a pupil of the school district, private school, or tribal school, the school district, private school, or tribal school may also disclose that information to those employees of the school district, private school, or tribal school who have been designated by the school board or governing body of the private school or tribal school to receive that information for the purpose of providing treatment programs for pupils enrolled in the school district, private school, or tribal school. A school district may not use law enforcement officers' records obtained under s. 938.396 (1) (c) 3. as the sole basis for expelling or suspending a pupil or as the sole basis for taking any other disciplinary action against a pupil, but may use law enforcement officers' records obtained under s. 938.396 (1) (c) 3. as the sole basis for taking action against a pupil under the school district's athletic code.

History: 1991 a. 39; 1995 a. 77, 173, 352; 1997 a. 27, 205; 2005 a. 344; 2009 a. 302, 309; 2011 a. 165.

118.15 Compulsory school attendance. (1) (a) Except as provided under pars. (b) to (d) and (g) and sub. (4), unless the child is excused under sub. (3) or has graduated from high school, any person having under control a child who is between the ages of 6 and 18 years shall cause the child to attend school regularly during the full period and hours, religious holidays excepted, that the public, private, or tribal school in which the child should be enrolled is in session until the end of the school term, quarter or semester of the school year in which the child becomes 18 years of age.

(am) Except as provided under par. (d), unless the child is excused under sub. (3), any person having under his or her control a child who is enrolled in 5-year-old kindergarten shall cause the child to attend school regularly, religious holidays excepted, during the full period and hours that kindergarten is in session at the public or private school in which the child is enrolled until the end of the school term.

(b) Upon the child's request of the school board and with the written approval of the child's parent or guardian, any child who is 16 years of age or over and a child at risk, as defined in s. 118.153 (1) (a), may attend, in lieu of high school or on a part-time basis, a technical college if the child and his or her parent or guardian agree, in writing, that the child will participate in a program leading to the child's high school graduation. The district board of the technical college district in which the child resides shall admit the child. Every technical college district board shall offer day class programs satisfactory to meet the requirements of this paragraph and s. 118.33 (3m) as a condition to the receipt of any state aid.

(c) 1. Upon the child's request and with the written approval of the child's parent or guardian, any child who is 16 years of age may be excused by the school board from regular school attendance if the child and his or her parent or guardian agree, in writing, that the child will participate in a program or curriculum modification under par. (d) leading to the child's high school graduation.

2. Upon the child's request and with the written approval of the child's parent or guardian, any child who is 17 years of age or over may be excused by the school board from regular school attendance if the child and his or her parent or guardian agree, in writing, that the child will participate in a program or curriculum modification under par. (d) leading to the child's high school graduation or leading to a high school equivalency diploma under s. 115.29 (4).

3. Prior to a child's admission to a program leading to the child's high school graduation or a high school equivalency program under par. (b) or subd. 1. or 2., the child, his or her parent or guardian, the school board and a representative of the high school equivalency program or program leading to the child's high school graduation shall enter into a written agreement. The written agreement shall state the services to be provided, the time period needed to complete the high school equivalency program or program leading to the child's high school graduation and how the performance of the pupil will be monitored. The agreement shall be monitored by the school board on a regular basis, but in no case shall the agreement be monitored less frequently than once per semester. If the school board determines that a child is not complying with the agreement, the school board shall notify the child, his or her parent or guardian and the high school equivalency program or program leading to the child's high school graduation that the agreement may be modified or suspended in 30 days.

(cm) 1. Upon the child's request and with the approval of the child's parent or guardian, any child who is 17 years of age or over shall be excused by the school board from regular school attendance if the child began a program leading to a high school equivalency diploma in a juvenile correctional facility, as defined in s. 938.02 (10p), a secured residential care center for children and youth, as defined in s. 938.02 (15g), a juvenile detention facility, as defined in s. 938.02 (10r), or a juvenile portion of a county jail, and the child and his or her parent or guardian agree under subd. 2. that the child will continue to participate in such a program. For purposes of this subdivision, a child is considered to have begun a program leading to a high school equivalency diploma if the child has received a passing score on a minimum of one of the 5 content area tests given under the general educational development test or has demonstrated under a course of study meeting the standards established under s. 115.29 (4) for the granting of a declaration of equivalency to high school graduation a level of proficiency in a minimum of one of the 5 content areas specified in s. 118.33 (1) (a) 1. that is equivalent to the level of proficiency that he or she would have attained if he or she had satisfied the requirements under s. 118.33 (1) (a) 1.

2. Prior to the admission of a child under subd. 1. to a program leading to a high school equivalency diploma, the child, his or her parent or guardian, the school board and a representative of the agency providing the program shall enter into a written agreement. The agreement shall specify that the child is excused from regular school attendance while he or she is enrolled in the program and making progress toward completion of the program, or successfully completes the program. If the agency providing the program determines that the child is not making progress toward completion of the program, the agency shall notify the child and his or her parent or guardian that the agreement may be suspended within 30 days. If the agency suspends the agreement, the agency shall notify the child, his or her parent or guardian and the school board.

3. If the program that the child wishes to attend is provided by a technical college district, the technical college district board shall admit the child.

4. A child attending a program under this paragraph shall not be included in membership, as defined in s. 121.004 (5).

5. The state superintendent shall grant a high school equivalency diploma to a child under this paragraph who completes the general educational development test with a passing score, as determined by the state superintendent, and completes the additional requirements determined by the state superintendent under s. 115.29 (4).

(d) Any child's parent or guardian, or the child if the parent or guardian is notified, may request the school board, in writing, to provide the child with program or curriculum modifications, including but not limited to:

1. Modifications within the child's current academic program.

2. A school work training or work study program.

3. Enrollment in any alternative public school or program located in the school district in which the child resides.

4. Enrollment in any nonsectarian private school or program, or tribal school, located in the school district in which the child resides, which complies with the requirements of 42 USC 2000d. Enrollment of a child under this subdivision shall be pursuant to a contractual agreement under s. 121.78 (5) that provides for the payment of the child's tuition by the school district.

5. Homebound study, including nonsectarian correspondence courses or other courses of study approved by the school board or nonsectarian tutoring provided by the school in which the child is enrolled.

6. Enrollment in any public educational program located outside the school district in which the child resides. Enrollment of a child under this subdivision may be pursuant to a contractual agreement between school districts.

(dm) The school board shall render its decision, in writing, within 90 days of a request under par. (d), except that if the request relates to a child who has been evaluated by an individualized education program team under s. 115.782 and has not been recommended for special education, the school board shall render its decision within 30 days of the request. If the school board denies the request, the school board shall give its reasons for the denial.

(e) Any decision made by a school board or a designee of the school board in response to a request for program or curriculum modifications under par. (d) shall be reviewed by the school board upon request of the child's parent or guardian. The school board shall render its determination upon review in writing, if the child's parent or guardian so requests.

(f) At the beginning of each school term, the school board shall notify the pupils enrolled in the school district and their parents or guardians of the substance of pars. (d), (dm) and (e).

(g) Paragraph (a) does not apply to a person having under control a child who is enrolled in a virtual charter school.

(2) (a) If the determination is made under sub. (1) (b) for a child to attend a technical college, the district board governing the technical college shall establish appropriate vocational and technical courses in accordance with s. 118.33 (3m) and the school board shall pay the technical college district board an amount calculated as follows:

1. Divide the number of credit hours of instruction scheduled by the technical college district for the pupil by 30.

2. Multiply the quotient under subd. 1. by the statewide average instructional cost for general education programs in the

technical college system in the previous school year, as determined by the technical college system board.

3. Multiply the quotient under subd. 1. by any additional costs associated with direct student support services, as determined jointly by the state superintendent and the state director of the technical college system.

4. Add the product under subd. 2. to the product under subd. 3.

(c) Pupils attending a technical college under this subsection may receive general education subjects at the technical college. Payments by the school district under par. (a) shall be deemed costs of operation and maintenance.

(d) Transportation, or board and lodging under s. 121.57 (1) (a), for pupils attending a technical college under this subsection shall be provided by the school district, and state aids shall be paid therefor, on the same basis as is transportation for pupils attending high school.

(3) This section does not apply to:

(a) Any child who is excused by the school board because the child is temporarily not in proper physical or mental condition to attend a school program but who can be expected to return to a school program upon termination or abatement of the illness or condition. The school attendance officer may request the parent or guardian of the child to obtain a written statement from a licensed physician, dentist, chiropractor, optometrist, psychologist, physician assistant, or nurse practitioner, as defined in s. 255.06 (1) (d), or certified advanced practice nurse prescriber or Christian Science practitioner living and residing in this state, who is listed in the Christian Science Journal, as sufficient proof of the physical or mental condition of the child. An excuse under this paragraph shall be in writing and shall state the time period for which it is valid, not to exceed 30 days.

(b) Any child excused by the school board in accordance with the school board's written attendance policy under s. 118.16 (4) and with the written approval of the child's parent or guardian. The child's truancy, discipline or school achievement problems or disabilities as described in s. 115.76 (5) may not be used as the reason for an excuse under this paragraph. The excuse shall be in writing and shall state the time period for which it is effective, not to extend beyond the end of the current school year.

(c) Any child excused in writing by his or her parent or guardian before the absence. The school board shall require a child excused under this paragraph to complete any course work missed during the absence. A child may not be excused for more than 10 days in a school year under this paragraph.

(d) Any child excused in writing by his or her parent or guardian and by the principal of the school that the child attends for the purpose of serving as an election official under s. 7.30 (2) (am). A principal may not excuse a child under this paragraph unless the child has at least a 3.0 grade point average or the equivalent. The principal shall allow the child to take examinations and complete course work missed during the child's absences under this paragraph. The principal shall promptly notify the municipal clerk or the board of election commissioners of the municipality that appointed the child as an election official if the child ceases to be enrolled in school or if the child no longer has at least a 3.0 grade point average or the equivalent.

(4) Instruction in a home-based private educational program that meets all of the criteria under s. 118.165 (1) may be substituted for attendance at a public or private school.

(4m) No school board, board of control of a cooperative educational service agency or county children with disabilities education board, or person employed by a school board, cooperative educational service agency or county children with disabilities education board, may in any manner compel a pregnant girl to withdraw from her educational program.

(5) (a) 1. Except as provided under par. (b) or if a person has been found guilty of a misdemeanor under s. 948.45, whoever violates this section may be penalized as follows, if evidence has been provided by the school attendance officer that the activities under s. 118.16 (5) have been completed or were not required to be completed as provided in s. 118.16 (5m):

a. For the first offense, by a fine of not more than $500 or imprisonment for not more than 30 days or both.

b. For a 2nd or subsequent offense, by a fine of not more than $1,000 or imprisonment for not more than 90 days or both.

2. The court may require a person who is subject to subd. 1. to perform community service work for a public agency or a nonprofit charitable organization in lieu of the penalties specified under subd. 1. Any organization or agency to which a defendant is assigned pursuant to an order under this subdivision acting in good faith has immunity from any civil liability in excess of $25,000 for any act or omission by or impacting on the defendant.

(am) The court may order any person who violates this section to participate in counseling at the person's own expense or to attend school with his or her child, or both.

(b) 1. Paragraph (a) does not apply to a person who has under his or her control a child who has been sanctioned under s. 49.26 (1) (h).

2. In a prosecution under par. (a), if the defendant proves that he or she is unable to comply with the law because of the disobedience of the child, the action shall be dismissed and the child shall be referred to the court assigned to exercise jurisdiction under chs. 48 and 938.

History: 1971 c. 40, 125, 154; 1973 c. 89, 243, 319, 332; 1975 c. 39, 199; 1979 c. 221, 298, 300, 355; 1981 c. 20; 1983 a. 512; 1985 a. 29; 1987 a. 36, 285, 399; 1989 a. 31, 336; 1991 a. 39; 1993 a. 223, 399; 1995 a. 27 s. 3945, 9145 (1); 1995 a. 77, 225; 1997 a. 27, 164, 205, 239; 2001 a. 109; 2005 a. 344; 2007 a. 222; 2009 a. 41, 302; 2011 a. 161.

Cross-reference: See also ch. TCS 9, Wis. adm. code.

Compelling Amish parents to send their children to high school infringed upon their religious liberties. State v. Yoder, 49 Wis. 2d 430, 182 N.W.2d 539 (1971). Affirmed, 406 U.S. 205 (1972).

A city is not liable for a failure to enforce the school attendance laws for damages resulting from an assault by truants. Riemer v. Crayton, 57 Wis. 2d 755 (1973).

A refusal, on religious grounds, to send children to school was a personal, philosophical choice by parents, rather than a protected religious expression. State v. Kasuboski, 87 Wis. 2d 407, 275 N.W.2d 101 (Ct. App. 1978).

This section permits VTAE [now technical college] instructors to teach a limited number of courses to public school students, under certain circumstances, without department of public instruction certification. Green Bay Education Association v. DPI, 154 Wis. 2d 655, 453 N.W.2d 915 (Ct. App. 1990).

This section is not unconstitutionally vague. State v. White, 180 Wis. 2d 203, 509 N.W.2d 434 (Ct. App. 1993).

A dispositional order, based solely upon habitual truancy, cannot endure beyond the school term during which the juvenile reaches 18 years of age. State v. Jeremiah C. 2003 WI App 40, 260 Wis. 2d 359, 659 N.W.2d 193, 02-1740.

The trial court erred in ruling that this section requires a conviction under sub. (5) (a) before sub. (5) (b) is triggered. The disobedience exception in sub. (5) (b)

2. was an affirmative defense to the charge here and should have been presented to the fact-finder during the trial for resolution. State v. McGee, 2005 WI App 97, 281 Wis. 2d 756, 698 N.W.2d 850, 04-1005.

The Amish and compulsory school attendance. 1971 WLR 832.

118.16 School attendance enforcement. (1) In this section:

(a) "Habitual truant" means a pupil who is absent from school without an acceptable excuse under sub. (4) and s. 118.15 for part or all of 5 or more days on which school is held during a school semester.

(b) "School attendance officer" means an employee designated by the school board to deal with matters relating to school attendance and truancy. "School attendance officer" does not include an individual designated under sub. (2m) (a) to take into custody a child who is absent from school without an acceptable excuse under s. 118.15 unless that individual has also been designated by the school board to deal with matters relating to school attendance and truancy.

(c) "Truancy" means any absence of part or all of one or more days from school during which the school attendance officer, principal or teacher has not been notified of the legal cause of such absence by the parent or guardian of the absent pupil, and also means intermittent attendance carried on for the purpose of defeating the intent of s. 118.15.

(1m) The period during which a pupil is absent from school due to a suspension or expulsion under s. 120.13 or 119.25 is neither an absence without an acceptable excuse for the purposes of sub. (1) (a) nor an absence without legal cause for the purposes of sub. (1) (c).

(2) The school attendance officer:

(a) Shall determine daily which pupils enrolled in the school district are absent from school and whether that absence is excused under s. 118.15.

(c) Except as provided under pars. (cg) and (cr), shall notify the parent or guardian of a child who has been truant of the child's truancy and direct the parent or guardian to return the child to school no later than the next day on which school is in session or to provide an excuse under s. 118.15. The notice under this paragraph shall be given before the end of the 2nd school day after receiving a report of an unexcused absence. The notice may be made by personal contact, mail or telephone call of which a written record is kept, except that notice by personal contact or telephone call shall be attempted before notice by mail may be given.

(cg) Shall notify the parent or guardian of a child who is a habitual truant, by registered or certified mail, when the child initially becomes a habitual truant. The notice shall include all of the following:

1. A statement of the parent's or guardian's responsibility, under s. 118.15 (1) (a) and (am), to cause the child to attend school regularly.

2. A statement that the parent, guardian or child may request program or curriculum modifications for the child under s. 118.15 (1) (d) and that the child may be eligible for enrollment in a program for children at risk under s. 118.153 (3).

3. A request that the parent or guardian meet with appropriate school personnel to discuss the child's truancy. The notice shall include the name of the school personnel with whom the parent or guardian should meet, a date, time and place for the meeting and the name, address and telephone number of a person to contact to arrange a different date, time or place. The date for the meeting shall be within 5 school days after the date that the notice is sent, except that with the consent of the child's parent or guardian the date for the meeting may be extended for an additional 5 school days.

4. A statement of the penalties, under s. 118.15 (5), that may be imposed on the parent or guardian if he or she fails to cause the child to attend school regularly as required under s. 118.15 (1) (a) and (am).

(cr) After the notice required under par. (cg) has been given, shall notify the parent or guardian of a habitual truant of the habitual truant's unexcused absences as provided in the plan under s. 118.162 (4) (a). After the notice required under par. (cg) has been given, par. (c) does not apply.

(d) May visit any place of employment in the school district to ascertain whether any minors are employed there contrary to law. The officer shall require that school certificates and lists of minors who are employed there be produced for inspection, and shall report all cases of illegal employment to the proper school authorities and to the department of workforce development.

(e) Except as provided in par. (f), shall have access to information regarding the attendance of any child between the ages of 6 and 18 who is a resident of the school district or who claims or is claimed to be in attendance at a private school located in the school district.

(f) Shall request information regarding the attendance of any child between the ages of 6 and 18 who is a resident of the school district and who claims or is claimed to be in attendance at a tribal school, or who is not a resident of the school district and who claims or is claimed to be in attendance at a tribal school located in the school district.

(2m) (a) A school district administrator may designate any of the following individuals to take a child who resides in the school district and who is absent from school without an acceptable excuse under s. 118.15 into custody under s. 938.19 (1m):

1. An employee of the school district who is directly involved in the provision of educational programs to the truant child.

2. An employee of the school district who is directly involved in the provision of a modified program or curriculum under s. 118.15 (1) (d), a program for children at risk under s. 118.153 or an alternative educational program under s. 119.82 or any other alternative educational program to children who attend the school attended by the truant child, if the school district administrator believes that the program or curriculum may be appropriate for the truant child.

3. A school social worker employed by the school district who provides services to children attending the school attended by the truant child, if the school district administrator believes that the services provided by the social worker may be appropriate for the truant child.

4. An employee of a social services agency who is directly involved in the provision of social services to the truant child or the child's family.

5. A school attendance officer, but only if the school attendance officer meets the criteria specified in subds. 1., 2. or 3.

(b) A designation under par. (a) shall be in writing and shall specifically identify the child whom the individual is authorized to take into custody.

(c) A school district administrator may not designate an individual under par. (a) unless the individual agrees to the designation in writing.

(d) A school district administrator who makes a designation under par. (a) shall provide each individual so designated with an identification card of a form determined by the school board. The designee shall carry the identification card on his or her person at all times while the designee is on official duty under s. 938.19 (1m) and shall exhibit the identification card to any person to whom the designee represents himself or herself as a person authorized to take a child into custody under s. 938.19 (1m).

(e) A school district administrator who makes a designation under par. (a) or the individual designated under par. (a) shall immediately attempt to notify, by personal contact or telephone call, the child's parent, guardian and legal custodian that the designation has been made and that the child may be taken into custody under s. 938.19 (1m). The school district administrator, or the designee, is not required to notify a parent, guardian or legal custodian under this paragraph if the parent, guardian or legal custodian is the person who requested that the child be taken into custody under s. 938.19 (1m).

(3) All private schools shall keep a record containing the information required under ss. 115.30 (2) and 120.18. The record shall be open to the inspection of school attendance officers at all reasonable times. When called upon by any school attendance officer, the school shall furnish, on forms supplied by the school attendance officer, the information required under ss. 115.30 (2) and 120.18 in regard to any child between the ages of 6 and 18 who is a resident of the school district or who claims or is claimed to be in attendance at the school.

(4) (a) The school board shall establish a written attendance policy specifying the reasons for which pupils may be permitted to be absent from a public school under s. 118.15 and shall require the teachers employed in the school district to submit to the school attendance officer daily attendance reports on all pupils under their charge.

(b) No public school may deny a pupil credit in a course or subject solely because of the pupil's unexcused absences or suspensions from school. The attendance policy under par. (a) shall specify the conditions under which a pupil may be permitted to take examinations missed during absences, other than suspensions, and the conditions under which a pupil shall be permitted to take any quarterly, semester or grading period examinations and complete any course work missed during a period of suspension.

(c) The school board may establish policies which provide that as a consequence of a pupil's truancy the pupil may be assigned to detention or to a supervised, directed study program. The program need not be held during the regular school day. The policies under this paragraph shall specify the conditions under which credit may be given for work completed during the period of detention or assignment to a supervised, directed study program. A pupil shall be permitted to take any examinations missed during a period of assignment to a supervised, directed study program.

(cm) 1. The school board may establish policies which provide that a pupil of an age eligible for high school enrollment in the school district, as determined by the school board, may be assigned to a period of assessment as a consequence of the pupil's truancy or upon the pupil's return to school from placement in a correctional facility, mental health treatment facility, alcohol and other drug abuse treatment facility or other out-of-school placement. The policies shall specify the conditions under which a pupil may participate in the assessment without being in violation of s. 118.15 and the maximum length of time that a pupil may be assigned to an assessment period.

2. A school board may not assign a pupil to an assessment period without the written approval of the pupil's parent or guardian. A school board may not assign a pupil to an assessment period for longer than the time necessary to complete the assessment and place the pupil in an appropriate education program or 8 weeks, whichever is less. A school board may not assign a pupil to an assessment period more than once and may not assign a pupil to an assessment period if the school district has an alternative education program, as defined in s. 115.28 (7) (e) 1., available for the pupil that is appropriate for the pupil's needs. An assessment need not be conducted during the regular school day.

3. The goals of an assessment period are to develop an educational plan for the pupil, implement an appropriate transitional plan and facilitate the pupil's placement in an education program in which the pupil will be able to succeed. The school board shall provide pupils who are assigned to an assessment period with information on other education programs that the school district or other community providers have available for the pupil. The assessment may include any of the following new or previously completed activities:

a. An assessment for problems with alcohol or other drugs.

b. An assessment of individual educational needs.

c. An assessment of whether the pupil is encountering problems in the community or at home that require intervention by a social worker.

d. A vocational assessment, which may include career counseling.

e. A medical assessment.

(d) The school board shall provide each pupil enrolled in the public schools in the district with a copy of the policies established under this subsection and shall file a copy of the policies in each school in the district. In addition, the school board shall make copies available upon request.

(e) Except as provided under s. 119.55, a school board may establish one or more youth service centers for the counseling of children who are taken into custody under s. 938.19 (1) (d) 10. for being absent from school without an acceptable excuse under s. 118.15.

(5) Except as provided in sub. (5m), before any proceeding may be brought against a child under s. 938.13 (6) for habitual truancy or under s. 938.125 (2) or 938.17 (2) for a violation of an ordinance enacted under s. 118.163 (2) or against the child's parent or guardian under s. 118.15 for failure to cause the child to attend school regularly, the school attendance officer shall provide evidence that appropriate school personnel in the school or school district in which the child is enrolled have, within the school year during which the truancy occurred, done all of the following:

(a) Met with the child's parent or guardian to discuss the child's truancy or attempted to meet with the child's parent or guardian and received no response or were refused.

(b) Provided an opportunity for educational counseling to the child to determine whether a change in the child's curriculum would resolve the child's truancy and have considered curriculum modifications under s. 118.15 (1) (d).

(c) Evaluated the child to determine whether learning problems may be a cause of the child's truancy and, if so, have taken steps to overcome the learning problems, except that the child need not be evaluated if tests administered to the child within the previous year indicate that the child is performing at his or her grade level.

(d) Conducted an evaluation to determine whether social problems may be a cause of the child's truancy and, if so, have taken appropriate action or made appropriate referrals.

(5m) Subsection (5) (a) does not apply if a meeting under sub. (2) (cg) 3. is not held within 10 school days after the date that the notice under sub. (2) (cg) is sent. Subsection (5) (b), (c) and (d) does not apply if the school attendance officer provides evidence that appropriate school personnel were unable to carry out the activity due to the child's absences from school.

(6) (a) If the school attendance officer receives evidence that activities under sub. (5) have been completed or were not required to be completed as provided in sub. (5m), the school attendance officer may do any of the following:

1. File information on any child who continues to be truant with the court assigned to exercise jurisdiction under chs. 48 and 938 in accordance with s. 938.24. Filing information on a child under this subdivision does not preclude concurrent prosecution of the child's parent or guardian under s. 118.15 (5).

2. Refer the child to a teen court program if all of the following conditions apply:

a. The chief judge of the judicial administrative district has approved a teen court program established in the child's county of residence and has authorized the school attendance officer to refer children to the teen court program and the school attendance officer determines that participation in the teen court program will likely benefit the child and the community.

b. The child and the child's parent, guardian and legal custodian consent to the child's participation in the teen court program.

c. The child has not successfully completed participation in a teen court program during the 2 years before the date on which the school attendance officer received evidence that activities under sub. (5) have been completed or were not completed due to the child's absence from school as provided in sub. (5m).

(b) If a child who is referred to a teen court program under par. (a) 2. is not eligible for participation in the teen court program or does not successfully complete participation in the teen court program, the person administering the teen court program shall file information on the child with the court assigned to exercise jurisdiction under chs. 48 and 938 in accordance with s. 938.24. Filing information on a child under this paragraph does not preclude concurrent prosecution of the child's parent or guardian under s. 118.15 (5).

(7) Any school district administrator, principal, teacher or school attendance officer who violates this section shall forfeit not less than $5 nor more than $25.

History: 1971 c. 164 s. 85; 1975 c. 39; 1979 c. 221, 298; 1985 a. 211; 1987 a. 285; 1993 a. 16, 56, 334, 339, 491; 1995 a. 27 ss. 3947, 9130 (4), 9145 (1); 1995 a. 77; 1997 a. 3, 27, 205, 239; 1999 a. 9; 2001 a. 107; 2005 a. 122; 2009 a. 41, 302.

NOTE: 1993 Wis. Act 339, which created sub. (4) (cm), contains explanatory notes.

A court must consider evidence under sub. (5) prior to entering a finding of contempt based on truancy from school. T. J. N. v. Winnebago County Social Services Dept. 141 Wis. 2d 838, 416 N.W.2d 632 (Ct. App. 1987).

Sub. (5) does not limit a court's discretion in setting school attendance requirements in a dispositional order for a delinquent juvenile and in imposing sanctions if the order is violated. By its terms, sub. (5) is limited to children who are habitual truants and therefore in need of protection and services. State v. Jason R.N. 201 Wis. 2d 646, 549 N.W.2d 752 (Ct. App. 1996), 95-1728.

When under school board policy a suspension is not an excused absence, an absence as a result of the suspension is not an "acceptable excuse" under sub. (1) (a) or "legal cause" under sub. (1) (c) and may result in a finding of habitual truancy. State v. Isaac, 220 Wis. 2d 251, 582 N.W.2d 476 (Ct. App. 1998), 97-1611.

118.257 Liability for referral to police. (1) In this section:

(a) "Controlled substance" has the meaning specified in s. 961.01 (4).

(am) "Controlled substance analog" has the meaning given in s. 961.01 (4m).

(at) "Delivery" has the meaning given in s. 961.01 (6).

(b) "Distribute" has the meaning specified in s. 961.01 (9).

(c) "Pupil services professional" means a school counselor, school social worker, school psychologist or school nurse.

(d) "School" means a public, parochial, private, or tribal school which provides an educational program for one or more grades between grades 1 and 12 and which is commonly known as an elementary school, middle school, junior high school, senior high school, or high school.

(2) A school administrator, principal, pupil services professional or teacher employed by a school board is not liable for referring a pupil enrolled in the school district to law enforcement authorities, or for removing a pupil from the school premises or from participation in a school-sponsored activity, for suspicion of possession, distribution, delivery or consumption of an alcohol beverage or a controlled substance or controlled substance analog.

History: 1979 c. 331; 1981 c. 79 s. 17; 1983 a. 373; 1987 a. 170; 1995 a. 448; 2009 a. 302.

118.258 Electronic communication devices prohibited. (1) Each school board may adopt rules prohibiting a pupil from using or possessing an electronic communication device while on premises owned or rented by or under the control of a public school.

(2) Annually, if the school board adopts rules under sub. (1), it shall provide each pupil enrolled in the school district with a copy of the rules.

History: 1989 a. 121; 1995 a. 27 s. 9145 (1); 1997 a. 27; 2005 a. 220.

118.292 Possession and use of epinephrine auto-injectors. (1g) In this section:

(a) "Emergency situation" means a situation in which a pupil reasonably believes that he or she is experiencing a severe allergic reaction, including anaphylaxis, that requires the administration of epinephrine to avoid severe injury or death.

(b) "Epinephrine auto-injector" means a device used for the automatic injection of epinephrine into the human body to prevent or treat a life-threatening allergic reaction.

(c) "School" includes a public, private, and tribal school.

(1r) While in school, at a school-sponsored activity or under the supervision of a school authority, a pupil may possess and use an epinephrine auto-injector if all of the following are true:

(a) The pupil uses the epinephrine auto-injector to prevent the onset or alleviate the symptoms of an emergency situation.

(b) The pupil has the written approval of the pupil's physician and, if the pupil is a minor, the written approval of the pupil's parent or guardian.

(c) The pupil has provided the school principal with a copy of the approval or approvals under par. (b).

(2) No school board, school district, private school, or tribal school, or any employee of the foregoing, is civilly liable for an injury incurred by any of the following:

(a) A pupil as a result of using an epinephrine auto-injector under sub. (1r).

(b) Any person as a result of a pupil possessing or using an epinephrine auto-injector under sub. (1r).

History: 2011 a. 85.

118.31 Corporal punishment. (1) In this section, "corporal punishment" means the intentional infliction of physical pain which is used as a means of discipline. "Corporal punishment" includes, but is not limited to, paddling, slapping or prolonged maintenance of physically painful positions, when used as a means of discipline. "Corporal punishment" does not include actions consistent with an individualized education program developed under s. 115.787 or reasonable physical activities associated with athletic training.

(2) Except as provided in sub. (3), no official, employee or agent of a school board may subject a pupil enrolled in the school district to corporal punishment.

(3) Subsection (2) does not prohibit an official, employee or agent of a school board from:

(a) Using reasonable and necessary force to quell a disturbance or prevent an act that threatens physical injury to any person.

(b) Using reasonable and necessary force to obtain possession of a weapon or other dangerous object within a pupil's control.

(c) Using reasonable and necessary force for the purpose of self-defense or the defense of others under s. 939.48.

(d) Using reasonable and necessary force for the protection of property under s. 939.49.

(e) Using reasonable and necessary force to remove a disruptive pupil from a school premises or motor vehicle, as defined in s. 125.09 (2) (a) 1. and 4., or from school-sponsored activities.

(f) Using reasonable and necessary force to prevent a pupil from inflicting harm on himself or herself.

(g) Using reasonable and necessary force to protect the safety of others.

(h) Using incidental, minor or reasonable physical contact designed to maintain order and control.

(4) Each school board shall adopt a policy that allows any official, employee or agent of the school board to use reasonable and necessary force for the purposes of sub. (3) (a) to (h). In determining whether or not a person was acting within the exceptions in sub. (3), deference shall be given to reasonable, good faith judgments made by an official, employee or agent of a school board.

(5) Except as provided in s. 939.61 (1), this section does not create a separate basis for civil liability of a school board or their officials, employees or agents for damages arising out of claims involving allegations of improper or unnecessary use of force by school employees against students.

(6) Nothing in this section shall prohibit, permit or otherwise affect any action taken by an official, employee or agent of a school board with regard to a person who is not a pupil enrolled in the school district.

(7) Nothing in this section abrogates or restricts any statutory or common law defense to prosecution for any crime.

History: 1987 a. 303; 1989 a. 26; 1991 a. 164; 1993 a. 334; 1997 a. 164; 1999 a. 127.

NOTE: This section was created by 1987 Wis. Act 303. Section 1 of that act is entitled "Legislative findings and purpose".

118.32 Strip search by school employee. Any official, employee or agent of any school or school district is prohibited under s. 948.50 from conducting a strip search of any pupil.

History: 1983 a. 489; 1987 a. 332 s. 64.

118.325 Locker searches. An official, employee or agent of a school or school district may search a pupil's locker as determined necessary or appropriate without the consent of the pupil, without notifying the pupil and without obtaining a search warrant if the school board has adopted a written policy specifying that the school board retains ownership and possessory control of all pupil lockers and designating the positions of the officials, employees or agents who may conduct searches, and has distributed a copy of the policy to pupils enrolled in the school district.

History: 1997 a. 329.

118.45 Tests for alcohol use. A school board employee or agent, or law enforcement officer, as defined in s. 102.475 (8) (c), authorized by a public school board may require a public school pupil, including a charter school pupil, to provide one or more samples of his or her breath for the purpose of determining the presence of alcohol in the pupil's breath whenever the authorized employee, agent or officer has reasonable suspicion that the pupil is under the influence of alcohol while the pupil is in any of the circumstances listed in s. 125.09 (2) (b) 1. to 3. The authorized employee, agent or officer shall use a breath screening device approved by the department of transportation for the purpose of determining the presence of alcohol in a person's breath to determine if alcohol is present in the pupil's breath. The results of the breath screening device or the fact that a pupil refused to submit to breath testing shall be made available for use in any hearing or proceeding regarding the discipline, suspension or expulsion of a student due to alcohol use. No school board may require a pupil to provide one or more samples of his or her breath for the purpose of determining the presence of alcohol in the pupil's breath until the school board has adopted written policies regarding disciplines or treatments that will result from being under the influence of alcohol while on school premises or from refusing to submit to breath testing to determine the presence of alcohol in the pupil's breath.

History: 1995 a. 327.

118.46 Policy on bullying. (1) By March 1, 2010, the department shall do all of the following:

(a) Develop a model school policy on bullying by pupils. The policy shall include all of the following:

1. A definition of bullying.

2. A prohibition on bullying.

3. A procedure for reporting bullying that allows reports to be made confidentially.

4. A prohibition against a pupil retaliating against another pupil for reporting an incident of bullying.

5. A procedure for investigating reports of bullying. The procedure shall identify the school district employee in each school who is responsible for conducting the investigation and require that the parent or guardian of each pupil involved in a bullying incident be notified.

6. A requirement that school district officials and employees report incidents of bullying and identify the persons to whom the reports must be made.

7. A list of disciplinary alternatives for pupils that engage in bullying or who retaliate against a pupil who reports an incident of bullying.

8. An identification of the school-related events at which the policy applies.

9. An identification of the property owned, leased, or used by the school district on which the policy applies.

10. An identification of the vehicles used for pupil transportation on which the policy applies.

(b) Develop a model education and awareness program on bullying.

(c) Post the model policy under par. (a) and the model program under par. (b) on its Internet site.

(2) By August 15, 2010, each school board shall adopt a policy prohibiting bullying by pupils. The school board may adopt the model policy under sub. (1) (a). The school board shall provide a copy of the policy to any person who requests it. Annually, the school board shall distribute the policy to all pupils enrolled in the school district and to their parents or guardians.

CHAPTER 125

ALCOHOL BEVERAGES

NOTE: Chapter 79, laws of 1981, which created this chapter of the statutes, contains extensive notes explaining the revisions. See the 1981 Session Laws.

SUBCHAPTER I

GENERAL PROVISIONS

125.02 Definitions. Except as otherwise provided, in this chapter:

(1) "Alcohol beverages" means fermented malt beverages and intoxicating liquor.

(1m) "Barrel" means 31 U.S. gallons.

(2) "Brewer" means any person who manufactures fermented malt beverages for sale or transportation, except that "brewer" does not include a permittee under s. 125.295.

(2d) "Brewer group" means a brewer, including all premises for which the brewer holds a permit issued under s. 125.29, together with all of the following:

(a) All brewers that share membership with the brewer in a controlled group of brewers, as determined under 26 USC 5051 (a) (2) (B).

(b) All brewers considered with the brewer as one taxpayer under 27 CFR 25.111b (b).

(c) All franchisees, as defined in s. 553.03 (5), of the brewer.

(d) All franchisees, as defined in s. 553.03 (5), of the brewer's franchisor, as defined in s. 553.03 (6).

(e) The franchisor, as defined in s. 553.03 (6), of the brewer.

(2h) "Brewpub" means a permittee under s. 125.295.

(2p) "Brewpub group" means a brewpub, including all premises for which the brewpub holds a permit issued under s. 125.295, together with all of the following:

(a) All brewpubs that share membership with the brewpub in a controlled group of brewpubs, as determined under 26 USC 5051 (a) (2) (B).

(b) All brewpubs considered with the brewpub as one taxpayer under 27 CFR 25.111b (b).

(c) All franchisees, as defined in s. 553.03 (5), of the brewpub.

(d) All franchisees, as defined in s. 553.03 (5), of the brewpub's franchisor, as defined in s. 553.03 (6).

(e) The franchisor, as defined in s. 553.03 (6), of the brewpub.

(2t) "Brewpub premises" means any premises covered by a permit issued under s. 125.295.

(3) "Brewery premises" means all land and buildings used in the manufacture or sale of fermented malt beverages at a brewer's principal place of business.

(3m) "Campus" has the meaning given under s. 36.05 (3).

(3r) "Caterer" means any person holding a restaurant permit under s. 254.64 who is in the business of preparing food and transporting it for consumption on premises where gatherings, meetings, or events are held, if the sale of food at each gathering, meeting, or event accounts for greater than 50 percent of the gross receipts of all of the food and beverages served at the gathering, meeting, or event.

(4) "Club" means an organization, whether incorporated or not, which is the owner, lessee or occupant of a building or portion thereof used exclusively for club purposes, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent or athletic purpose but not for pecuniary gain and which only sells alcohol beverages incidental to its operation.

(5) "Department" means the department of revenue.

(6) "Fermented malt beverages" means any beverage made by the alcohol fermentation of an infusion in potable water of barley malt and hops, with or without unmalted grains or decorticated and degerminated grains or sugar containing 0.5% or more of alcohol by volume.

(6m) "Homemade," with respect to the making of wine and fermented malt beverages, means wine and fermented malt beverages made by a person's own efforts and not for a commercial purpose, but does not require that the wine or fermented malt beverages be made in the person's home.

(7) "Hotel" means a hotel, as defined in s. 254.61 (3), that is provided with a restaurant.

(8) "Intoxicating liquor" means all ardent, spirituous, distilled or vinous liquors, liquids or compounds, whether

medicated, proprietary, patented or not, and by whatever name called, containing 0.5% or more of alcohol by volume, which are beverages, but does not include "fermented malt beverages".

(8m) "Legal drinking age" means 21 years of age.

(9) "License" means an authorization to sell alcohol beverages issued by a municipal governing body under this chapter.

(10) "Manufacturer" means a person, other than a rectifier, that ferments, manufactures or distills intoxicating liquor.

(11) "Municipality" means a city, village or town.

(12) "Peace officer" means a sheriff, undersheriff, deputy sheriff, police officer, constable, marshal, deputy marshal or any employee of the department or of the department of justice authorized to act under this chapter.

(13) "Permit" means any permit issued by the department under this chapter.

(14) "Person" means a natural person, sole proprietorship, partnership, limited liability company, corporation or association or the owner of a single-owner entity that is disregarded as a separate entity under ch. 71.

(14m) "Premises" means the area described in a license or permit.

(15) "Primary source of supply" means any of the following:

(a) With respect to fermented malt beverages, the brewer or brewpub that manufactured the fermented malt beverages or the exclusive agent designated by this brewer or brewpub.

(b) With respect to intoxicating liquor, the manufacturer, the rectifier, or the exclusive agent designated by the manufacturer or rectifier.

(15m) "Principal business" means the primary activity as determined by analyzing the amount of capital, labor, time, attention and floor space devoted to each business activity and by analyzing the sources of net income and gross income. The name, appearance and advertising of the entity may also be taken into consideration if they are given less weight.

(16) "Rectifier" means any one of the following:

(a) A person that rectifies, purifies or refines distilled spirits or wines by any process other than by original and continuous distillation from mash, wort or wash, through continuous closed vessels or pipes, until the manufacture thereof is complete.

(b) A person who possesses any still or leach tub or keeps any other apparatus for refining distilled spirits.

(c) A person who after rectifying and purifying distilled spirits, by mixing such spirits with any materials, manufactures any spurious, imitation or compound liquors for sale.

(d) A distiller or any person under substantially the same control as a distiller who, without rectifying, purifying or refining distilled spirits, by mixing such spirits with any materials, manufactures any spurious, imitation or compound liquors for sale under the name of "whiskey", "brandy", "gin", "rum", "spirits", "cordials" or any other name.

(e) A person who places intoxicating liquor in bottles or other containers.

(17) "Regulation" means any rule or ordinance adopted by a municipal governing body.

(18) "Restaurant" means a restaurant, as defined in s. 254.61 (5).

(19) "Retailer" means any person who sells, or offers for sale, any alcohol beverages to any person other than a person holding a permit or a license under this chapter.

(20) "Sell", "sold", "sale" or "selling" means any transfer of alcohol beverages with consideration or any transfer without consideration if knowingly made for purposes of evading the law relating to the sale of alcohol beverages or any shift, device, scheme or transaction for obtaining alcohol beverages, including the solicitation of orders for, or the sale for future delivery of, alcohol beverages.

(20m) "Underage person" means a person who has not attained the legal drinking age.

(21) "Wholesaler" means a person, other than a brewer, brewpub, manufacturer, or rectifier, who sells alcohol beverages to a licensed retailer or to another person who holds a permit to sell alcohol beverages at wholesale.

(22) "Wine" means products obtained from the normal alcohol fermentation of the juice or must of sound, ripe grapes, other fruits or other agricultural products, imitation wine, compounds sold as wine, vermouth, cider, perry, mead and sake, if such products contain not less than 0.5 percent nor more than 21 percent of alcohol by volume.

(23) "Wine collector" means an individual who meets the standards established by the department by rule and who is registered with the department as a collector of wine.

History: 1981 c. 79, 202; 1983 a. 74; 1983 a. 189 s. 329 (6); 1983 a. 203 s. 47; 1985 a. 47, 302, 337; 1989 a. 253; 1991 a. 39; 1993 a. 27, 112; 1997 a. 27; 1999 a. 163; 2007 a. 20 ss. 2757te to 2757we, 2759ci; 2007 a. 85; 2011 a. 32, 200.

125.07 Underage and intoxicated persons; presence on licensed premises; possession; penalties.

(1) ALCOHOL BEVERAGES; RESTRICTIONS RELATING TO UNDERAGE PERSONS. (a) *Restrictions.* 1. No person may procure for, sell, dispense or give away any alcohol beverages to any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age.

2. No licensee or permittee may sell, vend, deal or traffic in alcohol beverages to or with any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age.

3. No adult may knowingly permit or fail to take action to prevent the illegal consumption of alcohol beverages by an underage person on premises owned by the adult or under the adult's control. This subdivision does not apply to alcohol beverages used exclusively as part of a religious service.

4. No adult may intentionally encourage or contribute to a violation of sub. (4) (a) or (b).

(b) *Penalties.* 1. In this paragraph, "violation" means a violation of this subsection or of a local ordinance that strictly conforms to par. (a) if the violation results in an imposition of a forfeiture or a conviction. For purposes of determining previous violations under subd. 2., the 30-month period shall be measured from the dates of violations that resulted in an imposition of a forfeiture or a conviction. For the purpose of determining whether or not a previous violation has occurred, if more than one violation occurs at the same time all those violations shall be counted as one violation.

2. A person who commits a violation may be:

a. Required to forfeit not more than $500 if the person has not committed a previous violation within 30 months of the violation.

b. Fined not more than $500 or imprisoned for not more than 30 days or both if the person has committed a previous violation within 30 months of the violation.

c. Fined not more than $1,000 or imprisoned for not more than 90 days or both if the person has committed 2 previous violations within 30 months of the violation.

d. Fined not more than $10,000 or imprisoned for not more than 9 months or both if the person has committed 3 or more previous violations within 30 months of the violation.

3. A court shall suspend any license or permit issued under this chapter to a person for:

a. Not more than 3 days, if the court finds that the person committed a violation within 12 months after committing one previous violation;

b. Not less than 3 days nor more than 10 days, if the court finds that the person committed a violation within 12 months after committing 2 other violations; or

c. Not less than 15 days nor more than 30 days, if the court finds that the person committed the violation within 12 months after committing 3 other violations.

4. The court shall promptly mail notice of a suspension under this paragraph to the department and to the clerk of each municipality which has issued a license or permit to the person.

5. A person who holds a Class "A" license, a Class "B" license or permit, a "Class A" license or a "Class B" license or permit who commits a violation is subject to subd. 3. but is not subject to subd. 2. or s. 125.11.

6. Only one penalty may be imposed under this paragraph for each underage person who is provided alcohol beverages contrary to this section or a local ordinance in conformity with this section.

(2) SALES OF ALCOHOL BEVERAGES TO INTOXICATED PERSONS. (a) *Restrictions.* 1. No person may procure for, sell, dispense or give away alcohol beverages to a person who is intoxicated.

2. No licensee or permittee may sell, vend, deal or traffic in alcohol beverages to or with a person who is intoxicated.

(b) *Penalties.* Any person who violates par. (a) shall be fined not less than $100 nor more than $500 or imprisoned for not more than 60 days or both.

(3) PRESENCE IN PLACES OF SALE; PENALTY. (a) *Restrictions.* An underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age may not enter, knowingly attempt to enter or be on any premises for which a license or permit for the retail sale of alcohol beverages has been issued, for any purpose except the transaction of business pertaining to the licensed premises with or for the licensee or his or her employee. The business may not be amusement or the purchase, receiving or consumption of edibles or beverages or similar activities which normally constitute activities of a customer of the premises. This paragraph does not apply to:

1. An underage person who is a resident, employee, lodger or boarder on the premises controlled by the proprietor, licensee or permittee of which the licensed premises consists or is a part.

2. An underage person who enters or is on a Class "A" or "Class A" premises for the purpose of purchasing items other than alcohol beverages. An underage person so entering the premises may not remain on the premises after the purchase.

3. Hotels, drug stores, grocery stores, bowling centers, movie theaters, billiards centers having on the premises 12 or more billiards tables that are not designed for coin operation and that are 8 feet or longer in length, indoor golf simulator facilities, service stations, vessels, cars operated by any railroad, regularly established athletic fields, outdoor volleyball courts that are contiguous to a licensed premises, stadiums, public facilities as defined in s. 125.51 (5) (b) 1. d. which are owned by a county or municipality or centers for the visual or performing arts.

3m. Premises having an indoor volleyball court that measures at least 9 meters by 18 meters in area. The exception under this subdivision does not authorize an underage person to loiter in any room that is primarily used for the sale or consumption of alcohol beverages.

3r. Any privately owned business that exists to provide recreational fishing opportunities to the public for a fee and that is registered under s. 95.60 (3m) if the sale of alcohol beverages accounts for less than 30 percent of the business's gross receipts.

4. Premises in the state fair park, concessions authorized on state-owned premises in the state parks and state forests as defined or designated in chs. 27 and 28, and parks owned or operated by agricultural societies.

5. Ski chalets, golf courses and golf clubhouses, racetracks licensed under ch. 562, curling clubs, private soccer clubs and private tennis clubs.

6. Premises operated under both a Class "B" or "Class B" license or permit and a restaurant permit where the principal business conducted is that of a restaurant. If the premises are operated under both a Class "B" or "Class B" license or permit and a restaurant permit, the principal business conducted is presumed to be the sale of alcohol beverages, but the presumption may be rebutted by competent evidence.

6m. Premises operating under both a "Class C" license and a restaurant permit.

7. An underage person who enters or remains on a Class "B" or "Class B" premises for the purpose of transacting business at an auction or market, if the person does not enter or remain in a room where alcohol beverages are sold, furnished or possessed.

8. An underage person who enters or remains in a room on Class "B" or "Class B" licensed premises separate from any room where alcohol beverages are sold or served, if no alcohol beverages are furnished or consumed by any person in the room where the underage person is present and the presence of underage persons is authorized under this subdivision. An underage person may enter and remain on Class "B" or "Class B" premises under this subdivision only if the municipality which issued the Class "B" or "Class B" license adopts an ordinance permitting underage persons to enter and remain on the premises as provided in this subdivision and the law enforcement agency responsible for enforcing the ordinance issues to the Class "B" or "Class B" licensee a written authorization permitting underage persons to be present under this subdivision on the date specified in the authorization. Before issuing the authorization, the law enforcement agency shall make a determination that the presence of underage persons on the licensed premises will not endanger their health, welfare or safety or that of other members of the community.

The licensee shall obtain a separate authorization for each date on which underage persons will be present on the premises.

9. A person who is at least 18 years of age and who is working under a contract with the licensee, permittee or corporate agent to provide entertainment for customers on the premises.

10. An underage person who enters or remains on Class "B" or "Class B" licensed premises on a date specified by the licensee or permittee during times when no alcohol beverages are consumed, sold or given away. During those times, the licensee, the agent named in the license if the licensee is a corporation or limited liability company or a person who has an operator's license shall be on the premises unless all alcohol beverages are stored in a locked portion of the premises. The licensee shall notify the local law enforcement agency, in advance, of the times underage persons will be allowed on the premises under this subdivision.

11. An underage person who enters or remains in a dance hall or banquet or hospitality room attached to Class "B" or "Class B" licensed premises for the purpose of attending a banquet, reception, dance, or other similar event.

12. An underage person who enters and remains on premises for which a temporary Class "B" license is issued under s. 125.26 (6) if the licensee is authorized by the official or body of the municipality that issued the license to permit underage persons to be on the premises under s. 125.26 (6) and if the licensee permits underage persons to be on the premises.

13. An underage person who enters or remains in a banquet or hospitality room on brewery premises for the purpose of attending a brewery tour.

14. An underage person who enters or remains on premises for which a license is issued to the Wisconsin Renaissance Faire in the city of Chippewa Falls.

(b) *Penalties.* A licensee or permittee who directly or indirectly permits an underage person to enter or be on a licensed premises in violation of par. (a) is subject to a forfeiture of not more than $500.

(4) UNDERAGE PERSONS; PROHIBITIONS; PENALTIES. (a) Any underage person who does any of the following is guilty of a violation:

1. Procures or attempts to procure alcohol beverages from a licensee or permittee.

2. Unless accompanied by a parent, guardian or spouse who has attained the legal drinking age, possesses or consumes alcohol beverages on licensed premises.

3. Enters, knowingly attempts to enter or is on licensed premises in violation of sub. (3) (a).

4. Falsely represents his or her age for the purpose of receiving alcohol beverages from a licensee or permittee.

(b) Except as provided in par. (bm), any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age who knowingly possesses or consumes alcohol beverages is guilty of a violation.

(bm) An underage person may possess alcohol beverages in the course of employment during his or her working hours if employed by any of the following:

1. A brewer or brewpub.

2. A fermented malt beverages wholesaler.

3. A permittee other than a Class "B" or "Class B" permittee.

4. A facility for the production of alcohol fuel.

5. A retail licensee or permittee under the conditions specified in s. 125.32 (2) or 125.68 (2) or for delivery of unopened containers to the home or vehicle of a customer.

6. A campus, if the underage person is at least 18 years of age and is under the immediate supervision of a person who has attained the legal drinking age.

(bs) Any person violating par. (a) is subject to the following penalties:

1. For a first violation, a forfeiture of not less than $250 nor more than $500, suspension of the person's operating privilege as provided under s. 343.30 (6) (b) 1., participation in a supervised work program or other community service work under par. (cg) or any combination of these penalties.

2. For a violation committed within 12 months of one previous violation, either a forfeiture of not less than $300 nor more than $500, participation in a supervised work program or other community service work under par. (cg) or any combination of these penalties. In addition, the person's operating privilege may be suspended as provided under s. 343.30 (6) (b) 2., except that if the violation of par. (a) involved a motor vehicle the person's operating privilege shall be suspended as provided under s. 343.30 (6) (b) 2.

3. For a violation committed within 12 months of 2 previous violations, either a forfeiture of not less than $500 nor more than $750, participation in a supervised work program or other community service work under par. (cg) or any combination of these penalties. In addition, the person's operating privilege may be suspended as provided under s. 343.30 (6) (b) 3., except that if the violation of par. (a) involved a motor vehicle the person's operating privilege shall be suspended as provided under s. 343.30 (6) (b) 3.

4. For a violation committed within 12 months of 3 or more previous violations, either a forfeiture of not less than $750 nor more than $1,000, participation in a supervised work program or other community service work under par. (cg) or any combination of these penalties. In addition, the person's operating privilege may be suspended as provided under s. 343.30 (6) (b) 3., except that if the violation of par. (a) involved a motor vehicle the person's operating privilege shall be suspended as provided under s. 343.30 (6) (b) 3.

(c) Any person violating par. (b) is subject to the following penalties:

1. For a first violation, a forfeiture of not less than $100 nor more than $200, suspension of the person's operating privilege as provided under s. 343.30 (6) (b) 1., participation in a supervised work program or other community service work under par. (cg) or any combination of these penalties.

2. For a violation committed within 12 months of one previous violation, either a forfeiture of not less than $200 nor more than $300, participation in a supervised work program or other community service work under par. (cg) or any combination of these penalties. In addition, the person's operating privilege may be suspended as provided under s. 343.30 (6) (b) 2., except that if the violation of par. (b) involved a motor vehicle the person's operating privilege shall be suspended as provided under s. 343.30 (6) (b) 2.

3. For a violation committed within 12 months of 2 previous violations, either a forfeiture of not less than $300 nor more than $500, participation in a supervised work program or other community service work under par. (cg) or any combination of these penalties. In addition, the person's operating privilege may be suspended as provided under s. 343.30 (6) (b) 3., except that if the violation of par. (b) involved a motor vehicle the person's operating privilege shall be suspended as provided under s. 343.30 (6) (b) 3.

4. For a violation committed within 12 months of 3 or more previous violations, either a forfeiture of not less than $500 nor more than $1,000, participation in a supervised work program or other community service work under par. (cg) or any combination of these penalties. In addition, the person's operating privilege may be suspended as provided under s. 343.30 (6) (b) 3., except that if the violation of par. (b) involved a motor vehicle the person's operating privilege shall be suspended as provided under s. 343.30 (6) (b) 3.

(cd) For purposes of par. (bs) or (c), all violations arising out of the same incident or occurrence shall be counted as a single violation.

(cg) 1. A supervised work program ordered under par. (bs) or (c) shall be administered by the county department under s. 46.215 or 46.22 or by a community agency approved by the court. The court shall set standards for the supervised work program within the budgetary limits established by the county board of supervisors. The supervised work program may provide the person with reasonable compensation reflecting the market value of the work performed or it may consist of uncompensated community service work. Community service work ordered under par. (bs) or (c), other than community service work performed under a supervised work program, shall be administered by a public agency or nonprofit charitable organization approved by the court. The court may use any available resources, including any community service work program, in ordering the person to perform community service work under par. (bs) or (c).

2. The supervised work program or other community service work shall be of a constructive nature designed to promote the person's rehabilitation, shall be appropriate to the person's age level and physical ability and shall be combined with counseling from a member of the staff of the county department, community agency, public agency or nonprofit charitable organization or other qualified person. The supervised work program or other community service work may not conflict with the person's regular attendance at school. The amount of work required shall be reasonably related to the seriousness of the person's offense.

(cm) When a court revokes or suspends a person's operating privilege under par. (bs) or (c), the department of transportation may not disclose information concerning or relating to the revocation or suspension to any person other than a court, district attorney, county corporation counsel, city, village or town attorney, law enforcement agency, driver licensing agency of another jurisdiction, or the person whose operating privilege is revoked or suspended. A person entitled to receive information under this paragraph may not disclose the information to any other person or agency.

(d) A person who is under 17 years of age on the date of disposition is subject to s. 938.344 unless proceedings have been instituted against the person in a court of civil or criminal jurisdiction after dismissal of the citation under s. 938.344 (3).

(e) 1. In this paragraph, "defendant" means a person found guilty of violating par. (a) or (b) who is 17, 18, 19 or 20 years of age.

2. After ordering a penalty under par. (bs) or (c), the court, with the agreement of the defendant, may enter an additional order staying the execution of the penalty order and suspending or modifying the penalty imposed, except that the court may not stay, suspend or modify the suspension of a person's operating privilege required under par. (bs) or (c). The order under this subdivision shall require the defendant to do any of the following:

a. Submit to an alcohol abuse assessment that conforms to the criteria specified under s. 938.547 (4) and that is conducted by an approved treatment facility. The order shall designate an approved treatment facility to conduct the alcohol abuse assessment and shall specify the date by which the assessment must be completed.

b. Participate in an outpatient alcohol abuse treatment program at an approved treatment facility, if an alcohol abuse assessment conducted under subd. 2. a. recommends treatment.

c. Participate in a court-approved alcohol abuse education program.

3. If the approved treatment facility, with the written informed consent of the defendant, notifies the agency primarily responsible for providing services to the defendant that the defendant has submitted to an assessment under subd. 2. a. and that the defendant does not need treatment or education, the court shall notify the defendant of whether or not the penalty will be reinstated.

4. If the defendant completes the alcohol abuse treatment program or court-approved alcohol abuse education program, the approved treatment facility or court-approved alcohol abuse education program shall, with the written informed consent of the defendant, notify the agency primarily responsible for providing services to the defendant that the defendant has complied with the order and the court shall notify the defendant of whether or not the penalty will be reinstated. If the court had ordered the suspension of the defendant's operating privilege under par. (bs) or (c), the court may order the secretary of transportation to reinstate the operating privilege of the defendant if he or she completes the alcohol abuse treatment program or court-approved alcohol abuse education program.

5. If an approved treatment facility or court-approved alcohol abuse education program, with the written informed consent of the defendant, notifies the agency primarily responsible for providing services to the defendant that the defendant is not participating in the program or that the defendant has not satisfactorily completed a recommended alcohol abuse treatment program or an education program, the court shall hold a hearing to determine whether the penalties under par. (bs) or (c) should be imposed.

(6) DEFENSES. In determining whether or not a licensee or permittee has violated subs. (1) (a) and (3) (a), all relevant circumstances surrounding the presence of the underage person or the procuring, selling, dispensing or giving away of alcohol beverages may be considered, including any circumstance under pars. (a) to (d). In addition, proof of all of the following facts

by a seller of alcohol beverages to an underage person is a defense to any prosecution for a violation of this section:

(a) That the purchaser falsely represented that he or she had attained the legal drinking age.

(b) That the appearance of the purchaser was such that an ordinary and prudent person would believe that the purchaser had attained the legal drinking age.

(c) That the sale was made in good faith and in reliance on the representation and appearance of the purchaser in the belief that the purchaser had attained the legal drinking age.

(d) That the underage person supported the representation under par. (a) with documentation that he or she had attained the legal drinking age.

(7) BOOK KEPT BY LICENSEES AND PERMITTEES. (a) Every retail alcohol beverage licensee or permittee may keep a book for the purposes of sub. (6). The licensee or permittee or his or her employee may require any of the following persons to sign the book:

1. A person who has shown documentary proof that he or she has attained the legal drinking age, if the person's age is in question.

2. A person who alleges that he or she is the underage person's parent, guardian or spouse and that he or she has attained the legal drinking age, if the licensee or permittee or his or her employee suspects that he or she is not the underage person's parent, guardian or spouse or that he or she has not attained the legal drinking age.

(b) The book may show the date of the purchase of the alcohol beverages, the identification used in making the purchase or the identification used to establish that a person is an underage person's parent, guardian or spouse and has attained the legal drinking age, the address of the purchaser and the purchaser's signature.

History: 1981 c. 79, 202, 391; 1983 a. 74, 472, 538; 1985 a. 28, 29, 47, 120, 176, 221, 317, 337; 1987 a. 51, 354; 1989 a. 31, 121, 135, 253, 336, 359; 1991 a. 28, 39, 171, 269; 1993 a. 112, 472; 1995 a. 77, 334; 1997 a. 35, 84, 98, 100, 205, 337; 1999 a. 109; 2003 a. 246; 2005 a. 50; 2007 a. 8, 20; 2011 a. 32.

A vendor who negligently sells to an underage person may be liable for acts of the intoxicated underage person. Sorensen v. Jarvis, 119 Wis. 2d 627, 350 N.W.2d 108 (1984).

A host who negligently furnished alcohol to an underage guest was negligent per se and liable for injuries to a 3rd party arising out of the guest's intoxication. Koback v. Crook, 123 Wis. 2d 259, 366 N.W.2d 857 (1985).

Sub. (1) (a) prohibits underage persons, as well as adults, from providing alcoholic beverages to underage persons. Smith v. Kappel, 147 Wis. 2d 380, 433 N.W.2d 588 (Ct. App. 1988).

The purpose of sub. (3) is not to avoid the likelihood that a minor who enters a licensed premises will subsequently commit an off-premises assault; a licensee who violates sub. (3) is not negligent per se if such an assault occurs. Symes v. Milwaukee Mut. Ins. Co. 178 Wis. 2d 564, 505 N.W.2d 143 (Ct. App. 1993).

Sub. (6) provides two lines of defense: the defendant can produce any factors believed relevant including those listed in pars. (a) to (d) or can produce evidence meeting all four elements of pars. (a) to (d), which if proven constitutes an absolute defense. City of Oshkosh v. Abitz, 187 Wis. 2d 202, 522 N.W.2d 258 (Ct. App. 1994).

In order to "knowingly permit" consumption by an underage person under sub. (1) (a) 3., there must be evidence, or a reasonable inference from evidence, that the person knew or should have known that drinking would occur. Miller v. Thomack, 204 Wis. 2d 242, 555 N.W.2d 130 (Ct. App. 1996), 95-1684.

An individual who contributes money for the intent of purchasing alcohol knowing that it will be consumed by an underage person "procures" alcohol for the underage person. Miller v. Thomack, 210 Wis. 2d 650, 563 N.W.2d 891 (1997), 95-1684.

Underage drinkers are not accompanied by a parent for the purposes of sub. (1) (a) merely because the parent and child are on the same premises. Parents who held a party and told their son not to drink where he could be observed by the other guests and who did not know how much their son drank were neither supervising nor otherwise controlling their son when he was drinking and were thus not accompanying him. Mueller v. McMillian Warner Insurance Company, 2005 WI App 210, 287 Wis. 2d 154, 704 N.W.2d 613, 05-0121, affirmed on other grounds, 2006 WI 54, 290 Wis. 2d 571, 714 N.W.2d 183, 05-0121.

Liquor liability and blame-shifting defenses: Do they mix? Kelly. 69 MLR 217 (1986).

Imposition of liability on social hosts in drunk driving cases: A judicial response mandated by principles of common law and common sense. Goldberg. 69 MLR 251 (1986).

Social Host Liability for Underage Drinking. Hinkston. Wis. Law. June 2008.

125.075 Injury or death by providing alcohol beverages to a minor. (1) Any person who procures alcohol beverages for or sells, dispenses or gives away alcohol beverages to a person under 18 years of age in violation of s. 125.07 (1) (a) 1. or 2. may be penalized as provided in sub. (2) if:

(a) The person knew or should have known that the underage person was under the legal drinking age; and

(b) The underage person dies or suffers great bodily harm, as defined in s. 939.22 (14), as a result of consuming the alcohol beverages provided in violation of s. 125.07 (1) (a) 1. or 2.

(1m) In determining under sub. (1) (a) whether a person knew or should have known that the underage person was under the legal drinking age, all relevant circumstances surrounding the procuring, selling, dispensing or giving away of the alcohol beverages may be considered, including any circumstance under pars. (a) to (d). In addition, a person has a defense to criminal liability under sub. (1) if all of the following occur:

(a) The underage person falsely represents that he or she has attained the legal drinking age.

(b) The underage person supports the representation under par. (a) with documentation that he or she has attained the legal drinking age.

(c) The alcohol beverages are provided in good faith reliance on the underage person's representation that he or she has attained the legal drinking age.

(d) The appearance of the underage person is such that an ordinary and prudent person would believe that he or she had attained the legal drinking age.

(2) (a) Whoever violates sub. (1) is guilty of a Class H felony if the underage person suffers great bodily harm, as defined in s. 939.22 (14).

(b) Whoever violates sub. (1) is guilty of a Class G felony if the underage person dies.

History: 1987 a. 335; 1989 a. 253; 1997 a. 283; 2001 a. 109.

The reference in sub. (1) to a single minor or underage person does not preclude its application to a defendant who procures alcohol beverages for a group of persons that the defendant knew or should have known were underage persons. It would be unreasonable to interpret sub. (1) as requiring a personal interaction between the defendant and the victim, or as requiring that the defendant have knowledge that a particular underage person would consume the alcohol procured by the defendant. State v. Wille, 2007 WI App 27, 299 Wis. 2d 531, 728 N.W.2d 343, 05-2839.

125.085 Proof of age. (1) DEFINITION. In this section, "official identification card" means any of the following:

(a) A valid operator's license issued under ch. 343 that contains the photograph of the holder.

(b) An identification card issued under s. 343.50.

(c) An identification card issued under s. 125.08, 1987 stats.

(d) A valid military identification card issued to a member of the U.S. armed forces, or forces incorporated as part of the

U.S. armed forces, that contains the person's photograph and date of birth.

(e) A valid U.S. passport.

(2) USE. No card other than the identification card authorized under this section may be recognized as an official identification card in this state. Any licensee or permittee under this chapter may require a person to present an official identification card, documentary proof of age, an operator's license issued by another jurisdiction, or any other form of identification or proof of age acceptable to the licensee or permittee before providing alcohol beverages to the person or allowing the person to enter the premises for which the license or permit has been issued. Nothing in this subsection requires a licensee or permittee to accept any form of identification that does not appear to be valid or authentic or appears altered.

(3) PENALTIES FOR FALSIFICATION OF PROOF OF AGE. (a) 1. No person may make, alter or duplicate an official identification card, provide an official identification card to an underage person or knowingly provide other documentation to an underage person purporting to show that the underage person has attained the legal drinking age. No person may possess an official identification card or other documentation used for proof of age with the intent of providing it to an underage person. Except as provided in subds. 2. and 3., any person who violates this subdivision may be fined not less than $300 nor more than $1,250 or imprisoned for not less than 10 days nor more than 30 days or both.

2. Any person who violates subd. 1. for money or other consideration is guilty of a Class I felony.

3. Subdivisions 1. and 2. do not apply to a person who is authorized to make an official identification card under ch. 343.

(b) Any underage person who does any of the following is guilty of a violation:

1. Intentionally carries an official identification card not legally issued to him or her, an official identification card obtained under false pretenses or an official identification card which has been altered or duplicated to convey false information.

2. Makes, alters or duplicates an official identification card purporting to show that he or she has attained the legal drinking age.

3. Presents false information to an issuing officer in applying for an official identification card.

4. Intentionally carries an official identification card or other documentation showing that the person has attained the legal drinking age, with knowledge that the official identification card or documentation is false.

(bd) Any underage person who violates par. (b) is subject to a forfeiture of not less than $300 nor more than $1,250, suspension of the person's operating privilege under s. 343.30 (6) (bm), participation in a supervised work program or other community service work under par. (bh) or any combination of these penalties.

(bh) 1. A supervised work program ordered under par. (bd) shall be administered by the county department under s. 46.215 or 46.22 or by a community agency approved by the court. The court shall set standards for the supervised work program within the budgetary limits established by the county board of supervisors. The supervised work program may provide the person with reasonable compensation reflecting the market value of the work performed or it may consist of uncompensated community service work. Community service work ordered under par. (bd), other than community service work performed under a supervised work program, shall be administered by a public agency or nonprofit charitable organization approved by the court. The court may use any available resources, including any community service work program, in ordering the person to perform community service work under par. (bd).

2. The supervised work program or other community service work shall be of a constructive nature designed to promote the person's rehabilitation, shall be appropriate to the person's age level and physical ability and shall be combined with counseling from a member of the staff of the county department, community agency, public agency or nonprofit charitable organization or other qualified person. The supervised work program or other community service work may not conflict with the person's regular attendance at school. The amount of work required shall be reasonably related to the seriousness of the person's offense.

(bp) When a court suspends a person's operating privilege under par. (bd), the department of transportation may not disclose information concerning or relating to the suspension to any person other than a court, district attorney, county corporation counsel, city, village or town attorney, law enforcement agency, driver licensing agency of another jurisdiction, or the person whose operating privilege is suspended. A person entitled to receive information under this paragraph may not disclose the information to any other person or agency.

(bt) A person who is under 17 years of age on the date of disposition is subject to s. 938.344 unless proceedings have been instituted against the person in a court of civil or criminal jurisdiction after dismissal of the citation under s. 938.344 (3).

(c) A law enforcement officer investigating an alleged violation of par. (b) shall confiscate any official identification card or other documentation that constitutes evidence of the violation.

History: 1989 a. 31, 253, 336; 1991 a. 39; 1995 a. 77; 1997 a. 27, 35, 205, 283; 2001 a. 109; 2007 a. 20, 164.

125.09 General restrictions. (1) PUBLIC PLACE. No owner, lessee, or person in charge of a public place may permit the consumption of alcohol beverages on the premises of the public place, unless the person has an appropriate retail license or permit. This subsection does not apply to municipalities, buildings and parks owned by counties, regularly established athletic fields and stadiums, school buildings, campuses of private colleges, as defined in s. 16.99 (3g), at the place and time an event sponsored by the private college is being held, churches, premises in a state fair park or clubs.

(2) POSSESSION OF ALCOHOL BEVERAGES ON SCHOOL GROUNDS PROHIBITED. (a) In this subsection:

1. "Motor vehicle" means a motor vehicle owned, rented or consigned to a school.

2. "School" means a public school, a parochial or private school, or a tribal school, as defined in s. 115.001 (15m), which provides an educational program for one or more grades between grades 1 and 12 and which is commonly known as an elementary school, middle school, junior high school, senior high school, or high school.

3. "School administrator" means the person designated by the governing body of a school as ultimately responsible for the ordinary operations of a school.

4. "School premises" means premises owned, rented or under the control of a school.

(b) Except as provided by par. (c) no person may possess or consume alcohol beverages:

1. On school premises;

2. In a motor vehicle, if a pupil attending the school is in the motor vehicle; or

3. While participating in a school-sponsored activity.

(c) Alcohol beverages may be possessed or consumed on school premises, in motor vehicles or by participants in school-sponsored activities if specifically permitted in writing by the school administrator consistent with applicable laws, ordinances and school board policies.

(d) A person who violates this subsection is subject to a forfeiture of not more than $200, except that ss. 125.07 (4) (c) and (d) and 938.344 provide the penalties applicable to underage persons.

(3) PLACE-TO-PLACE DELIVERIES. No person may peddle any alcohol beverage from house to house where the sale and delivery are made concurrently.

(6) MUNICIPAL STORES. No municipality may engage in the sale of alcohol beverages, except as authorized under s. 125.26 (6). This subsection does not apply to municipal stores in operation on November 6, 1969.

History: 1981 c. 79, 158; 1983 a. 74; 1985 a. 218; 1995 a. 77; 2009 a. 302, 395.

This section does not prohibit the consumption of alcohol beverages by bed and breakfast proprietors, their friends, or their personal guests in areas that are off-limits to the public or to renters. 80 Atty. Gen. 218.

125.10 Municipal regulation. (1) AUTHORIZATION. Any municipality may enact regulations incorporating any part of this chapter and may prescribe additional regulations for the sale of alcohol beverages, not in conflict with this chapter. The municipality may prescribe forfeitures or license suspension or revocation for violations of any such regulations. Regulations providing forfeitures or license suspension or revocation must be adopted by ordinance. Any municipality may, by ordinance, regulate contests, competitions, or other events for the exhibition, demonstration, judging, tasting, or sampling of homemade wine or fermented malt beverages.

(2) REGULATION OF UNDERAGE PERSONS. A municipality or a county may enact an ordinance regulating conduct regulated by s. 125.07 (1) or (4) (a), (b) or (bm), 125.085 (3) (b) or 125.09 (2) only if it strictly conforms to the statutory subsection. A county ordinance enacted under this subsection does not apply within any municipality that has enacted or enacts an ordinance under this subsection.

(3) ZONING. Except as provided in ss. 125.05 and 125.68, this chapter does not affect the power of municipalities to enact or enforce zoning regulations.

(4) REGULATION OF CLOSED RETAIL PREMISES. A municipality may not prohibit the permittee, licensee, employees, salespersons, employees of wholesalers issued a permit under s. 125.28 (1) or 125.54 (1); employees of permittees under s. 125.295 with respect to the permittee's own retail premises; or service personnel from being present on premises operated under a Class "A", "Class A" or "Class C" license or under a Class "B" or "Class B" license or permit during hours when the premises are not open for business if those persons are performing job-related activities.

History: 1981 c. 79, 202; 1983 a. 74 ss. 19, 32; 1985 a. 28 ss. 5, 9; 1987 a. 168; 1989 a. 31, 253; 1991 a. 39; 1993 a. 208; 2007 a. 20; 2011 a. 32, 200.

Chapter 125 contemplates and expressly directs that regulation is to supersede competition in the retail sale of alcohol beverages. The regulatory scheme indicates a legislative intent to make state antitrust law not applicable by authorizing contrary or inconsistent conduct by granting municipalities broad statutory authority to prescribe or orchestrate anticompetitive regulation in the sale and consumption of alcohol if that regulation serves an important public interest. Private parties are eligible for antitrust immunity when they act in concert, in an anticompetitive manner, in direct response to pressure bordering on compulsion from a municipality. Eichenseer v. Madison-Dane County Tavern League, Inc. 2008 WI 38, 308 Wis. 2d 684, 748 N.W.2d 154, 05-1063.

A town must renew a license, if the proper application is made and the fees are paid, unless it revokes, suspends, or non-renews the license, following the procedures outlined in s. 125.12. This section does not give towns the authority to unilaterally modify the described premises in an individual license upon renewal of that license. A town must either pass a regulation or an ordinance under this section or it must find grounds for revocation or nonrenewal under s. 125.12. Wisconsin Dolls, LLC v. Town of Dell Prairie, 2012 WI 76, ___ Wis. 2d ___, ___ N.W.2d ___, 10-2900.

125.105 Impersonating an officer. (1) No person may impersonate an inspector, agent or other employee of the department or of the department of justice.

(2) (a) Whoever violates sub. (1) with the intent to mislead another may be fined not more than $10,000 or imprisoned for not more than 9 months or both.

(b) Whoever violates sub. (1) to commit, or abet the commission of, a crime is guilty of a Class H felony.

History: 1989 a. 253; 1997 a. 283; 2001 a. 109.

125.11 Penalties. (1) GENERAL PENALTY. Any person who violates any provision of this chapter for which a specific penalty is not provided, shall be fined not more than $1,000 or imprisoned for not more than 90 days or both. Any license or permit issued to the person under this chapter may be revoked by the court.

(2) FELONY. If a person is convicted of a felony under this chapter, in addition to the penalties provided for the felony, the court shall revoke any license or permit issued to the person under this chapter.

History: 1981 c. 79; 1985 a. 120, 302; 1989 a. 253.

125.115 Responsibility for commission of a crime. (1) A person may be convicted of the commission of a crime under this chapter only if the criteria specified in s. 939.05 exist.

(2) This section does not apply to civil forfeiture actions for violation of any provision of this chapter or any local ordinance in conformity with any provision of this chapter.

History: 1985 a. 47.

125.14 Enforcement provisions. (1) ARREST. Subject to s. 175.38, any peace officer may arrest without warrant any person committing in his or her presence a violation of this chapter or ch. 139 and may, without a search warrant, seize any personal property used in connection with the violation.

(2) CONFISCATION; DISPOSAL. (a) *Contraband.* All alcohol beverages owned, possessed, kept, stored, manufactured, sold, distributed or transported in violation of this chapter or ch. 139 and all personal property used in connection therewith is unlawful property and may be seized by any peace officer. Any peace officer confiscating personal property under this section may proceed under this section.

(c) *Identification.* Any person seizing alcohol beverages or personal property and electing to dispose of it under this subsection shall exercise reasonable diligence to ascertain the name and address of the owner of the alcohol beverages or property and of all persons holding a security interest in the property seized. The person shall report his or her findings in writing to the department.

(d) *Order.* Upon conviction of any person for owning, possessing, keeping, storing, manufacturing, selling, distributing or transporting alcohol beverages in violation of this chapter or ch. 139, the court shall order part or all of the alcohol beverages or personal property seized to be destroyed if it is unfit for sale. Alcohol beverages and other personal property fit for sale shall be turned over to the department for disposition. Upon receipt of the confiscated property, the department shall exercise reasonable diligence to ascertain the names and addresses of all owners of the property and of all persons holding a security interest in the property. If a motor vehicle is confiscated, the department shall obtain the written advice of the department of transportation as to the ownership of the motor vehicle and shall make a reasonable search for perfected security interests in the vehicle.

(e) *Disposal.* The department shall dispose of the alcohol beverages turned over to it by the court by either giving it to law enforcement agencies free of charge for use in criminal investigations, selling it to the highest bidder if the bidder is a person holding a license or permit issued under this chapter, or destroying it, at the discretion of the department. If the department elects to sell the alcohol beverages, it shall publish a class 2 notice under ch. 985 asking for sealed bids from qualified bidders. Any items or groups of items in the inventory subject to a security interest, the existence of which was established in the proceedings for conviction as being bona fide and as having been created without the secured party having notice that the items were being used or were to be used in connection with the violation, shall be sold separately. The net proceeds from the sale, less all costs of seizure, storage, and sale, shall be turned over to the secretary of administration and credited to the common school fund.

(f) *Sale.* Any personal property, other than alcohol beverages, seized under par. (a) and fit for sale, shall be turned over by the department to the department of administration for disposal at public auction to the highest bidder, at a time and place stated in a notice of sale which describes the property to be sold. The sale shall be held in a conveniently accessible place in the county where the property was confiscated. A copy of the notice shall be published as a class 2 notice under ch. 985. The last insertion shall be at least 10 days before the sale. The department of revenue shall serve a copy of the notice of sale at least 2 weeks before the date thereof on all persons who are or may be owners or holders of security interests in the property. Any confiscated property worth more than $100 shall be sold separately, and the balance of the confiscated property shall be sold in bulk or separately at the discretion of the department of administration. The net proceeds from the sale, less all costs of seizure, storage, and sale, shall be turned over to the secretary of administration. No motor vehicle or motorboat confiscated under this section may be sold within 30 days after the date of seizure.

(3) RECOVERY OF CONFISCATED PROPERTY. (a) *Application.* Prior to sale under sub. (2) (f), the owner of confiscated property may apply to a court of record in the county where the property was seized for an order restoring the property to the owner. After the sale, the owner may apply to the court for a refund of the amount realized on the sale. After the sale, any holder of a security interest in the property may apply to the court for a refund of the sum realized on the sale of property subject to the security interest, but not more than the amount due under the security agreement.

(b) *Deadline.* The application shall be made within one year after the sale of the property. A copy of the application and the order setting a hearing on it shall be served on the department at least 20 days before the date set for hearing.

(c) *Grounds.* Relief shall be granted only after a showing by the applicant that he or she is the true owner or holder of a bona fide security interest in the property seized; that the violation which led to the confiscation was not with his or her knowledge, consent or connivance; and, that he or she had no reasonable grounds to believe or suspect that the property would be used in a violation.

(d) *Costs.* The court may determine whether the applicant shall pay the costs of seizure and sale as a condition of obtaining relief. Allowance of costs and disbursements shall be within the discretion of the court.

(5) NUISANCES. Any building or place where alcohol beverages or alcohol is sold, possessed, stored, brewed, bottled, manufactured or rectified without a valid permit or license issued under this chapter or ch. 139, or where persons are permitted to drink alcohol beverages in violation of this chapter is a public nuisance and may be closed until the activity in violation of this chapter is abated. When the activity is abated, the building or place may be used for any lawful purpose.

(6) PROCEDURE. (a) *Form of complaint.* In a prosecution for a violation of a statute relating to the sale of alcohol beverages it is not necessary to allege in the complaint, information or indictment the kind or quantity of alcohol beverages sold or the person to whom it was sold. It is sufficient to allege generally that the defendant sold alcohol beverages at a time and place mentioned, together with a brief statement of the facts showing that the sale was a violation of this chapter.

(b) *Discovery.* In a prosecution for a violation of this chapter that may result in the imposition of a forfeiture, neither party is entitled to pretrial discovery, except that, if the defendant moves within 30 days after the initial appearance in person or by an attorney and shows cause therefor, the court may order that the defendant be allowed to inspect documents, including lists of names and addresses of witnesses, if available, and to test under s. 804.09, under such conditions as the court

prescribes, any devices used by the plaintiff to determine whether a violation has been committed.

History: 1981 c. 79; 1989 a. 253; 1997 a. 291; 2003 a. 33; 2005 a. 22, 332.

125.145 Prosecutions by attorney general or department. Upon request by the secretary of revenue, the attorney general may represent this state or assist a district attorney in prosecuting any case arising under this chapter. The department may represent this state in prosecuting any violation of s. 125.54 (7) (a) or (b) and shall bring any such action in the circuit court for Dane County.

History: 1985 a. 302; 2005 a. 25.

SUBCHAPTER II

FERMENTED MALT BEVERAGES

125.32 General restrictions and requirements. (1) MANAGERS' LICENSES; CLASS "B" LICENSES. (a) If a municipal governing body elects to issue managers' licenses under s. 125.18, no person may manage premises operating under a Class "B" license or permit, unless the person is the licensee or permittee, an agent of a corporation or limited liability company appointed as required by s. 125.04 (6) or the holder of a manager's license. A manager's license issued in respect to a vessel under s. 125.27 (2) is valid outside the municipality that issues it. A person manages Class "B" premises if that person has responsibility or authority for:

1. Personnel management of all employees, whether or not the person is authorized to sign employment contracts;

2. The terms of contracts for the purchase or sale of goods or services, whether or not the person is authorized to sign the contracts; or

3. The daily operations of the Class "B" premises.

(b) The municipal governing body may, by ordinance, define factors in addition to those listed in par. (a) which constitute management of Class "B" premises.

(2) OPERATORS LICENSES CLASS "A" OR CLASS "B" PREMISES. Except as provided under sub. (3) (b) and s. 125.07 (3) (a) 10., no premises operated under a Class "A" or Class "B" license or permit may be open for business unless there is upon the premises the licensee or permittee, the agent named in the license or permit if the licensee or permittee is a corporation or limited liability company, or some person who has an operator's license and who is responsible for the acts of all persons serving any fermented malt beverages to customers. An operator's license issued in respect to a vessel under s. 125.27 (2) is valid outside the municipality that issues it. For the purpose of this subsection, any person holding a manager's license under s. 125.18 or any member of the licensee's or permittee's immediate family who has attained the age of 18 shall be considered the holder of an operator's license. No person, including a member of the licensee's or permittee's immediate family, other than the licensee, permittee or agent may serve fermented malt beverages in any place operated under a Class "A" or Class "B" license or permit unless he or she has an operator's license or is at least 18 years of age and is under the immediate supervision of the licensee, permittee, agent or a person holding an operator's license, who is on the premises at the time of the service.

(2m) USE BY ANOTHER PROHIBITED. (a) No person may allow another to use his or her Class "A" or Class "B" license or permit to sell alcohol beverages.

(b) The license or permit of a person who violates par. (a) shall be revoked.

(3) CLOSING HOURS. (a) No premises for which a Class "B" license or permit is issued may remain open between the hours of 2 a.m. and 6 a.m., except as provided in this paragraph and par. (c). On Saturday and Sunday, the closing hours shall be between 2:30 a.m. and 6 a.m. except that, on the Sunday that daylight saving time begins as specified in s. 175.095 (2), the closing hours shall be between 3:30 a.m. and 6 a.m. On January 1 premises operating under a Class "B" license or permit are not required to close.

(am) Between 12 midnight and 6 a.m. no person may sell fermented malt beverages on Class "B" licensed premises in an original unopened package, container or bottle or for consumption away from the premises.

(b) Class "A" premises may remain open for the conduct of their regular business but may not sell fermented malt beverages between 12 midnight and 6 a.m. Subsection (2) does not apply to Class "A" premises between 12 midnight and 6 a.m. or at any other time during which the sale of fermented malt beverages is prohibited by a municipal ordinance adopted under par. (d).

(c) Hotels and restaurants the principal business of which is the furnishing of food and lodging to patrons, bowling centers, movie theaters, indoor horseshoe-pitching facilities, curling clubs, golf courses and golf clubhouses may remain open for the conduct of their regular business but may not sell fermented malt beverages during the hours specified in par. (a).

(d) A municipality may, by ordinance, impose more restrictive hours than those provided in par. (am) or (b), but may not impose different hours than those provided in par. (a) or (c).

(3m) LIMITATIONS ON OTHER BUSINESS; CLASS "B" PREMISES. No Class "B" license or permit may be granted for any premises where any other business is conducted in connection with the premises, except that this restriction does not apply if the premises for which the Class "B" license or permit is issued is connected to premises where other business is conducted by a secondary doorway that serves as a safety exit and is not the primary entrance to the Class "B" premises. No other business may be conducted on premises operating under a Class "B" license or permit. These restrictions do not apply to any of the following:

(a) A hotel.

(b) A restaurant, whether or not it is a part of or located in any mercantile establishment.

(c) A combination grocery store and tavern.

(d) A combination sporting goods store and tavern in towns, villages and 4th class cities.

(e) A combination novelty store and tavern.

(f) A bowling center or recreation premises.

(g) A club, society or lodge that has been in existence for 6 months or more prior to the date of filing application for the Class "B" license or permit.

(h) A movie theater.

(5) SIGNS NEAR TAPS AND BRANDS ON TAP; CLASS "B" PREMISES. Every Class "B" licensee or permittee selling or offering for sale draught fermented malt beverages shall display

a sign on or near each tap or faucet disclosing the brand of fermented malt beverage drawn from the tap or faucet and the name of the brewer or brewpub that manufactured it. No Class "B" licensee or permittee may substitute any other brand of fermented malt beverage in place of the brand designated on the sign with the intent to defraud or deceive the customer.

(6) LIMITATIONS ON BEVERAGES ON WHOLESALE AND RETAIL PREMISES. (a) Except as provided in s. 125.33 (2) (o) or (12) or 125.70, and subject to par. (c), no person may possess on the premises covered by a retail or wholesale fermented malt beverages license or permit any alcohol beverages not authorized by law for sale on the premises.

(b) No fermented malt beverage licensee or permittee may keep any beverages of an alcoholic content prohibited by federal law on the premises covered by the license or permit.

(c) Paragraph (a) does not prohibit a licensee under s. 125.26 from allowing, if the licensed premises are located in a public park within a 1st class city, a person who does not hold a license or permit under this chapter to possess and consume on the licensed premises fermented malt beverages that were not purchased from the licensee.

(7) LABELS. (a) No fermented malt beverages may be sold, offered, or exposed for sale, kept in possession with intent to sell, or served on any premises for which a license or permit for the sale of fermented malt beverages has been issued unless each barrel, keg, cask, bottle, or other container bears a label or other identification with the name and address of the brewer or brewpub that manufactured it. The possession of any fermented malt beverages which are not so identified on any premises for which a license or permit for the sale of fermented malt beverages has been issued is prima facie evidence that the fermented malt beverages are possessed with intent to sell, offer for sale, display for sale, or give away.

(b) No container containing fermented malt beverages may be sold, offered or exposed for sale, kept in possession with intent to sell or served on any premises for which a license or permit for the sale of fermented malt beverages has been issued unless there is a label or other identification on the container bearing a statement of its contents in fluid ounces in plain legible type.

History: 1981 c. 79; 1983 a. 27, 74, 192, 452; 1985 a. 28, 33, 221, 317; 1987 a. 27, 121; 1989 a. 253; 1991 a. 28, 39, 315; 1993 a. 112; 1995 a. 320; 2007 a. 3, 9, 20; 2009 a. 128; 2011 a. 32, 97.

Cross-reference: See also s. Tax 7.21, Wis. adm. code.

SUBCHAPTER III

INTOXICATING LIQUOR

125.51 Retail licenses and permits. (1) MUNICIPAL AUTHORITY TO ISSUE. (a) Every municipal governing body may grant and issue "Class A" and "Class B" licenses for retail sales of intoxicating liquor, and "Class C" licenses for retail sales of wine, from premises within the municipality to persons entitled to a license under this chapter as the issuing municipal governing body deems proper and may authorize an official or body of the municipality to issue temporary "Class B" licenses under sub. (10). No "Class B" license may be issued to a winery under sub. (3) (am) unless the winery has been issued a permit under s. 125.53 and the winery is capable of producing at least 5,000 gallons of wine per year in no more than 2 locations.

(b) No member of the municipal governing body may hold a permit under s. 125.54 or, with respect to the issuance or denial of licenses under this section, do any act in violation of s. 19.59 (1).

(c) 1. Except as provided in subd. 2., the municipal governing body, or the duly authorized committee of a city council, shall meet not later than May 15 annually, and be in session from day to day thereafter so long as may be necessary, for the purpose of acting upon license applications filed with it on or before April 15. The governing body or committee shall grant, issue or deny each application not later than June 15 for the ensuing license year. Licenses may be granted for issuance at a later date when the applicant has complied with all requirements for the issuance of the license. The governing body or committee may accept and act upon any application filed at any other time. The governing body or committee may not deny an application for renewal of an existing license unless a statement of the reason for the denial is included in its clerk's minutes.

2. The governing body of a 1st class city shall establish and publish notice of the dates on which it, or its duly authorized committee, will meet and act on license applications.

(2) RETAIL "CLASS A" LICENSE. (a) A "Class A" license authorizes the retail sale of intoxicating liquor for consumption off the premises where sold and in original packages and containers.

(b) Except as provided under s. 125.69, "Class A" licenses may be issued to any person qualified under s. 125.04 (5), except a person acting as an agent for or in the employ of another.

(c) "Class A" licenses shall particularly describe the premises for which issued and are not transferable, except as provided in s. 125.04 (12).

(d) The annual fee for a "Class A" license shall be determined by the municipal governing body and shall be the same for all "Class A" licenses, except that the minimum fee is $50 and the maximum fee is $500.

(3) RETAIL "CLASS B" LICENSE. (a) A "Class B" license authorizes the retail sale of intoxicating liquor for consumption on the premises where sold by the glass and not in the original package or container. In addition, wine may be sold in the original package or container in any quantity to be consumed off the premises where sold. This paragraph does not apply in municipalities in which the governing body elects to come under par. (b) or to a winery that has been issued a "Class B" license. Paragraph (am) applies to all wineries that have been issued a "Class B" license.

(am) A "Class B" license issued to a winery authorizes the sale of wine to be consumed by the glass or in opened containers only on the premises where sold and also authorizes the sale of wine in the original package or container to be consumed off the premises where sold, but does not authorize the sale of fermented malt beverages or any intoxicating liquor other than wine.

(b) In all municipalities electing by ordinance to come under this paragraph, a retail "Class B" license authorizes the sale of intoxicating liquor to be consumed by the glass only on the premises where sold and also authorizes the sale of intoxicating liquor in the original package or container, in multiples not to exceed 4 liters at any one time, and to be

consumed off the premises where sold. Wine, however, may be sold for consumption off the premises in the original package or otherwise in any quantity. This paragraph does not apply to a winery that has been issued a "Class B" license. Paragraph (am) applies to all wineries that have been issued a "Class B" license.

(bm) Notwithstanding pars. (a) and (b) and s. 125.04 (3) (a) 3. and (9), a "Class B" license authorizes a person operating a hotel to furnish a registered guest who has attained the legal drinking age with a selection of intoxicating liquor in the guest's room which is not part of the "Class B" premises. Intoxicating liquor furnished under this paragraph shall be furnished in original packages or containers and stored in a cabinet, refrigerator or other secure storage place. The cabinet, refrigerator or other secure storage place must be capable of being locked. The cabinet, refrigerator or other secure storage place shall be locked, or the intoxicating liquor shall be removed from the room, when the room is not occupied and when intoxicating liquor is not being furnished under this paragraph. A key for the lock shall be supplied to a guest who has attained the legal drinking age upon request at registration. The hotel shall prominently display a price list of the intoxicating liquor in the hotel room. Intoxicating liquor may be furnished at the time the guest occupies the room, but for purposes of this chapter, the sale of intoxicating liquor furnished under this paragraph is considered to occur at the time and place that the guest pays for the intoxicating liquor. Notwithstanding s. 125.68 (4) (c), the guest may pay for the intoxicating liquor at any time if he or she pays in conjunction with checking out of the hotel. An individual who stocks or accepts payment for alcohol beverages under this paragraph shall be the licensee, the agent named in the license if the licensee is a corporation or limited liability company or the holder of a manager's or operator's license or be supervised by one of those individuals.

(bs) 1. In this paragraph:

a. "Coliseum" means a multipurpose facility designed principally for sports events, with a capacity of 18,000 or more persons.

b. "Concessionaire" means a person designated by the owner or operator of a coliseum to operate premises in the coliseum and to provide intoxicating liquor to holders of coliseum suites.

2. Notwithstanding pars. (a) and (b) and s. 125.04 (3) (a) 3. and (9), a "Class B" license authorizes a person operating a coliseum to furnish the holder of a coliseum suite who has attained the legal drinking age with a selection of intoxicating liquor in the coliseum suite that is not part of the "Class B" premises. Intoxicating liquor furnished under this subdivision shall be furnished in original packages or containers and stored in a cabinet, refrigerator or other secure storage place. The cabinet, refrigerator or other secure storage place or the coliseum suite must be capable of being locked. The cabinet, refrigerator or other secure storage place or the coliseum suite shall be locked, or the intoxicating liquor shall be removed from the coliseum suite, when the coliseum suite is not occupied and when intoxicating liquor is not being furnished under this subdivision. Intoxicating liquor may be furnished at the time the holder of the coliseum suite occupies the coliseum suite, but for purposes of this chapter, the sale of intoxicating liquor furnished under this subdivision is considered to occur at the time and place that the holder pays for the intoxicating liquor. Notwithstanding s. 125.68 (4) (c), the holder of a coliseum suite may pay for the intoxicating liquor at any time if he or she pays in accordance with an agreement with the person operating the coliseum or with the concessionaire. An individual who stocks or accepts payment for alcohol beverages under this subdivision shall be the licensee, the agent named in the license if the licensee is a corporation or limited liability company or the holder of a manager's or operator's license or be supervised by one of those individuals.

(bu) Notwithstanding ss. 125.04 (3) (a) 3. and (9) and 125.09 (1), in addition to the authorization specified in sub. (1) (a) and in sub. (3) (a) or (b), a "Class B" license issued under sub. (1) to a caterer also authorizes the caterer to provide intoxicating liquor, including its retail sale, at the National Railroad Museum in Green Bay during special events held at this museum. Notwithstanding subs. (1) (a) and (3) (a) and (b), a caterer may provide intoxicating liquor under this paragraph at any location at the National Railroad Museum even though the National Railroad Museum is not part of the caterer's licensed premises, as described under par. (d) in the caterer's "Class B" license, and even if the National Railroad Museum is not located within the municipality that issued the caterer's "Class B" license. A caterer that provides intoxicating liquor under this paragraph is subject to s. 125.68 (2) as if the intoxicating liquor were provided on the caterer's "Class B" licensed premises. This paragraph does not authorize the National Railroad Museum to sell intoxicating liquor at retail or to procure or stock intoxicating liquor for purposes of retail sale. This paragraph does not apply if, at any time, the National Railroad Museum holds a "Class B" license.

(bw) Notwithstanding ss. 125.04 (3) (a) 3. and (9) and 125.09 (1), in addition to the authorization specified in par. (a) or (b) and in sub. (1) (a), a "Class B" license issued under sub. (1) to a caterer also authorizes the caterer to provide intoxicating liquor, including its retail sale, at the Heritage Hill state park during special events held at this park. Notwithstanding pars. (a) and (b) and sub. (1) (a), a caterer may provide intoxicating liquor under this paragraph at any location at the Heritage Hill state park even though the Heritage Hill state park is not part of the caterer's licensed premises, as described under par. (d) in the caterer's "Class B" license, and even if the Heritage Hill state park is not located within the municipality that issued the caterer's "Class B" license. A caterer that provides intoxicating liquor under this paragraph is subject to s. 125.68 (2) as if the intoxicating liquor were provided on the caterer's "Class B" licensed premises. This paragraph does not authorize the Heritage Hill state park to sell intoxicating liquor at retail or to procure or stock intoxicating liquor for purposes of retail sale. This paragraph does not apply if, at any time, the Heritage Hill state park holds a "Class B" license.

(c) Except as provided under s. 125.69, a "Class B" license may be issued to any person qualified under s. 125.04 (5), except a person acting as an agent for or in the employ of another.

(d) "Class B" licenses shall particularly describe the premises for which issued and are not transferable, except as provided in s. 125.04 (12).

(dm) A municipality may issue a "Class B" license authorizing retail sales of intoxicating liquor on a railroad car while the railroad car is standing in a specified location in the municipality.

(e) 1. Except as provided in subds. 2. and 3., the annual fee for a "Class B" license shall be established by the municipal governing body and shall be the same for all "Class B" licenses, except that the minimum fee shall be $50 and the maximum fee shall be $500. The minimum fee does not apply to licenses issued to bona fide clubs and lodges situated and incorporated in the state for at least 6 years.

2. Each municipal governing body shall establish the fee, in an amount not less than $10,000, for an initial issuance of a reserve "Class B" license, as defined in sub. (4) (a) 4., and, if the municipality contains a capital improvement area enumerated under sub. (4) (x) 2. a., for an initial issuance of a "Class B" license under sub. (4) (x) 3. and 4., except that the fee for an initial issuance of a reserve "Class B" license to a bona fide club or lodge situated and incorporated in the state for at least 6 years is the fee established under subd. 1. for such a club or lodge. The fee under this subdivision is in addition to any other fee required under this chapter. The annual fee for renewal of a reserve "Class B" license, as defined in sub. (4) (a) 1., and a "Class B" license issued under sub. (4) (x) 3. or 4. is the fee established under subd. 1.

3. Each municipal governing body shall establish the annual fee for a "Class B" license issued under sub. (4) (v), except that neither the fee for an initial issuance of, nor the annual fee for, a "Class B" license issued under sub. (4) (v) 4. may exceed any fee established under subd. 1. The initial fee may be different from the annual fee to renew the license.

(f) A "Class B" license may be issued only to a holder of a retail Class "B" license to sell fermented malt beverages unless the "Class B" license is the kind of "Class B" license specified under par. (am).

(3m) RETAIL "CLASS C" LICENSE. (a) In this subsection "barroom" means a room that is primarily used for the sale or consumption of alcohol beverages.

(b) A "Class C" license authorizes the retail sale of wine by the glass or in an opened original container for consumption on the premises where sold.

(c) A "Class C" license may be issued to a person qualified under s. 125.04 (5) for a restaurant in which the sale of alcohol beverages accounts for less than 50% of gross receipts and which does not have a barroom or for a restaurant in which the sale of alcohol beverages accounts for less than 50% of gross receipts and which has a barroom in which wine is the only intoxicating liquor sold. A "Class C" license may not be issued to a foreign corporation, a foreign limited liability company or a person acting as agent for or in the employ of another.

(d) A "Class C" license shall particularly describe the premises for which it is issued.

(e) The annual fee for a "Class C" license shall be determined by the municipal governing body issuing the license. The fee shall not exceed $100 and shall be the same for all "Class C" licenses.

(3r) SALES OF WINE BY THE BOTTLE IN RESTAURANTS. (a) Notwithstanding subs. (3) (a) and (b) and (3m) (b), a "Class B" license or "Class C" license authorizes the retail sale of wine in an opened original bottle, in a quantity not to exceed one bottle, for consumption both on and off the premises where sold if all of the following apply:

1. The licensed premises is a restaurant also operated under a "Class B" or "Class C" license and the purchaser of the wine orders food to be consumed on the licensed premises.

2. The licensee provides a dated receipt that identifies the purchase of the food and the bottle of wine.

3. Prior to the opened, partially consumed bottle of wine being taken off the licensed premises, the licensee securely reinserts the cork into the bottle to the point where the top of the cork is even with the top of the bottle and the cork is reinserted at a time other than during the time period specified in s. 125.68 (4) (c) 3.

(b) This subsection does not apply to a "Class B" license issued to a winery under s. 125.51 (3) (am). Nothing in this subsection restricts a licensee's authorization for retail sales of wine under subs. (3) (a) and (b) and (3m) (b).

(4) QUOTAS ON "CLASS B" LICENSES. (a) In this subsection:

1. "License" means a retail "Class B" license issued under sub. (3) but does not include a "Class B" license issued to wineries under sub. (3) (am).

2. "Population" means the number of inhabitants in the previous year determined by the department of administration under s. 16.96 (2) for purposes of revenue sharing distribution.

3. "Quota" means the number of licenses which a municipality may grant or issue.

4. "Reserve "Class B" license" means a license that is not granted or issued by a municipality on December 1, 1997, and that is counted under par. (br).

(am) No municipality may issue a license that would cause the municipality to exceed its quota.

(b) Except as provided in pars. (c) and (d), the quota of each municipality is the sum of the following:

1g. The number of licenses granted or issued in good faith by the municipality and in force on December 1, 1997.

1m. The number of the municipality's reserve "Class B" licenses determined under par. (bm) 3.

(bm) The clerk of each municipality shall record the municipality's population, as defined in par. (a) 2., and the number of licenses:

1. Authorized to be issued by the municipality on December 1, 1997, under s. 125.51 (4), 1995 stats.;

2. Described in par. (b) 1g.; and

3. That are reserve "Class B" licenses.

(br) 1. Except as provided in subd. 2., the number of reserve "Class B" licenses authorized to be issued by a municipality shall be determined as follows:

a. Subtract 3 from the number recorded under par. (bm) 1.

b. Subtract the number recorded under par. (bm) 2. from the result under subd. 1. a.

c. Divide the result under subd. 1. b. by 2, except that if the result is not a whole number round the quotient down to the nearest whole number.

d. Add 3 to the result under subd. 1. c.

e. Add one license per each increase of 500 population to the population recorded under par. (bm).

f. Add one license if the municipality had issued a license under s. 125.51 (4) (br) 1. e., 1999 stats., based on a fraction of

500 population, but a municipality's quota is only increased under this subd. 1. f. as long as the total number of licenses issued by the municipality equals the maximum number of licenses authorized, including under this subd. 1. f.

2. Notwithstanding subd. 1., if the difference between the number of licenses determined under par. (b) 1g. and under par. (bm) 1. is 3 or fewer, the number of reserve "Class B" licenses authorized to be issued by that municipality is the difference between the number of licenses determined under par. (b) 1g. and under par. (bm) 1., plus one per each increase of 500 population to the population recorded under par. (bm), plus one if the municipality had issued a license under s. 125.51 (4) (br) 2., 1999 stats., based on a fraction of 500 population but only as long as the total number of licenses issued by the municipality equals the maximum number of licenses authorized.

(c) If territory containing premises covered by a license or reserve "Class B" license is annexed to a municipality and if the municipality's quota would not otherwise allow a license or reserve "Class B" license for the premises, the quota is increased to include the license or reserve "Class B" license of each premises in the annexed territory.

(d) Detachment of territory decreases the quota of the remainder of the municipality by the number of licenses or reserve "Class B" licenses issued for premises in the detached territory, except that detachment does not decrease the quota of the remainder to less than one license per 500 persons or less than one license.

(v) Notwithstanding par. (am), if a municipality has granted or issued a number of licenses equal to or exceeding its quota, the municipal governing body may issue a license for any of the following:

1. A full-service restaurant that has a seating capacity of 300 or more persons.

2. A hotel that has 50 or more rooms of sleeping accommodations and that has either an attached restaurant with a seating capacity of 150 or more persons or a banquet room in which banquets attended by 400 or more persons may be held.

3. An opera house or theater for the performing arts operated by a nonprofit organization, as defined in s. 134.695 (1) (am). Notwithstanding sub. (3) (a) and (b), a "Class B" license issued under this subdivision authorizes the retail sale of intoxicating liquor only for consumption on the premises where sold and only in connection with ticketed performances.

4. A full-service restaurant that has a seating capacity of 75 to 100 persons on November 26, 2009; is located in a commercial building; prepares, serves, and sells food to the public; has a separate dining area with permanent fixtures where table service is provided a minimum of 4 nights per week for a minimum of 6 months per year; generates more than 50 percent of total annual sales revenue from food sales; and is located on a golf course in a municipality, in Bayfield County, having a population of at least 400 but not more than 500. For purposes of this subdivision, "golf course" does not include a miniature golf course. No "Class B" license may be issued under this subdivision after March 1, 2010. If a "Class B" license issued under this subdivision is surrendered to the issuing municipality, not renewed, or revoked, the municipality may not reissue the license.

(w) 1. Notwithstanding pars. (am) to (d) and s. 125.185 (5), the village board of any village in the northern geographical half of Ozaukee County having a population of more than 4,000 may issue, to any applicant designated by the village board, one "Class B" license in addition to the number of licenses determined for the village's quota under pars. (b) to (d). No "Class B" license may be issued under this subdivision after August 1, 2008. If a "Class B" license issued under this subdivision is surrendered to the issuing village, not renewed, or revoked, the village may not reissue the license, but a "Class B" license issued under this subdivision may be transferred in the same manner as other licenses as provided under s. 125.04 (12) (b) 4.

2. Notwithstanding pars. (am) to (d) and s. 125.185 (5), a city that is immediately adjacent to the southern border of the city of Milwaukee and that has an eastern boundary of Lake Michigan may issue 3 "Class B" licenses in addition to the number of licenses determined for the city's quota under pars. (b) to (d).

3. Notwithstanding pars. (am) to (d) and s. 125.185 (5), a 4th class city located in Dane County having a population as shown in the 2000 federal decennial census of at least 8,000 but not more than 9,000 may issue one "Class B" license in addition to the number of licenses determined for the city's quota under pars. (b) to (d).

4. Notwithstanding pars. (am) to (d) and s. 125.185 (5), a 3rd class city located in Dane County having a population as shown in the 2000 federal decennial census of at least 15,000 but not more than 16,000 may issue 2 "Class B" licenses in addition to the number of licenses determined for the city's quota under pars. (b) to (d).

(x) 1. In this paragraph:

a. "Area base value" means the aggregate assessed value of all taxable property located within the geographic bounds of a capital improvement area on January 1 of the year that is 5 years prior to the year in which such capital improvement area is enumerated under subd. 2.

b. "Capital improvement area" means a geographic area that is enumerated under subd. 2. as having an improvement increment exceeding $50,000,000 in the year in which the area is enumerated and as being located within a municipality with insufficient reserve "Class B" licenses to issue a "Class B" license for each business or proposed business that would reasonably require one.

c. "Good faith," with respect to an applicant's attempt to purchase a "Class B" licensed business, includes an applicant making an offer to purchase the business for an amount exceeding $25,000 in total value, without additional significant conditions placed on the purchase by either party, after having given notice to all current "Class B" license holders within the municipality where the business is located, by U.S. mail addressed to either the licensee's last-known address or to the licensed premises, of the applicant's interest in purchasing a licensed business, except that an offer in an amount of $25,000 or less may also be considered to be in a good faith for purposes of this subd. 1. c. depending on the fair market value of the business, the availability of other licensed businesses for purchase, and any conditions attached to the sale.

d. "Improvement increment" means the aggregate assessed value of all taxable property in a capital improvement area as of January 1 of any year minus the area base value.

e. "Qualified applicant" means an applicant that complies with all requirements under s. 125.04 (5) and (6) and any applicable ordinance, that certifies by affidavit that the applicant has made a good faith attempt to purchase the business of a person holding a "Class B" license within the municipality and have that license transferred to the applicant under s. 125.04 (12) (b) 4., and for whom the issuing municipality has determined that these requirements have been met.

2. The legislature hereby enumerates the following areas, with the geographic boundaries described in this subdivision, as capital improvement areas:

a. The geographic area composed of all land within the Tax Incremental District Number 3 within the city of Oconomowoc in Waukesha County that lies south of Valley Road and east of STH 67 or that lies south of I 94 and west of STH 67.

3. Notwithstanding pars. (am) to (d) and s. 125.185 (5), upon application by a qualified applicant, the governing body of any municipality containing a capital improvement area enumerated under subd. 2. a. shall issue to the qualified applicant one "Class B" license in addition to the number of licenses determined for the municipality's quota under pars. (b) to (d) and in addition to any license under par. (v).

4. Notwithstanding pars. (am) to (d) and s. 125.185 (5), after a qualified applicant has filed an application under subd. 3. and upon application by an initial qualified applicant under this subdivision, the governing body of any municipality containing a capital improvement area enumerated under subd. 2. a. shall determine the improvement increment within the capital improvement area for the calendar year in which the application under this subdivision is filed. If the improvement increment is at least $10,000,000 above $50,000,000, the governing body of the municipality shall issue to the initial qualified applicant a "Class B" license. For each $10,000,000 of improvement increment above $50,000,000, the governing body of the municipality is authorized to issue under this subdivision one "Class B" license and, upon each application by a qualified applicant subsequent to that of the initial qualified applicant, the governing body of the municipality shall issue a "Class B" license to the qualified applicant until all licenses authorized under this subdivision have been issued. If the governing body of any municipality receives an application by a qualified applicant in a calendar year subsequent to the calendar year in which it received the application of the initial qualified applicant, the governing body of the municipality shall redetermine the improvement increment for that year for the purpose of determining the number of "Class B" licenses authorized under this subdivision. The "Class B" licenses that a municipality is authorized to issue under this subdivision are in addition to the number of licenses determined for the municipality's quota under pars. (b) to (d), any license under par. (v), and the license under subd. 3.

5. Notwithstanding subds. 3. and 4., not more than 8 "Class B" licenses may be issued under this paragraph for premises within the same capital improvement area.

6. Notwithstanding subd. 7., any "Class B" license issued under this paragraph may be transferred as provided under s. 125.04 (12) (b) 4. Notwithstanding subds. 5. and 7., if a "Class B" license issued under this paragraph is surrendered to the issuing municipality, revoked, or not renewed, the municipality may reissue the license to a qualified applicant for a premises located within the same capital improvement area for which the license was originally issued.

7. No "Class B" license may be issued under this paragraph after July 1, 2017.

(5) RETAIL "CLASS B" PERMITS. (a) *Sports clubs.* 1. The department shall issue "Class B" permits to clubs that are operated solely for the playing of golf or tennis and are commonly known as country clubs and to clubs which are operated solely for curling, ski jumping or yachting. A "Class B" permit may be issued only to a club that holds a valid certificate issued under s. 73.03 (50), that is not open to the general public and that is located in a municipality that does not issue "Class B" licenses or to a club located in a municipality that issues "Class B" licenses, if the club holds a valid certificate issued under s. 73.03 (50), is not open to the general public, was not issued a license under s. 176.05 (4a), 1979 stats., and does not currently hold a "Class B" license. The permits may be issued by the department without regard to any local option exercised under s. 125.05 and without regard to any quota under sub. (4). The holder of a "Class B" permit may sell intoxicating liquor for consumption by the glass and not in the original package or container on the premises covered by the permit.

2. Except as provided in this paragraph, all sections of this chapter applying to retail "Class B" licenses apply to "Class B" permits issued under this paragraph.

3. "Class B" permits may be issued only to a club which has occupied the premises upon which it is located for a period of at least 6 months prior to the date of application.

4. The department may annually issue a "Class B" permit to any club that holds a valid certificate issued under s. 73.03 (50), is organized to engage in sports similar to curling, golf, tennis or yachting and that held a license from July 1, 1950, to June 30, 1951, as long as it is continuously operated under substantially the same circumstances under which it operated during the year beginning July 1, 1950, if the club is located in a municipality that does not issue "Class B" licenses.

(b) *Public facilities and airports.* 1. In this paragraph:

a. "Arena" means a public building with a capacity of 4,000 or more persons used principally for the conduct of sports events.

b. "Coliseum" means a public multipurpose facility designed for activities of the public, which may include but are not limited to sports events, trade shows, conventions, seminars, concerts, banquets and fairs.

c. "Concessionaire" means a person designated by resolution of the governing body of a county or municipality owning an airport or public facility to operate premises in the airport or public facility.

d. "Public facility" means an arena, coliseum, related exposition facilities or center for the performing or visual arts.

e. "Related exposition facility" means buildings constructed on the same grounds as a coliseum and used for the same or ancillary functions.

2. The department shall issue a "Class B" permit to a concessionaire that holds a valid certificate issued under s. 73.03 (50) and that conducts business in an operating airport or public facility, if the county or municipality which owns the airport or public facility has, by resolution of its governing

body, annually applied to the department for the permit. The permit authorizes the sale of intoxicating liquor for consumption by the glass and not in the original package or container on the premises.

3. Except as provided in this paragraph, all sections of this chapter relating to "Class B" licenses apply to "Class B" permits issued under this paragraph.

4. The department may not issue a permit under this paragraph to any county or municipality or officer or employee thereof.

(c) *Vessels.* 1. The department may issue a "Class B" permit to any person who holds a valid certificate issued under s. 73.03 (50) and who is qualified under s. 125.04 (5) authorizing the sale of intoxicating liquor for consumption on any vessel having a regular place of mooring located in any waters of this state as defined under s. 29.001 (45) and (63) if the vessel either serves food and has an approved passenger capacity of not less than 40 individuals and the sale of intoxicating liquor and fermented malt beverages on the vessel accounts for less than 50% of the gross receipts of all of the food and beverages served on the vessel or if the vessel has an approved passenger capacity of at least 100 individuals and the sale of intoxicating liquor and fermented malt beverages on the vessel accounts for less than 50% of the gross receipts of the vessel. The department may issue the permit only if the vessel leaves its place of mooring while the sale of intoxicating liquor is taking place and if the vessel fulfills the requirement under par. (c) 1m. A permit issued under this subdivision also authorizes the permittee to store intoxicating liquor purchased for sale on the vessel on premises owned or leased by the permittee and located near the vessel's regular place of mooring. The permittee shall describe on the permit application under s. 125.04 (3) (a) 3. the premises where the intoxicating liquor will be stored. The premises shall be open to inspection by the department upon request.

1m. An applicant for a permit under par. (a) shall provide proof that the vessel is certified by the U.S. coast guard, classed by the American bureau of shipping or covered by liability insurance.

3. Except as provided in this paragraph, all provisions of this chapter applying to "Class B" licenses apply to "Class B" permits issued under subd. 1.

4. A person holding a permit under subd. 1. shall keep all invoices relating to the purchase of intoxicating liquor for sale on a vessel at the location where the intoxicating liquor is customarily stored.

(d) *Permits for certain tribes.* 1. In this paragraph, "tribe" has the meaning given in s. 125.27 (3) (a).

2. Upon application, the department shall issue a "Class B" permit to a tribe that holds a valid certificate issued under s. 73.03 (50) and that is qualified under s. 125.04 (5) and (6). The permit authorizes the retail sale of intoxicating liquor for consumption on the premises where sold by the glass and not in the original package or container. The permit also authorizes the sale of intoxicating liquor in the original package or container, in multiples not to exceed 4 liters at any one time, to be consumed off the premises where sold, except that wine is not subject to the 4-liter limitation.

3. Except as provided in this paragraph, all sections of this chapter applying to "Class B" licenses apply to "Class B" permits issued under this paragraph.

(6) FACE-TO-FACE RETAIL SALES. Except as provided in sub. (3) (bm) and (bs) and except with respect to caterers, a retail license or permit issued under this section authorizes only face-to-face sales to consumers at the premises described in the retail license or permit.

(7) SALES IN NAME OF LICENSEE OR PERMITTEE. Every holder of a retail license or permit for the sale of intoxicating liquor shall purchase, advertise and sell intoxicating liquor in the holder's name and under the holder's license or permit only, except that holders of retail licenses or permits that are franchisees, as defined in s. 553.03 (5), may advertise, separately or together, in the name of the franchisor, as defined in s. 553.03 (6).

Cross-reference: See also s. Tax 8.61, Wis. adm. code.

(8) CONNECTING PREMISES. Except in the case of hotels, no person may hold both a "Class A" license and either a "Class B" license or permit, a Class "B" license or permit or a "Class C" license for the same premises or for connecting premises. Except for hotels, if either type of license or permit is issued for the same or connecting premises already covered by the other type of license or permit, the license or permit last issued is void. If both licenses or permits are issued simultaneously, both are void.

(9) LICENSES FOR LESS THAN ONE YEAR. (a) A license may be issued after July 1 in any license year. The license shall expire on the following June 30. The fee for the license shall be prorated according to the number of months or fractions thereof remaining until the following June 30.

(b) Licenses valid for 6 months may be issued at any time. The fee for the license shall be 50% of the annual license fee. The license may not be renewed during the calendar year in which issued.

(10) TEMPORARY LICENSES. Notwithstanding s. 125.68 (3), temporary "Class B" licenses may be issued to bona fide clubs, to county or local fair associations or agricultural societies, to churches, lodges or societies that have been in existence for at least 6 months before the date of application and to posts of veterans' organizations authorizing the sale of wine in an original package, container or bottle or by the glass if the wine is dispensed directly from an original package, container or bottle at a particular picnic or similar gathering, at a meeting of the post, or during a fair conducted by the fair association or agricultural society. The amount of the fee for the license shall be $10, except that no fee may be charged to a person who at the same time applies for a temporary Class "B" license under s. 125.26 (6) for the same event. A license issued to a county or district fair licenses the entire fairgrounds where the fair is being conducted and all persons engaging in retail sales of wine from leased stands on the fairgrounds. The county or district fair to which the license is issued may lease stands on the fairgrounds to persons who may engage in retail sales of wine from the stands while the fair is being held. If a county or district fair leases any stand to a winery holding a permit under s. 125.53, in addition to making retail sales of wine from the leased stand, the winery may provide taste samples anywhere on the fairgrounds of wine manufactured by the winery. Not more than 2 licenses may be issued under this subsection to any

club, county or local fair association, agricultural association, church, lodge, society or veterans post in any 12-month period.

History: 1981 c. 79, 202, 220; 1983 a. 27 ss. 1489c, 2202 (38); 1983 a. 250, 516; 1985 a. 74, 239, 302; 1987 a. 27, 91, 103, 249, 354, 399; 1989 a. 16, 30, 31, 252, 253, 359; 1991 a. 39; 1993 a. 112; 1995 a. 27; 1997 a. 27, 41, 248, 259; 1999 a. 9, 185; 2001 a. 16, 49; 2003 a. 124; 2005 a. 22, 268, 307; 2007 a. 20, 69, 85, 192; 2009 a. 28, 73; 2011 a. 129.

A city ordinance allowing a recipient of a new Class B license who pays the $10,000 fee under sub. (3) (e) 2. to apply for a $10,000 economic development grant from the city was not barred by the statute or constitution. Alexander v. City of Madison, 2001 WI App 208, 247 Wis. 2d 576, 634 N.W.2d 577, 00-2692.

The licensed premises, with respect to a "Class B" intoxicating liquor license under this section, may be co-extensive with the premises where consumption may occur. Thus, the premises to be listed on a "Class B" license are not necessarily confined to the dimensions of a bar room or storage room. Here, the town chose to license the entire eight acres of a resort as the premises for the sale, and also the consumption, of fermented malt beverages and intoxicating liquor. The town made that choice. The license was not void due to an insufficient description of the premises. Wisconsin Dolls, LLC v. Town of Dell Prairie, 2012 WI 76, ___ Wis. 2d ___, ___ N.W.2d ___, 10-2900.

Country clubs opening any part of their facilities to the general public lose their eligibility for "country club" liquor or beer licenses. 69 Atty. Gen. 248.

125.66 Sale without license; failure to obtain permit; penalties. (1) No person may sell, or possess with intent to sell, intoxicating liquor unless that person holds the appropriate license or permit. Whoever violates this subsection may be fined not more than $10,000 or imprisoned for not more than 9 months or both.

(2) The issuance of any current permit or special tax stamp of the federal government to any person, authorizing or permitting the person to sell intoxicating liquor, shall be prima facie evidence in any prosecution for violation of this section that the person was engaged in selling intoxicating liquor.

(3) Any person manufacturing or rectifying intoxicating liquor without holding appropriate permits under this chapter, or any person who sells such liquor, is guilty of a Class F felony.

(4) Notwithstanding sub. (1) and s. 125.04 (1), a "Class A" licensee who sells intoxicating liquor to a "Class B" licensee for resale may be fined not more than $100.

History: 1981 c. 79; 1989 a. 253; 1995 a. 27; 1997 a. 283; 2001 a. 109.

A license never should have been issued when a notice of application had not been published as required under s. 125.04 (3) (g), and a license issued without publication is void under s. 125.04 (2). Selling liquor under a void license constitutes a violation of s. 125.66 (1). Under s. 125.12, a renewal licensee, if refused, is guaranteed a right to be heard by the municipality, and the municipality must show cause for refusal, but a new licensee, if refused, has no such guarantee. When an original license is void, the applicant is a new licensee. Williams v. City of Lake Geneva, 2002 WI App 95, 253 Wis. 2d 618, 643 N.W.2d 864, 01-1733.

125.67 Evading provisions of law by giving away intoxicating liquor; penalties. No person may give away intoxicating liquor or use any other means to evade any law of this state relating to the sale of intoxicating liquor. Whoever violates this subsection may be fined not more than $10,000 or imprisoned for not more than 9 months or both.

History: 1981 c. 79; 1989 a. 253.

125.68 General restrictions and requirements. (1) MANAGERS' LICENSES; "CLASS B" AND "CLASS C" PREMISES. (a) If a municipal governing body elects to issue managers' licenses under s. 125.18, no person may manage premises operating under a "Class B" license or permit or a "Class C" license unless the person is the licensee or permittee, an agent of a corporation or limited liability company appointed as required by s. 125.04 (6) or the holder of a manager's license. A manager's license issued in respect to a vessel under s. 125.51 (5) (c) is valid outside the municipality that issues it. A person manages premises if that person has responsibility or authority for:

1. Personnel management of all employees, whether or not the person is authorized to sign employment contracts;

2. The terms of contracts for the purchase or sale of goods or services, whether or not the person is authorized to sign the contracts; or

3. The daily operations of the premises.

(b) The municipal governing body may, by ordinance, define factors in addition to those listed in par. (a) which constitute management of premises.

(2) OPERATORS' LICENSES; "CLASS A," "CLASS B," "CLASS C," AND OTHER PREMISES. Except as provided under s. 125.07 (3) (a) 10., no premises operated under a "Class A" or "Class C" license or under a "Class B" license or permit may be open for business, and no person who holds a manufacturer's or rectifier's permit may allow the sale or provision of taste samples of intoxicating liquor on the manufacturing or rectifying premises as provided in s. 125.52 (1) (b) 2., unless there is upon the premises either the licensee or permittee, the agent named in the license or permit if the licensee or permittee is a corporation or limited liability company, or some person who has an operator's license and who is responsible for the acts of all persons selling or serving any intoxicating liquor to customers. An operator's license issued in respect to a vessel under s. 125.51 (5) (c) is valid outside the municipality that issues it. For the purpose of this subsection, any person holding a manager's license issued under s. 125.18 or any member of the licensee's or permittee's immediate family who has attained the age of 18 shall be considered the holder of an operator's license. No person, including a member of the licensee's or permittee's immediate family, other than the licensee, permittee or agent may serve or sell alcohol beverages in any place operated under a "Class A" or "Class C" license or under a "Class B" license or permit unless he or she has an operator's license or is at least 18 years of age and is under the immediate supervision of the licensee, permittee or agent or a person holding an operator's license, who is on the premises at the time of the service.

(2m) USE BY ANOTHER PROHIBITED. (a) No person may allow another to use his or her "Class A" or "Class C" license or "Class B" license or permit to sell alcohol beverages.

(b) The license or permit of a person who violates par. (a) shall be revoked.

(3) RESTRICTIONS ON LOCATION. No "Class A" or "Class B" license or permit may be issued for premises the main entrance of which is less than 300 feet from the main entrance of a public or parochial school, tribal school, as defined in s. 115.001 (15m), hospital, or church, except that this prohibition may be waived by a majority vote of the governing body of the municipality in which the premises is located. The distance shall be measured by the shortest route along the highway from the main entrance of the school, church, or hospital to the main entrance of the premises covered by the license or permit. The prohibition in this subsection does not apply to any of the following:

(a) Premises covered by a license or permit on June 30, 1947.

(b) Premises covered by a license or permit prior to the occupation of real property within 300 feet thereof by any school, hospital or church building.

(c) A restaurant located within 300 feet of a church or school. This paragraph applies only to restaurants in which the sale of alcohol beverages accounts for less than 50% of their gross receipts.

(4) CLOSING HOURS. (a) *Wholesalers.* No premises for which a wholesale intoxicating liquor permit has been issued may remain open for the sale of intoxicating liquor between the hours of 5 p.m. and 8 a.m., except on Saturday the premises may remain open until 9 p.m.

(b) *"Class A" retailers.* No premises for which a "Class A" license or permit has been issued may remain open for the sale of intoxicating liquor between the hours of 9 p.m. and 6 a.m. A municipality may, by ordinance, impose more restrictive hours than those provided in this paragraph.

(c) *"Class B" and "Class C" retailers.* 1. Subject to subd. 3. and s. 125.51 (3r) (a) 3., no premises for which a "Class B" license or permit or a "Class C" license has been issued may remain open between the hours of 2 a.m. and 6 a.m., except as otherwise provided in this subdivision and subd. 4. On January 1 premises operating under a "Class B" license or permit are not required to close. On Saturday and Sunday, no premises may remain open between 2:30 a.m. and 6 a.m. except that, on the Sunday that daylight saving time begins as specified in s. 175.095 (2), no premises may remain open between 3:30 a.m. and 6 a.m. This subdivision does not apply to a "Class B" license issued to a winery under s. 125.51 (3) (am).

3. Between 12 midnight and 6 a.m. no person may sell intoxicating liquor on "Class B" licensed premises in an original unopened package, container or bottle or for consumption away from the premises or on "Class C" licensed premises as authorized under s. 125.51 (3r) (a). A municipal governing body may, by ordinance, impose more restrictive hours than are provided in this subdivision except with respect to the sale of intoxicating liquor authorized under s. 125.51 (3r) (a). This subdivision does not apply to a "Class B" license issued to a winery under s. 125.51 (3) (am).

3m. No premises for which a "Class B" license has been issued under s. 125.51 (3) (am) may remain open for the sale of intoxicating liquor between the hours of 9 p.m. and 8 a.m.

4. Hotels and restaurants the principal business of which is the furnishing of food, drinks or lodging to patrons, bowling centers, movie theaters, indoor horseshoe-pitching facilities, curling clubs, golf courses and golf clubhouses may remain open for the conduct of their regular business but may not sell intoxicating liquor during the closing hours under subd. 1. or, with respect to the sale of intoxicating liquor authorized under s. 125.51 (3r) (a), under subd. 3.

5. A municipality may not, by ordinance, impose different hours than those provided under subd. 1.

(5) RESTAURANT SANITATION RULES. No applicant may obtain a "Class B" license or permit or a "Class C" license unless the premises complies with the rules promulgated by the department of health services governing sanitation in restaurants. However, the department of health services may not restrict the serving of cheese without charge in individual portions to customers as permitted by s. 254.61 (5).

(8) SALE FROM ORIGINAL CONTAINER. (a) A person convicted of any of the following prohibited activities shall be fined not less than $150 nor more than $500 or imprisoned not less than 60 days nor more than 6 months or both:

1. Diluting any intoxicating liquor for purposes of sale as undiluted intoxicating liquor.

2. Refilling any original container which had previously been used for intoxicating liquor containing 21% or more of alcohol by volume.

3. Possessing diluted intoxicating liquor or refilled original containers on any premises covered by a "Class A" or "Class C" license or "Class B" license or permit.

(b) Possession of an original container which contains diluted intoxicating liquor or which has been refilled is prima facie evidence of intent to violate this subsection.

Cross-reference: See also s. Tax 8.43, Wis. adm. code.

(9) LABELS; CONTENTS; PACKAGING. (b) All containers of intoxicating liquor sold in this state shall be clearly and legibly labeled with the name and address of the manufacturer and the name of the intoxicating liquor. The label shall meet any other labeling requirements created by the federal alcohol administration act.

(c) No intoxicating liquor may contain any added ingredients or substances which are injurious to health or deleterious for human consumption.

(d) All packages or containers of intoxicating liquor delivered in this state shall bear seals affixed by the manufacturer so that the contents cannot be removed without breaking the seals.

(e) No person holding a license or permit issued under this chapter may possess or sell any package or container of intoxicating liquor which does not comply with pars. (b) and (d) or which does not bear evidence that the package or container was in compliance when delivery was taken.

(f) Every person manufacturing, rectifying or blending intoxicating liquor sold in this state shall provide the department with the names, brands, descriptions, alcoholic content by volume and any other information about the intoxicating liquor required by the department. Information required by this paragraph shall be submitted prior to placing any new blend on the market. The department may also require by rule that samples of new products be submitted for examination and analysis.

(g) Persons convicted of violating this subsection shall be fined not less than $500 nor more than $1,000 or imprisoned in the county jail for not less than 3 months nor more than one year or both.

Cross-reference: See also s. Tax 8.52, Wis. adm. code.

(10) SHIPMENTS INTO STATE. (a) Except as provided in s. 125.535, no intoxicating liquor may be shipped into this state unless consigned to a person holding a wholesaler's permit under s. 125.54 or, if shipped from a manufacturer or rectifier in another state holding a permit under s. 125.58, consigned to a person holding a manufacturer's or rectifier's permit under s. 125.52 or a winery permit under s. 125.53.

(b) Except as provided in s. 125.535, no common carrier or other person may transport into and deliver within this state any intoxicating liquor unless it is consigned to a person holding a

wholesaler's permit under s. 125.54 or, if shipped from a manufacturer or rectifier in another state holding a permit under s. 125.58, consigned to a person holding a manufacturer's or rectifier's permit under s. 125.52 or a winery permit under s. 125.53. Any common carrier violating this paragraph shall forfeit $100 for each violation.

Cross-reference: See also s. Tax 8.35, Wis. adm. code.

(11) ALCOHOL OR WINE FOR NONBEVERAGE USE; PENALTY. (a) The following products are not intoxicating liquor subject to this chapter, when unfit for beverage purposes:

1. Denatured alcohol produced and used pursuant to acts of congress and regulations promulgated thereunder.

2. Patent, proprietary, medicinal, pharmaceutical, antiseptic and toilet preparations.

3. Flavoring extracts, syrups and food products.

4. Scientific, chemical, mechanical and industrial products.

(b) Any person who sells any of the products enumerated in par. (a) for intoxicating beverage purposes, either knowingly or under circumstances from which a reasonable person may deduce the intention of the purchaser to use them for such purposes, shall be penalized under s. 125.11.

(12) DENATURED ALCOHOL. (a) No person may recover any alcohol or alcoholic liquid from denatured alcohol by any process or use, sell, conceal or dispose of, in any manner, any alcohol or alcoholic liquid derived from denatured alcohol.

(b) Whoever violates par. (a) is guilty of a Class F felony.

(c) Any person causing the death of another human being through the selling or otherwise disposing of, for beverage purposes, either denatured alcohol or alcohol or alcoholic liquid redistilled from denatured alcohol is guilty of a Class E felony.

(13) INTOXICATING LIQUOR NOT PURCHASED ON RETAIL PREMISES IN A PARK. No provision of this chapter prohibits a licensee under s. 125.51 (3) from allowing, if the licensed premises are located in a public park within a 1st class city, a person who does not hold a license or permit under this chapter to possess and consume on the licensed premises intoxicating liquor that was not purchased from the licensee.

History: 1981 c. 79, 158, 202; 1983 a. 74; 1983 a. 189 s. 329 (6); 1983 a. 203 s. 47; 1983 a. 349; 1985 a. 28, 221, 317; 1987 a. 27, 121, 399; 1989 a. 30, 253; 1991 a. 28, 39; 1993 a. 27, 112; 1995 a. 27 s. 9126 (19); 1997 a. 283; 2001 a. 16, 109; 2005 a. 25, 268; 2007 a. 3; 2007 a. 20 s. 9121 (6) (a); 2007 a. 85; 2009 a. 28, 128, 302; 2011 a. 32, 97.

It is not illegal under s. 176.07 [now s. 125.68 (4) (c) 3.] to allow the carry-out of liquor from a "Class B" licensed premises between 12 midnight and 8 a.m. if the sale of liquor occurred before 12 midnight. "Sale" is defined. 69 Atty. Gen. 168.

CHAPTER 165

DEPARTMENT OF JUSTICE

165.015 Duties. The attorney general shall:

(1) GIVE OPINION TO OFFICERS. Give his or her opinion in writing, when required, without fee, upon all questions of law submitted to him or her by the legislature, either house thereof or the senate or assembly committee on organization, or by the head of any department of state government.

(2) PROTECT TRUST FUNDS. Examine all applications for loans from any of the trust funds, and furnish to the commissioners of public lands his or her opinion in writing as to the regularity of each such application, and also of the validity of any bonds or other securities purchased for the benefit of such funds.

(3) CERTIFY BONDS. Examine a certified copy of all proceedings preliminary to any issue of state bonds or notes, and, if found regular and valid, endorse on each bond or note his or her certificate of such examination and validity. The attorney general shall also make similar examinations and certificates respecting municipal bonds in the cases specified in s. 67.025.

(4) KEEP STATEMENT OF FEES. Keep a detailed statement of all fees, including his or her fees as commissioner of public lands, received by him or her during the preceding year, and file such statement with the department of administration on or before June 30 in each year.

(5) REPORT TO LEGISLATURE. Upon request of the legislature or either house thereof, submit a report upon any matters pertaining to the duties of his or her office to the chief clerk of each house of the legislature, for distribution to the legislature under s. 13.172 (2).

(6) PERFORM OTHER DUTIES. Perform all other duties imposed upon the attorney general by law.

History: 1971 c. 40 s. 93; 1971 c. 125; 1983 a. 36 s. 96 (2); 1987 a. 186; 1993 a. 482.

The attorney general, absent a specific legislative grant of power, is devoid of the inherent power to initiate and prosecute litigation intended to protect or promote the interests of the state or its citizens and cannot act for the state as *parens patriae*. Estate of Sharp, 63 Wis. 2d 254, 217 N.W.2d 258 (1974).

The attorney general does not have authority to challenge the constitutionality of statutes. Any authority the attorney general has is found in the statutes. The attorney general's constitutional powers and statutory powers are one and the same. State v. City of Oak Creek, 2000 WI 9, 232 Wis. 2d 612, 605 N.W.2d 526, 97-2188.

The powers of the attorney general in Wisconsin. Van Alstyne, Roberts, 1974 WLR 721.

165.25 Duties of department of justice. The department of justice shall:

(1) REPRESENT STATE IN APPEALS AND ON REMAND. Except as provided in ss. 5.05 (2m) (a) and 978.05 (5), appear for the state and prosecute or defend all actions and proceedings, civil or criminal, in the court of appeals and the supreme court, in which the state is interested or a party, and attend to and prosecute or defend all civil cases sent or remanded to any circuit court in which the state is a party. Nothing in this subsection deprives or relieves the attorney general or the department of justice of any authority or duty under this chapter.

(1m) REPRESENT STATE IN OTHER MATTERS. If requested by the governor or either house of the legislature, appear for and represent the state, any state department, agency, official, employee or agent, whether required to appear as a party or witness in any civil or criminal matter, and prosecute or defend in any court or before any officer, any cause or matter, civil or criminal, in which the state or the people of this state may be interested. The public service commission may request under s. 196.497 (7) that the attorney general intervene in federal proceedings. All expenses of the proceedings shall be paid from the appropriation under s. 20.455 (1) (d).

(2) PROSECUTE BREACHES OF BONDS AND CONTRACTS. Prosecute, at the request of the governor, or of the head of any department of the state government any official bond or any contract in which the state is interested, deposited with any of them, upon a breach thereof, and prosecute or defend for the state all actions, civil or criminal, relating to any matter connected with any of their departments except in those cases where other provision is made.

(3) ADVISE DISTRICT ATTORNEYS. Consult and advise with the district attorneys when requested by them in all matters pertaining to the duties of their office.

(3m) REVIEW OBSCENITY CASES. Review obscenity cases submitted to the department by district attorneys under s. 944.21 (7). The attorney general shall determine whether a prosecution may be commenced.

(3r) AVOID CONFLICT OF INTEREST. Require that attorneys in different organizational subunits in the department prosecute violations of chs. 562 to 569 or Indian gaming compacts entered into under s. 14.035 and defend any department, agency, official, employee or agent under subs. (1), (1m), (4) (a) and (6).

(4) FURNISH LEGAL SERVICES; APPROPRIATION. (a) The department of justice shall furnish all legal services required by the investment board, the lottery division in the department of revenue, the public service commission, the department of transportation, the department of natural resources, the department of tourism and the department of employee trust funds, together with any other services, including stenographic and investigational, as are necessarily connected with the legal work.

(ag) The department of justice shall furnish legal services upon request of the department of safety and professional services under s. 167.35 (7).

(am) The department of justice shall furnish legal services to the department of safety and professional services in all proceedings under s. 440.21 (3), together with any other services, including stenographic and investigational, as are necessarily connected with the legal services.

(ar) The department of justice shall furnish all legal services required by the department of agriculture, trade and consumer protection relating to the enforcement of ss. 91.68, 93.73, 100.171, 100.173, 100.174, 100.175, 100.177, 100.18, 100.182, 100.195, 100.20, 100.205, 100.207, 100.209, 100.21, 100.28, 100.37, 100.42, 100.50, 100.51, 100.55, and 846.45 and chs. 126, 136, 344, 704, 707, and 779, together with any other services as are necessarily connected to the legal services.

(as) The department of justice shall furnish legal services to the livestock facility siting review board in defending appeals under s. 93.90 (5) (e) of decisions of the board.

(b) The department of justice shall furnish bond counsel services to the building commission when the building commission contracts public debt under subch. I of ch. 18.

(bn) The department of justice shall provide legal services, other than those relating to civil actions or opinions, under ch. 150 to the department of health services.

(c) The department shall at the end of each fiscal year, except for programs financed out of the general fund and except for services required to be provided by statute other than this subsection, render to the respective agencies enumerated in this subsection an itemized statement of the total cost of the legal and other services including travel expenses and legal expenses enumerated in s. 20.455 (1) (d).

(d) Upon receipt of the statement, the respective agency head shall audit the statement and upon finding it to be correct shall certify the amount of the statement to the department of administration to be paid into the general fund out of the agency's proper appropriation.

(5) PREPARE FORMS. Whenever requested by the head of any department of the state government, the department of justice shall prepare proper drafts of forms for contracts and other writings which may be wanted for the use of the state.

(6) ATTORNEY FOR STATE. (a) At the request of the head of any department of state government, the attorney general may appear for and defend any state department, or any state officer, employee, or agent of the department in any civil action or other matter brought before a court or an administrative agency which is brought against the state department, or officer, employee, or agent for or on account of any act growing out of or committed in the lawful course of an officer's, employee's, or agent's duties. Witness fees or other expenses determined by the attorney general to be reasonable and necessary to the defense in the action or proceeding shall be paid as provided for in s. 885.07. The attorney general may compromise and settle the action as the attorney general determines to be in the best interest of the state. Members, officers, and employees of the Wisconsin state agencies building corporation and the Wisconsin state public building corporation are covered by this section. Members of the board of governors created under s. 619.04 (3), members of a committee or subcommittee of that board of governors, members of the injured patients and families compensation fund peer review council created under s. 655.275 (2), and persons consulting with that council under s. 655.275 (5) (b) are covered by this section with respect to actions, claims, or other matters arising before, on, or after April 25, 1990. The attorney general may compromise and settle claims asserted before such actions or matters formally are brought or may delegate such authority to the department of administration. This paragraph may not be construed as a consent to sue the state or any department thereof or as a waiver of state sovereign immunity.

(b) Volunteer health care providers who provide services under s. 146.89, practitioners who provide services under s. 257.03, and health care facilities on whose behalf services are provided under s. 257.03 are, for the provision of those services, covered by this section and shall be considered agents of the department of health services for purposes of determining which agency head may request the attorney general to appear and defend them.

(c) Physicians under s. 251.07 or 252.04 (9) (b) are covered by this section and shall be considered agents of the department of health services for purposes of determining which agency head may request the attorney general to appear and defend them.

(e) The department of justice may appear for and defend the state or any state department, agency, official or employee in any civil action arising out of or relating to the assessment or collection of costs concerning environmental cleanup or natural resources damages including actions brought under 42 USC 9607. The action may be compromised and settled in the same manner as provided in par. (a). At the request of the department of natural resources, the department of justice may provide legal representation to the state or to the department of natural resources in the same matter in which the department of justice provides defense counsel, if the attorneys representing those interests are assigned from different organizational units within the department of justice. This paragraph may not be construed as a consent to sue the state or any department,

agency, official or employee of the state or as a waiver of sovereign immunity.

(6m) ATTORNEY FOR STATE WITNESSES. At the request of the head of any department or agency of state government, the attorney general may appear for and represent any state official, employee or agent who is required to appear as a witness in any administrative or civil matter.

(7) KEEP RECORD OF ACTIONS. The department shall keep a record of all actions and demands prosecuted or defended by the department on behalf of the state and all related proceedings. The department may dispose of public records in accordance with s. 16.61.

(8) HISTORICAL SOCIETY CONTRACTS. In subs. (1), (1m), (6) and (6m), treat any nonprofit corporation operating a museum under a lease agreement with the state historical society as a department of state government and any official, employee or agent of such a corporation as a state official, employee or agent.

(8m) LOCAL EMERGENCY PLANNING COMMITTEES. In subs. (1), (1m), (6) and (6m), treat any local emergency planning committee appointed by a county board under s. 59.54 (8) (a) as a department of state government and any member of such a committee as a state official, employee or agent.

(9) PERFORM OTHER DUTIES. The department of justice shall perform all other duties imposed upon the department by law.

(10) REPORT ON RESTITUTION. Semiannually submit a report to the department of administration and the joint committee on finance regarding money received by the department of justice under a court order or a settlement agreement for providing restitution to victims. The report shall specify the amount of restitution received by the department of justice during the reporting period; the persons to whom the department of justice paid restitution and the amount that the department of justice paid to each recipient during the reporting period; and the department of justice's methodology for selecting recipients and determining the amount paid to each recipient.

(11) FALSE CLAIMS. Diligently investigate possible violations of s. 20.931, and, if the department determines that a person has committed an act that is punishable under s. 20.931, may bring a civil action against that person.

(12) REPRESENTATION ARISING FROM AGREEMENTS WITH MINNESOTA. Represent any employee of the state of Minnesota who is named as a defendant in any civil action brought under the laws of this state as a result of performing services for this state under a valid agreement between this state and the state of Minnesota providing for interchange of employees or services and any employee of this state who is named as a defendant as a result of performing services for the state of Minnesota under such an agreement in any action brought under the laws of this state. Witness fees in any action specified in this subsection shall be paid in the same manner as provided in s. 885.07. The attorney general may compromise and settle any action specified in this subsection to the same extent as provided in s. 165.25 (6) (a).

(12m) RULES REGARDING CONCEALED WEAPONS LICENSES. Promulgate by rule a list of states that issue a permit, license, approval, or other authorization to carry a concealed weapon if the permit, license, approval, or other authorization requires, or designates that the holder chose to submit to, a background search that is comparable to a background check as defined in s. 175.60 (1) (ac).

NOTE: Sub. (12m) was created as sub. (12) by 2011 Wis. Act 35 and renumbered to sub. (12m) by the legislative reference bureau under s. 13.92 (1) (bm) 2.

History: 1971 c. 125 s. 522 (1); 1971 c. 215; 1973 c. 333; 1975 c. 81, 199; 1977 c. 29 s. 1656 (27); 1977 c. 187, 260, 273, 344; 1981 c. 20, 62, 96; 1983 a. 27; 1983 a. 36 s. 96 (2), (3), (4); 1983 a. 192; 1985 a. 29, 66; 1987 a. 416; 1989 a. 31, 115, 187, 206, 359; 1991 a. 25, 39, 269; 1993 a. 27, 28, 365; 1995 a. 27 ss. 4453 to 4454m, 9126 (19); 1995 a. 201; 1997 a. 27, 111; 2001 a. 16; 2003 a. 111, 235; 2005 a. 96, 458; 2007 a. 1; 2007 a. 20 ss. 2904, 9121 (6) (a); 2007 a. 76, 79, 96, 130, 225; 2009 a. 2, 28, 42; 2011 a. 32, 35; s. 13.92 (1) (bm) 2.

For the attorney general to prosecute violations of the election, lobby, and ethics laws, there must be a specific statute authorizing the attorney general to independently initiate the prosecution of civil and criminal actions involving violations of those laws unless there is a referral to the attorney general by the government accountability board under s. 5.05 (2m) (c) 16. or unless the attorney general or an assistant attorney general has been appointed as special prosecutor in lieu of the district attorney. OAG 10-08.

The powers of the attorney general in Wisconsin. Van Alstyne, Roberts, 1974 WLR 721.

165.50 Criminal investigation. (1) The department of justice shall perform the following criminal investigatory functions for the state:

(a) Investigate crime that is statewide in nature, importance or influence.

(b) Conduct arson investigations.

(2) Special criminal investigation agents of the department shall have the same general police powers as are conferred upon peace officers.

(3) Except as provided in s. 20.001 (5), all moneys received as restitution payments reimbursing the department of justice for moneys expended in undercover investigations and operations shall be deposited as general purpose revenue — earned.

History: 1975 c. 39; 1985 a. 29; 1987 a. 27; 1993 a. 213.

165.51 State fire marshal. The attorney general shall designate an employee as the state fire marshal.

History: 1977 c. 260; 1985 a. 29.

165.55 Arson investigation. (1) The chief of the fire department or company of every city, village and town in which a fire department or company exists, and where no fire department or company exists, the city mayor, village president or town clerk shall investigate or cause to be investigated the cause, origin and circumstances of every fire occurring in his or her city, village or town by which property has been destroyed or damaged when the damage exceeds $500, and on fires of unknown origin he or she shall especially investigate whether the fire was the result of negligence, accident or design. Where any investigation discloses that the fire may be of incendiary origin, he or she shall report the same to the state fire marshal.

(2) The department of justice shall supervise and direct the investigation of fires of incendiary origin when the state fire marshal deems the investigation expedient.

(3) When, in the opinion of the state fire marshal, investigation is necessary, he or she shall take or cause to be taken the testimony on oath of all persons supposed to be cognizant of any facts or to have any means of knowledge in relation to any case of damage to property by fire or explosives. If the state fire marshal is of the opinion that there is evidence sufficient to charge any person with a crime under s. 941.11, 943.01, 943.012, 943.013, 943.02, 943.03 or 943.04 or with an

attempt to commit any of those crimes, he or she shall cause the person to be prosecuted, and furnish the prosecuting attorney the names of all witnesses and all the information obtained by him or her, including a copy of all testimony taken in the investigation.

(4) The state fire marshal shall assign at least one deputy fire marshal exclusively to fire marshal duties for counties having a population of 500,000 or more.

(7) The state fire marshal and his or her subordinates shall each have the power to conduct investigations and hearings and take testimony regarding fires and the causes thereof, and compel the attendance of witnesses. The fees of witnesses shall be paid upon certificates signed by the officer before whom any witnesses shall have attended, and shall be charged to the appropriation for the state fire marshal.

(8) All investigations held by or under the direction of the state fire marshal, or his or her subordinates, may, in the fire marshal's discretion, be private, and persons other than those required to be present may be excluded from the place where such investigation is held, and witnesses may be kept apart from each other, and not allowed to communicate with each other until they have been examined.

(9) The state fire marshal and his or her subordinates may at all reasonable hours in performance of their duties enter upon and examine any building or premises where any fire has occurred and other buildings or premises near the same, and seize any evidence found as a result of such examination which in the opinion of the officer finding the same may be used in any criminal action which may result from such examination or otherwise, and retain it for a reasonable time or until it becomes an exhibit in the action.

(10) The state fire marshal, deputy state fire marshals or chiefs of fire departments shall apply for and obtain special inspection warrants prior to the inspection or investigation of personal or real properties which are not public buildings or for the inspection of portions of public buildings which are not open to the public for the purpose of determining the cause, origin and circumstances of fires either upon showing that consent to entry for inspection purposes has been refused or upon showing that it is impractical to obtain the consent. The warrant may be in the form set forth in s. 66.0119 (3). The definition of a public building under s. 101.01 (12) applies to this subsection. No special inspection warrant is required:

(a) In cases of emergency when a compelling need for official action can be shown and there is no time to secure a warrant;

(b) For investigations which occur during or immediately after the fire fighting process; or

(c) For searches of public buildings which are open to the public.

(10m) Any investigation or inspection authorized under sub. (10) shall be conducted by the state fire marshal, deputy state fire marshals or chiefs of fire departments or their designees.

(11) All officers who perform any service at the request of the state fire marshal or the state fire marshal's subordinates shall receive fees determined by the state fire marshal and such fees shall be charged to the appropriation for the department of justice.

(13) Any officer named in subs. (1) and (2) who neglects to comply with any of the requirements of this section shall be fined not less than $25 nor more than $200 for each neglect or violation.

(14) The state fire marshal, any deputy fire marshal, any fire chief or his or her designee may require an insurer, including the state acting under ch. 619, to furnish any information in its possession relating to a fire loss involving property with respect to which a policy of insurance issued or serviced by the insurer may apply. Any insurer, including the state, may furnish to the state fire marshal, any deputy fire marshal, any fire chief or designee information in its possession relating to a fire loss to which insurance issued by it may apply. In the absence of fraud or malice, no insurer furnishing information under this subsection, state fire marshal, deputy fire marshal, fire chief or designee, and no person acting on behalf of the insurer, state fire marshal, deputy fire marshal, fire chief or designee, shall be liable in any civil or criminal action on account of any statement made, material furnished or action taken in regard thereto. Information furnished by an insurer under this subsection shall be held in confidence by the state fire marshal, deputy fire marshal, fire chief or designee and all subordinates until release or publication is required pursuant to a civil or criminal proceeding. Information obtained by the state fire marshal, any deputy fire marshal, fire chief or designee during their investigations of fires determined to be the result of arson may be available to the insurer of the property involved.

(15) The state fire marshal, any deputy fire marshal, any fire chief, or his or her designee may obtain information relating to a juvenile from a law enforcement agency, a court assigned to exercise jurisdiction under chs. 48 and 938 or an agency, as defined in s. 938.78 (1), as provided in ss. 938.396 (1) (c) 8. and (2g) (j) and 938.78 (2) (b) 1. and may obtain information relating to a pupil from a public school as provided in ss. 118.125 (2) (ch) and (L) and 938.396 (1) (d).

History: 1973 c. 333; 1975 c. 224; 1977 c. 260, 341; 1979 c. 133; 1981 c. 318; 1983 a. 189 s. 329 (4); 1985 a. 29; 1987 a. 348; 1993 a. 50, 482; 1995 a. 27; 1997 a. 205; 1999 a. 150 s. 672; 2005 a. 344.

The state fire marshall must establish proper discretionary reasons for exercising the privilege of secrecy under sub. (8). Black v. General Electric Co. 89 Wis. 2d 195, 278 N.W.2d 224 (Ct. App. 1979).

Under *Michigan v. Tyler*, the warrantless search of an entire building on the morning after a localized fire was reasonable as it was the continuation of the prior night's investigation that had been interrupted by heat and nighttime circumstances. State v. Monosso, 103 Wis. 2d 368, 308 N.W.2d 891 (Ct. App. 1981).

Arson investigations under subs. (9) and (10) are subject to search warrant requirements set forth in *Michigan v. Tyler*. Consent to search is discussed. 68 Atty. Gen. 225.

A burning building clearly presents an exigency rendering a warrantless entry reasonable, and fire officials need no warrant to remain in a building for a reasonable time to investigate the cause of the fire after it is extinguished. Michigan v. Tyler, 436 U.S. 499 (1978)

165.60 Law enforcement. The department of justice is authorized to enforce ss. 101.123 (2), (2m), and (8), 175.60 (17) (e), 944.30, 944.31, 944.33, 944.34, 945.02 (2), 945.03 (1m), and 945.04 (1m) and ch. 108 and, with respect to a false statement submitted or made under s. 175.60 (7) (b) or (15) (b) 2. or as described under s. 175.60 (17) (c), to enforce s. 946.32 and is invested with the powers conferred by law upon sheriffs and municipal police officers in the performance of those duties. This section does not deprive or relieve sheriffs, constables, and other local police officers of the power and duty

to enforce those sections, and those officers shall likewise enforce those sections.

History: 1975 c. 39; 1985 a. 29; 1989 a. 97; 2003 a. 33; 2005 a. 86; 2009 a. 12; 2011 a. 35.

165.70 Investigation of statewide crime. (1) The department of justice shall do all of the following:

(a) Investigate crime that is statewide in nature, importance or influence.

(b) Except as provided in sub. (1m), enforce chs. 945 and 961 and ss. 940.20 (3), 940.201, 941.25 to 941.27, 943.01 (2) (c), 943.011, 943.27, 943.28, 943.30, 944.30, 944.31, 944.32, 944.33, 944.34, 946.65, 947.02 (3) and (4), 948.075, and 948.08.

(d) Enforce and administer s. 165.55.

(e) Investigate violations of ch. 563 that are statewide in nature, importance or influence.

(1m) The department may not investigate violations of or otherwise enforce s. 945.03 (2m) or 945.04 (2m).

(2) The attorney general shall appoint, under the classified service, investigative personnel to achieve the purposes set out in sub. (1) who shall have the powers of a peace officer. As many as are deemed necessary of the investigators so appointed shall be trained in drugs and narcotics law enforcement, or shall receive such training within one year of their appointment, and they shall assist, when appropriate, local law enforcement agencies to help them meet their responsibilities in this area.

(3) It is the intention of this section to give the attorney general responsibility for devising programs to control crime statewide in nature, importance or influence, drugs and narcotics abuse, commercial gambling other than what is described in s. 945.03 (2m) or 945.04 (2m), prostitution, and arson. Nothing herein shall deprive or relieve local peace officers of the power and duty to enforce those provisions enumerated in sub. (1).

(4) District attorneys, sheriffs and chiefs of police shall cooperate and assist the personnel of the department in the performance of their duties.

History: 1971 c. 40, 211, 307; 1973 c. 156; 1975 c. 39; 1977 c. 173 s. 168; 1977 c. 215, 260; 1977 c. 272 s. 98; 1985 a. 29; 1987 a. 332; 1989 a. 31; 1991 a. 269; 1993 a. 213; 1995 a. 448; 1997 a. 27, 143; 1999 a. 83; 2001 a. 109; 2003 a. 33; 2011 a. 32.

165.72 Controlled substances hotline and rewards for controlled substances tips. (1) DEFINITIONS. In this section:

(aj) "Department" means the department of justice.

(b) "Jail officer" has the meaning given in s. 165.85 (2) (bn).

(bt) "Juvenile detention officer" has the meaning given in s. 165.85 (2) (bt).

(c) "Law enforcement agency" has the meaning given in s. 165.83 (1) (b).

(d) "Law enforcement officer" has the meaning given in s. 165.85 (2) (c).

(2) HOTLINE. The department of justice shall maintain a single toll-free telephone number during normal retail business hours, as determined by departmental rule, for all of the following:

(a) For persons to anonymously provide tips regarding suspected controlled substances violations.

(b) For pharmacists to report suspected controlled substances violations.

(3) REWARD PAYMENT PROGRAM. The department shall administer a reward payment program. Under the program, the department may offer and pay rewards from the appropriation under s. 20.455 (2) (m) for information under sub. (2) (a) leading to the arrest and conviction of a person for a violation of ch. 961.

(4) PAYMENT LIMITATIONS. A reward under sub. (3) may not exceed $1,000 for the arrest and conviction of any one person. The department may not make any reward payment to a law enforcement officer, jail officer, juvenile detention officer, pharmacist, or department employee.

(5) DEPARTMENT AUTHORITY. If a reward is claimed, the department shall make the final determination regarding any payment. The department may pay portions of a reward to 2 or more persons. The payment of a reward is not subject to a contested case proceeding under ch. 227. The offer of a reward under sub. (3) does not create any liability on the department or the state.

(6) RECORDS. The department may withhold any record under this section from inspection or copying under s. 19.35.

(7) PUBLICITY. The department shall cooperate with the department of public instruction in publicizing, in public schools, the use of the toll-free telephone number under sub. (2).

History: 1989 a. 122, 336; 1993 a. 16, 460; 1995 a. 27 ss. 4456, 4457, 9145 (1); 1995 a. 448; 1997 a. 27; 2001 a. 16; 2003 a. 33; 2007 a. 20, 97.

165.75 Crime laboratories. (1) In this section and ss. 165.77 to 165.81:

(a) "Department" means the department of justice.

(b) "Employee" means any person in the service of the laboratories. "Employee" does not include any division administrator.

(c) "Laboratories" means the crime laboratories.

(2) The laboratories shall be located in the cities of Madison, Milwaukee and Wausau. The personnel of the laboratories shall consist of such employees as are authorized under s. 20.922. The laboratory in the city of Milwaukee is named the William J. McCauley crime laboratory.

(3) (a) The purpose of the laboratories is to establish, maintain and operate crime laboratories to provide technical assistance to local law enforcement officers in the various fields of scientific investigation in the aid of law enforcement. Without limitation because of enumeration the laboratories shall maintain services and employ the necessary specialists, technical and scientific employees for the recognition and proper preservation, marking and scientific analysis of evidence material in the investigation and prosecution of crimes in such fields as firearms identification, the comparison and identification of toolmarks, chemistry, identification of questioned documents, metallurgy, comparative microscopy, instrumental detection of deception, the identification of fingerprints, toxicology, serology and forensic photography.

(b) The employees are not peace officers and have no power of arrest or to serve or execute criminal process. They shall not be appointed as deputy sheriffs and shall not be given police powers by appointment or election to any office. Employees shall not undertake investigation of criminal conduct except upon the request of a sheriff, coroner, medical examiner,

district attorney, chief of police, warden or superintendent of any state prison, attorney general or governor. The head of any state agency may request investigations but in those cases the services shall be limited to the field of health, welfare and law enforcement responsibility which has by statute been vested in the particular state agency.

(c) Upon request under par. (b), the laboratories shall collaborate fully in the complete investigation of criminal conduct within their competence in the forensic sciences including field investigation at the scene of the crime and for this purpose may equip a mobile unit or units.

(d) The services of the laboratories available to such officer shall include appearances in court as expert witnesses.

(e) The department may decline to provide laboratory service in any case not involving a potential charge of felony.

(f) The services of the laboratories may be provided in civil cases in which the state or any department, bureau, agency or officer of the state is a party in an official capacity, when requested to do so by the attorney general.

(g) Deoxyribonucleic acid testing ordered under s. 974.07 shall have priority, consistent with the right of a defendant or the state to a speedy trial and consistent with the right of a victim to the prompt disposition of a case.

(4) The operation of the laboratories shall conform to the rules and policies established by the attorney general.

(5) Except as provided in s. 20.001 (5), all moneys received as restitution payments reimbursing the department for moneys expended by the laboratories shall be deposited as general purpose revenue — earned.

History: 1973 c. 272; 1977 c. 260; 1981 c. 314; 1983 a. 189; 1985 a. 29 ss. 2000 to 2006, 3200 (35); 1987 a. 27; 1989 a. 65; 1991 a. 39; 1993 a. 16; 2005 a. 60.

An evaluation of drug testing procedures. Stein, Laessig, Indriksons, 1973 WLR 727.

165.755 Crime laboratories and drug law enforcement surcharge. (1) (a) Except as provided in par. (b), a court shall impose under ch. 814 a crime laboratories and drug law enforcement surcharge of $13 if the court imposes a sentence, places a person on probation, or imposes a forfeiture for a violation of state law or for a violation of a municipal or county ordinance.

(b) A court may not impose the crime laboratories and drug law enforcement surcharge under par. (a) for a violation of s. 101.123 (2) or (2m), for a financial responsibility violation under s. 344.62 (2), or for a violation of a state law or municipal or county ordinance involving a nonmoving traffic violation, a violation under s. 343.51 (1m) (b), or a safety belt use violation under s. 347.48 (2m).

(2) If the court under sub. (1) (a) imposes a sentence or forfeiture for multiple offenses or places a person on probation for multiple offenses, a separate crime laboratories and drug law enforcement surcharge shall be imposed under ch. 814 for each separate offense.

(3) Except as provided in sub. (4), after the court determines the amount due under sub. (1) (a), the clerk of the court shall collect and transmit the amount to the county treasurer under s. 59.40 (2) (m). The county treasurer shall then make payment to the secretary of administration under s. 59.25 (3) (f) 2.

(4) If a municipal court imposes a forfeiture, after determining the amount due under sub. (1) (a) the court shall collect and transmit such amount to the treasurer of the county, city, town, or village, and that treasurer shall make payment to the secretary of administration as provided in s. 66.0114 (1) (bm).

(5) If any deposit of bail is made for a noncriminal offense to which sub. (1) (a) applies, the person making the deposit shall also deposit a sufficient amount to include the surcharge under sub. (1) (a) for forfeited bail. If bail is forfeited, the amount of the surcharge under sub. (1) (a) shall be transmitted monthly to the secretary of administration under this section. If bail is returned, the surcharge shall also be returned.

(6) If an inmate in a state prison or a person sentenced to a state prison has not paid the crime laboratories and drug law enforcement surcharge under sub. (1) (a), the department shall assess and collect the amount owed from the inmate's wages or other moneys. Any amount collected shall be transmitted to the secretary of administration.

(7) All moneys collected from crime laboratories and drug law enforcement surcharges under this section shall be deposited by the secretary of administration and used as specified in s. 20.455 (2) (kd) and (Lm).

History: 1997 a. 27; 1999 a. 9, 72; 1999 a. 150 s. 672; 2001 a. 16; 2003 a. 30, 33, 139, 268, 326, 327; 2005 a. 25, 455; 2009 a. 12, 28, 100, 276; 2011 a. 260.

165.76 Submission of human biological specimen. (1) A person shall provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis if he or she meets any of the following criteria:

(a) Is or was in a juvenile correctional facility, as defined in s. 938.02 (10p), or a secured residential care center for children and youth, as defined in s. 938.02 (15g), or on probation, extended supervision, parole, supervision, or aftercare supervision on or after August 12, 1993, for any violation of s. 940.225 (1) or (2), 948.02 (1) or (2), 948.025, or 948.085.

(ag) Is or was in prison on or after August 12, 1993, and before January 1, 2000, for any violation of s. 940.225 (1) or (2), 948.02 (1) or (2), or 948.025.

(ar) Is or was in prison on or after January 1, 2000, for a felony committed in this state.

(av) Is or was found guilty on or after January 1, 2000, of any felony or any violation of s. 165.765 (1), 940.225 (3m), 944.20, or 948.10.

(b) Has been found not guilty or not responsible by reason of mental disease or defect on or after August 12, 1993, and committed under s. 51.20 or 971.17 for any violation of s. 940.225 (1) or (2), 948.02 (1) or (2), 948.025, or 948.085.

(br) Has been found not guilty or not responsible by reason of mental disease or defect on or after January 1, 2000, and committed under s. 51.20 or 971.17, for any felony or a violation of s. 165.765 (1), 940.225 (3m), 944.20, or 948.10.

(c) Is or was in institutional care on or after August 12, 1993, for any violation of s. 940.225 (1) or (2), 948.02 (1) or (2), 948.025, or 948.085.

(cr) Is or was in institutional care on or after January 1, 2000, for a felony or any violation of s. 165.765 (1), 940.225 (3m), 944.20, or 948.10.

(d) Has been found to be a sexually violent person under ch. 980 on or after June 2, 1994.

(e) Is or was released on parole or extended supervision or placed on probation in another state before January 1, 2000, and

is or was on parole, extended supervision, or probation in this state from the other state under s. 304.13 (1m), 304.135, or 304.16 on or after July 9, 1996, for a violation of the law of the other state that the department of corrections determines, under s. 304.137 (1), is comparable to a violation of s. 940.225 (1) or (2), 948.02 (1) or (2), 948.025, or 948.085.

(f) Is or was released on parole or extended supervision or placed on probation in another state on or after January 1, 2000, and is or was on parole, extended supervision, or probation in this state from the other state under s. 304.13 (1m), 304.135, or 304.16 for a violation of the law of the other state that the department of corrections determines, under s. 304.137 (2), would constitute a felony if committed by an adult in this state.

(g) Has been required by a court under s. 51.20 (13) (cr), 938.34 (15m) [s. 938.34 (15)], 971.17 (1m) (a), 973.047, or 980.063 to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis.

NOTE: The correct cross-reference is shown in brackets. Corrective legislation is pending.

(h) Is notified by the department of justice, the department of corrections, a district attorney, or a county sheriff under sub. (1m) that the person is required to provide a biological specimen.

(1m) If a person is required to provide a biological specimen under sub. (1) (a) to (g) and the department of justice does not have the data obtained from analysis of a biological specimen from the person that the department is required to maintain in the data bank under s. 165.77 (3), the department may require the person to provide a biological specimen, regardless of whether the person previously provided a biological specimen under this section or s. 51.20 (13) (cr), 938.34 (15), 971.17 (1m) (a), 973.047, or 980.063. The department of justice, the department of corrections, a district attorney, or a county sheriff, shall notify any person whom the department of justice requires to provide a biological specimen under this subsection.

(2m) Unless otherwise provided by rule under sub. (4), a person who is required to provide a biological specimen under sub. (1) shall provide the biological specimen at the following time and place:

(a) If the person has been placed on probation by a court in this state, as soon as practicable after placement at the office of a county sheriff, except, if directed otherwise by the person's probation, extended supervision, and parole agent, then as directed by the agent.

(b) If the person has been on probation, parole, or extended supervision in this state from another state and the department of corrections directs the person to provide a biological specimen, as soon as practicable after placement at the office of a county sheriff, except, if directed otherwise by the person's probation, extended supervision, and parole agent, then as directed by the agent.

(c) If the person has been placed on supervision as a juvenile, as soon as practicable after placement at the office of a county sheriff, except, if directed otherwise by the agency providing supervision, then as directed by the agency.

(d) If the person has been sentenced to prison, while in prison as directed by the department of corrections; and if the person does not provide the biological sample while in prison, then as soon as practicable after release from the prison at the office of a county sheriff, except, if directed otherwise by his or her probation, parole, and extended supervision agent, then as directed by the agent.

(e) If the person has been placed in a juvenile correctional facility or a secured residential care center for children and youth, while in the facility or center as directed by the department of corrections; and if the juvenile does not provide the biological specimen while in the facility or center, then as soon as practicable after release from the facility or center, at the office of a county sheriff, except, if directed otherwise by the agency providing supervision, then as directed by the agency.

(f) If the person has been sentenced to a county jail or county house of corrections, as directed by the office of the county sheriff as soon as practicable after sentencing; and if the person does not provide the biological specimen while in the county jail or county house of corrections, as soon after release from the county jail or county house of corrections as practicable, at the office of a county sheriff.

(g) If the person has been committed to the department of health services under s. 51.20 or 971.17 or found to be a sexually violent person under ch. 980, as directed by the department of health services.

(h) If pars. (a) to (g) do not apply, as soon as practicable after the obligation to provide a biological specimen accrues at the office of a county sheriff, except, if directed otherwise by the agent or agency providing supervision or having legal or physical custody of the person.

(2r) Failure by a person who is required to provide a biological specimen under sub. (1) to provide the biological specimen at the time and place provided under sub. (2m) does not relieve the person of the obligation to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis.

(3) Notwithstanding sub. (1), if a county sheriff, the department of corrections, or the department of health services determines that a person who is required to submit a biological specimen under sub. (1) has submitted a biological specimen and that data obtained from analysis of the person's biological specimen is included in the data bank under s. 165.77 (3), the person is not required to submit another biological specimen.

(4) The department of justice may promulgate rules to implement this section.

(5) The departments of corrections and health services, county departments under ss. 46.215, 46.22 and 46.23 and county sheriffs shall cooperate with the department of justice in obtaining specimens under this section.

(6) (a) If a person who is required to provide a biological specimen under sub. (1) refuses or fails to provide a biological specimen, a district attorney may file a petition with the circuit court for an order compelling the person to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis. A petition under this paragraph shall establish reasonable cause to believe that the person is required to provide a biological specimen under sub. (1) and that the person's biological specimen is not included in the data bank under s. 165.77 (3).

(b) If the court determines that a district attorney's petition satisfies the conditions under par. (a), the court shall issue an order requiring the person to appear in court at a specified time

for a hearing to show cause why he or she is not required to provide a biological specimen under sub. (1) or, instead of appearing at the hearing, to provide a biological specimen at the office of the county sheriff before the time for which the hearing is scheduled. The hearing shall be scheduled for not less than 10 and not more than 45 days after the date the court enters the order. The order, together with a copy of the petition and any supporting material, shall be served upon the person in the manner provided for serving a summons under s. 801.11. The order shall be in substantially the following form:

STATE OF WISCONSIN
CIRCUIT COURT: .... County

STATE OF WISCONSIN File
No. .....
vs.
ORDER
A.B.
Address
City, State, Zip Code
, Respondent

THE STATE OF WISCONSIN, To the Respondent named above:

Unless you choose to contest this Order, by appearing at the time, date, and place set forth below, you are ordered to present yourself to the .... county sheriff, [ADDRESS], no later than ...., between the hours of .... and ...., for the collection of a biological specimen, obtained by buccal swab, for deoxyribonucleic acid (DNA) analysis and inclusion of the results of that analysis in the state crime laboratory's DNA database. YOU MUST BRING A COPY OF THIS ORDER WITH YOU. YOU MUST ALSO BRING TWO FORMS OF IDENTIFICATION, INCLUDING ONE FORM OF GOVERNMENT-ISSUED, PHOTOGRAPHIC IDENTIFICATION. A copy of the petition submitted to obtain this order is attached.

If you wish to contest this order, you may do so by appearing in person at the time, date, and place set forth below, at which time you will have the opportunity to show cause to the court why you should not be required to provide a biological specimen for DNA analysis:

[Court information]

If you do not appear in person to contest this order at the time, date, and place set forth above, and you do not present yourself for collection of a biological specimen as directed, all of the following apply:

1. You may be held in contempt of court and be subject to sanctions as provided in chapter 785 of the Wisconsin Statutes.

2. The court will issue an order to facilitate collection of a biological specimen which, in the court's discretion, may authorize arrest or detention or use of reasonable force against you to collect the biological specimen.

Dated: ...., ... (year)

By the Court signed: ....

This Order is entered under section 165.76 (6) of the Wisconsin Statutes. A copy of that section is attached.

(c) At a hearing on a petition under par. (a), the person has the burden of rebutting the matters established in the petition by demonstrating that he or she is not required to submit a biological specimen under sub. (1).

(d) If the court determines after the hearing under par. (c) that the person is required to submit a biological specimen under sub. (1) and that the person's specimen is not included in the data bank under s. 165.77 (3), the court shall issue an order to facilitate collection of a biological specimen from the person, which may authorize arrest or detention of the person or use of reasonable force against the person to collect the biological specimen.

History: 1993 a. 16, 98, 227; 1995 a. 27 s. 9126 (19); 1995 a. 77, 440; 1997 a. 35, 283; 1999 a. 9; 2001 a. 96; 2005 a. 277, 344; 2007 a. 20 s. 9121 (6) (a); 2007 a. 97; 2009 a. 261; 2011 a. 257; 2011 a. 260 s. 81.

DNA sampling under this section is constitutional. Shelton v. Grudman, 934 F. Supp. 1048 (1996).

165.765 Biological specimen; penalty and immunity. (1) Whoever intentionally fails to comply with a requirement to submit a biological specimen under s. 165.76, 938.34 (15), 973.047 or 980.063 may be fined not more than $10,000 or imprisoned for not more than 9 months or both.

(2) (a) Any physician, registered nurse, medical technologist, physician assistant or person acting under the direction of a physician who obtains a biological specimen under s. 165.76, 938.34 (15), 973.047 or 980.063 is immune from any civil or criminal liability for the act, except for civil liability for negligence in the performance of the act.

(b) Any employer of the physician, nurse, technologist, assistant or person under par. (a) or any hospital where blood is withdrawn by that physician, nurse, technologist, assistant or person has the same immunity from liability under par. (a).

History: 1993 a. 98; 1995 a. 77, 440.
Cross-reference: See also ch. Jus 9, Wis. adm. code.

165.77 Deoxyribonucleic acid analysis and data bank. (1) In this section:

(a) "Health care professional" has the meaning given in s. 154.01 (3).

(b) "Law enforcement agency" means a governmental unit of one or more persons employed full time by the federal government, a state or a political subdivision of a state for the purpose of preventing and detecting crime and enforcing federal or state laws or local ordinances, employees of which unit are authorized to make arrests for crimes while acting within the scope of their authority.

(c) "Wisconsin law enforcement agency" means a governmental unit of one or more persons employed full time by this state or a political subdivision of this state for the purpose of preventing and detecting crime and enforcing state laws or local ordinances, employees of which unit are authorized to make arrests for crimes while acting within the scope of their authority.

(2) (a) 1. If the laboratories receive a human biological specimen pursuant to any of the following requests, the laboratories shall analyze the deoxyribonucleic acid in the specimen:

a. A request from a law enforcement agency regarding an investigation.

b. A request, pursuant to a court order, from a defense attorney regarding his or her client's specimen.

c. A request, subject to the department's rules under sub. (8), from an individual regarding his or her own specimen.

2. The laboratories may compare the data obtained from the specimen with data obtained from other specimens. The laboratories may make data obtained from any analysis and comparison available to law enforcement agencies in connection with criminal or delinquency investigations and, upon request, to any prosecutor, defense attorney or subject of the data. The data may be used in criminal and delinquency actions and proceedings. The laboratories shall not include data obtained from deoxyribonucleic acid analysis of those specimens received under this paragraph in the data bank under sub. (3). The laboratories shall destroy specimens obtained under this paragraph after analysis has been completed and the applicable court proceedings have concluded.

(b) Paragraph (a) does not apply to specimens received under s. 51.20 (13) (cr), 165.76, 938.34 (15), 971.17 (1m) (a), 973.047 or 980.063.

(2m) (b) If the laboratories analyze biological material pursuant to an order issued under s. 974.07 (8), the laboratories may compare the data obtained from the material with data obtained from other specimens. The laboratories may make data obtained from any analysis and comparison available to law enforcement agencies in connection with criminal or delinquency investigations and, upon request, to any prosecutor, defense attorney, or subject of the data. The data may be used in criminal and delinquency actions and proceedings. The laboratories shall not include data obtained from deoxyribonucleic acid analysis of material that is tested pursuant to an order under s. 974.07 (8) in the data bank under sub. (3).

(c) Paragraph (b) does not apply to specimens received under s. 51.20 (13) (cr), 165.76, 938.34 (15), 971.17 (1m) (a), 973.047, or 980.063.

(3) If the laboratories receive a human biological specimen under s. 51.20 (13) (cr), 165.76, 938.34 (15), 971.17 (1m) (a), 973.047 or 980.063, the laboratories shall analyze the deoxyribonucleic acid in the specimen. The laboratories shall maintain a data bank based on data obtained from deoxyribonucleic acid analysis of those specimens. The laboratories may compare the data obtained from one specimen with the data obtained from other specimens. The laboratories may make data obtained from any analysis and comparison available to law enforcement agencies in connection with criminal or delinquency investigations and, upon request, to any prosecutor, defense attorney or subject of the data. The data may be used in criminal and delinquency actions and proceedings. The laboratories shall destroy specimens obtained under this subsection after analysis has been completed and the applicable court proceedings have concluded.

(4) A person whose deoxyribonucleic acid analysis data has been included in the data bank under sub. (3) may request expungement on the grounds that his or her conviction or adjudication has been reversed, set aside or vacated. The laboratories shall purge all records and identifiable information in the data bank pertaining to the person and destroy all samples from the person if it receives all of the following:

(a) The person's written request for expungement.

(b) A certified copy of the court order reversing, setting aside or vacating the conviction or adjudication.

(5) Any person who intentionally disseminates a specimen received under this section or any information obtained as a result of analysis or comparison under this section or from the data bank under sub. (3) in a manner not authorized under this section or the rules under sub. (8) may be fined not more than $500 or imprisoned for not more than 30 days or both.

(6) Except as necessary to administer this section or as provided under the department's rules under sub. (8), the department shall deny access to any record kept under this section.

(7) Whenever a Wisconsin law enforcement agency or a health care professional collects evidence in a case of alleged or suspected sexual assault, the agency or professional shall follow the procedures specified in the department's rules under sub. (8). The laboratories shall perform, in a timely manner, deoxyribonucleic acid analysis of specimens provided by law enforcement agencies under sub. (2). The laboratories shall not include data obtained from deoxyribonucleic acid analysis of those specimens in the data bank under sub. (3).

(8) The department shall promulgate rules to administer this section.

History: 1993 a. 16, 98; 1995 a. 77, 440; 2001 a. 16; 2005 a. 60; 2011 a. 32.
Cross-reference: See also ch. Jus 9, Wis. adm. code.
The New Genetic World and the Law. Derse. Wis. Law. April 2001.

165.78 Information center; training activities. (1) The department shall act as a center for the clearance of information between law enforcement officers. In furtherance of this purpose it shall issue bulletins by mail or its telecommunication system. The department shall at all times collaborate and cooperate fully with the F.B.I. in exchange of information.

(2) The department shall cooperate and exchange information with other similar organizations in other states.

(3) The department may prepare and conduct informational and training activities for the benefit of law enforcement officers and professional groups.

History: 1977 c. 260; 1985 a. 29.

165.785 Crime alert network. (1) In addition to its duties under ss. 165.50 and 165.78, the department may develop, administer, and maintain an integrated crime alert network to provide information regarding known or suspected criminal activity, crime prevention, and missing or endangered persons to state agencies, law enforcement officers, and members of the private sector.

(2) The department may charge a fee to members of the private sector who receive information under sub. (1).

(3) The department shall utilize only program revenue amounts credited and expended from the appropriation account under s. 20.455 (2) (gp) to develop, administer, and maintain the integrated crime alert network under sub. (1).

History: 2009 a. 358.

165.79 Evidence privileged. (1) Evidence, information and analyses of evidence obtained from law enforcement officers by the laboratories is privileged and not available to persons other than law enforcement officers nor is the defendant entitled to an inspection of information and evidence submitted to the laboratories by the state or of a laboratory's findings, or

to examine laboratory personnel as witnesses concerning the same, prior to trial, except to the extent that the same is used by the state at a preliminary hearing and except as provided in s. 971.23. Upon request of a defendant in a felony action, approved by the presiding judge, the laboratories shall conduct analyses of evidence on behalf of the defendant. No prosecuting officer is entitled to an inspection of information and evidence submitted to the laboratories by the defendant, or of a laboratory's findings, or to examine laboratory personnel as witnesses concerning the same, prior to trial, except to the extent that the same is used by the accused at a preliminary hearing and except as provided in s. 971.23. Employees who made examinations or analyses of evidence shall attend the criminal trial as witnesses, without subpoena, upon reasonable written notice from either party requesting the attendance.

(2) Upon the termination or cessation of the criminal proceedings, the privilege of the findings obtained by a laboratory may be waived in writing by the department and the prosecutor involved in the proceedings. The employees may then be subpoenaed in civil actions in regard to any information and analysis of evidence previously obtained in the criminal investigation, but the laboratories shall not engage in any investigation requested solely for the preparation for trial of a civil matter. Upon appearance as a witness or receipt of a subpoena or notice to prepare for trial in a civil action, or appearance either with or without subpoena, the laboratories shall be compensated by the party at whose request the appearance or preparation was made in a reasonable amount to be determined by the trial judge, which fee shall be paid into the state treasury. In fixing the compensation the court may give consideration to the time spent in obtaining and analyzing the evidence for the purposes of criminal proceedings.

History: 1977 c. 260; 1979 c. 221; 1981 c. 20; 1983 a. 459; 1985 a. 29, 267; 1995 a. 387.

Whether to grant a defendant's request under sub. (1) that the crime lab perform tests on the defendant's behalf is a discretionary decision. State v. Lee, 192 Wis. 2d 260, 531 N.W.2d 351 (Ct. App. 1995). But see also State v. Lee, 197 Wis. 2d 960, 542 N.W.2d 143 (1996).

Under the facts of the case, the privilege in sub. (1) did not prevent the defendant from obtaining evidence he was entitled to under s. 971.23 when he received the physical evidence that the state intended to offer at trial and a copy of the crime lab report and was granted permission to submit the evidence for testing by his own expert. The defendant was entitled to examine the crime lab analyst at trial but not at an evidentiary hearing. State v. Franszczak, 2002 WI App 141, 256 Wis. 2d 68, 647 N.W.2d 396, 01-1393.

Cross-examination of a highly qualified witness who is familiar with the procedures used in performing the tests whose results are offered as evidence, who supervises or reviews the work of the testing analyst, and who renders his or her own expert opinion is sufficient to protect a defendant's right to confrontation, despite the fact that the expert was not the person who performed the mechanics of the original tests. State v. Williams, 2002 WI 58, 253 Wis. 2d 99, 644 N.W.2d 919, 00-3065.

Under *Crawford*, 541 U.S. 36, analysts' affidavits that certified that evidence was in fact cocaine were testimonial statements, and the analysts were "witnesses" for purposes of the 6th amendment confrontation clause. Absent a showing that the analysts were unavailable to testify at trial and that petitioner had a prior opportunity to cross-examine them, petitioner was entitled to be confronted with the analysts at trial. Melendez-Diaz v. Massachusetts, 557 U.S. 305, 174 L. Ed. 2d 314, 129 S. Ct. 2527 (2009).

165.80 Cooperation with other state departments. For the purpose of coordinating the work of the crime laboratories with the research departments located in the University of Wisconsin, the attorney general and the University of Wisconsin may agree for the use of university laboratories and university physical facilities and the exchange and utilization of personnel between the crime laboratories and the university.

History: 1985 a. 29; 1997 a. 27.

165.81 Disposal of evidence. (1) Whenever the department is informed by the submitting officer or agency that physical evidence in the possession of the laboratories is no longer needed the department may, except as provided in sub. (3) or unless otherwise provided by law, destroy the evidence, retain it in the laboratories, return it to the submitting officer or agency, or turn it over to the University of Wisconsin upon the request of the head of any department of the University of Wisconsin. If the department returns the evidence to the submitting officer or agency, any action taken by the officer or agency with respect to the evidence shall be in accordance with s. 968.20. Except as provided in sub. (3), whenever the department receives information from which it appears probable that the evidence is no longer needed, the department may give written notice to the submitting agency and the appropriate district attorney, by registered mail, of the intention to dispose of the evidence. If no objection is received within 20 days after the notice was mailed, it may dispose of the evidence.

(2) Any electric weapon, as defined in s. 941.295 (1c) (a), in the possession of the laboratories shall either be destroyed or be turned over to an agency authorized to have electric weapons under s. 941.295 (2).

(3) (a) In this subsection:

1. "Custody" has the meaning given in s. 968.205 (1) (a).

2. "Discharge date" has the meaning given in s. 968.205 (1) (b).

(b) Except as provided in par. (c), if physical evidence that is in the possession of the laboratories includes any biological material that was collected in connection with a criminal investigation that resulted in a criminal conviction, a delinquency adjudication, or commitment under s. 971.17 or 980.06 and the biological material is from a victim of the offense that was the subject of the criminal investigation or may reasonably be used to incriminate or exculpate any person for the offense, the laboratories shall preserve the physical evidence until every person in custody as a result of the conviction, adjudication, or commitment has reached his or her discharge date.

(bm) The laboratories shall retain evidence to which par. (b) applies in an amount and manner sufficient to develop a deoxyribonucleic acid profile, as defined in s. 939.74 (2d) (a), from the biological material contained in or included on the evidence.

(c) Subject to par. (e), the department may destroy evidence that includes biological material before the expiration of the time period specified in par. (b) if all of the following apply:

1. The department sends a notice of its intent to destroy the evidence to all persons who remain in custody as a result of the criminal conviction, delinquency adjudication, or commitment, and to either the attorney of record for each person in custody or the state public defender.

2. No person who is notified under subd. 1. does either of the following within 90 days after the date on which the person received the notice:

a. Files a motion for testing of the evidence under s. 974.07 (2).

b. Submits a written request for retention of the evidence to the department.

3. No other provision of federal or state law requires the department to retain the evidence.

(d) A notice provided under par. (c) 1. shall clearly inform the recipient that the evidence will be destroyed unless, within 90 days after the date on which the person receives the notice, either a motion for testing of the evidence is filed under s. 974.07 (2) or a written request for retention of the evidence is submitted to the department.

(e) If, after providing notice under par. (c) 1. of its intent to destroy evidence, the department receives a written request for retention of the evidence, the department shall retain the evidence until the discharge date of the person who made the request or on whose behalf the request was made, subject to a court order issued under s. 974.07 (7), (9) (a), or (10) (a) 5., unless the court orders destruction or transfer of the evidence under s. 974.07 (9) (b) or (10) (a) 5.

(f) Unless otherwise provided in a court order issued under s. 974.07 (9) (a) or (b) or (10) (a) 5., nothing in this subsection prohibits the laboratories from returning evidence that must be preserved under par. (b) or (e) to the agency that submitted the evidence to the laboratories. If the laboratories return evidence that must be preserved under par. (b) or (e) to a submitting agency, any action taken by the agency with respect to the evidence shall be in accordance with s. 968.205.

History: 1981 c. 348; 1985 a. 29 ss. 2012, 3200 (35); 2001 a. 16; 2005 a. 60; 2011 a. 35.

165.82 Criminal history search fee. (1) Notwithstanding s. 19.35 (3), the department of justice shall impose the following fees, plus any surcharge required under sub. (1m), for criminal history searches for purposes unrelated to criminal justice or to s. 175.35, 175.49, or 175.60:

(am) For each record check, except a fingerprint card record check, $7.

(ar) For each fingerprint card record check requested by a governmental agency or nonprofit organization, $15.

(1m) The department of justice shall impose a $5 surcharge if a person requests a paper copy of the results of a criminal history search requested under sub. (1).

(2) The department of justice shall not impose fees for criminal history searches for purposes related to criminal justice.

History: 1987 a. 27; 1989 a. 122; 1991 a. 11; 1995 a. 27; 2003 a. 33; 2009 a. 28; 2011 a. 32, 35.

165.825 Information link; department of health services. The department of justice shall cooperate with the departments of safety and professional services and health services in developing and maintaining a computer linkup to provide access to the information obtained from a criminal history search.

History: 1997 a. 27; 2007 a. 20 s. 9121 (6) (a); 2011 a. 32.

165.827 Transaction information for the management of enforcement system; fees. The department of justice shall administer a transaction information for the management of enforcement system to provide access to information concerning law enforcement. The department of justice may impose fees on law enforcement agencies and tribal law enforcement agencies, as defined in s. 165.83 (1) (e), for rentals, use of terminals and related costs and services associated with the system. All moneys collected under this section shall be credited to the appropriation account under s. 20.455 (2) (h).

History: 1991 a. 39; 1993 a. 407; 1995 a. 27.

165.8285 Transaction information for management of enforcement system; department of corrections records. (1) The department of justice shall, through the transaction information for management of enforcement system, provide local law enforcement agencies with access to the registry of sex offenders maintained by the department of corrections under s. 301.45.

(2) The department of justice shall provide the department of corrections with access to the transaction information for management of enforcement system administrative message process.

(3) Beginning on July 9, 1996, the department of justice and the department of corrections shall cooperate in using the transaction information for management of enforcement system, and in developing or using any other computerized or direct electronic data transfer system, in anticipation of the transfer of the sex offender registry from the department of justice to the department of corrections under 1995 Wisconsin Act 440 and for the purpose of providing access to or disseminating information from the sex offender registry under s. 301.45.

History: 1995 a. 440.

165.8287 Transaction information for management of enforcement system; department of transportation photographs. (1) In this section:

(a) "Administration of criminal justice" has the meaning given in 28 CFR 20.3 (b).

(b) "Federal law enforcement agency" has the meaning given in s. 343.237 (1) (ag).

(c) "Law enforcement agency of another state" has the meaning given in s. 343.237 (1) (ar).

(d) "Wisconsin law enforcement agency" has the meaning given in s. 175.46 (1) (f).

(2) Upon electronic request, the department of transportation shall make available to the department of justice, in a digital format, any photograph taken of an applicant under s. 343.14 (3) or 343.50 (4) that is maintained by the department of transportation. Updated photographs shall be available to the department of justice within 30 days of photograph capture.

(3) (a) The department of justice shall, through the transaction information for the management of enforcement system or another similar system operated by the department of justice, provide Wisconsin law enforcement agencies, federal law enforcement agencies, and law enforcement agencies of other states with electronic access to any photograph specified in sub. (2) for the administration of criminal justice and for traffic enforcement. Access to these photographs shall be available electronically if the law enforcement agency submits an electronic request bearing an electronic certification or other indicator of authenticity. For an electronic request made by a law enforcement agency of another state, the electronic certification or other indicator of authenticity shall include an electronic signature or verification of the agency making the request and a certification that the request is made for the purpose of administration of criminal justice or traffic enforcement.

(b) Any photograph electronically available under this subsection shall contain the notation: "This photograph is subject to the requirements and restrictions of section 165.8287 of the Wisconsin Statutes. The photograph shall not be used for any purpose other than the administration of criminal justice or traffic enforcement. Secondary dissemination is prohibited and the photograph shall be destroyed when no longer necessary for the purpose requested. The photograph shall not be used as part of a photo lineup or photo array."

(c) The provisions of s. 343.237 (5), (8), (9), and (10) shall apply to any photograph obtained electronically by a law enforcement agency under this subsection. Any photograph obtained electronically by a law enforcement agency under this subsection may not be used for a photo lineup or photo array. For purposes of this paragraph, any photograph obtained electronically by a law enforcement agency under this subsection shall be considered a copy of a photograph obtained under s. 343.237 (3) or (4) with respect to s. 343.237 (5), (8), (9), and (10).

(d) The department of justice shall maintain a record, which may be electronic, of each request by a law enforcement agency for a photograph under this subsection and of the response to the request. Except as provided in s. 343.237 (9), the department of justice may not disclose any record or other information concerning or relating to the request to any person other than a court, district attorney, county corporation counsel, city, village, or town attorney, law enforcement agency, the applicant under s. 343.14 (3) or 343.50 (4), or, if the applicant is under 18 years of age, his or her parent or guardian. Records maintained under this paragraph shall be maintained for at least 12 months.

(e) The department of justice and the department of transportation shall ensure that, upon submission by law enforcement agencies of electronic requests meeting the requirements under this subsection, access to photographs under this subsection is promptly available to these requesting agencies.

History: 2009 a. 167.

165.83 Criminal identification, records and statistics.

(1) DEFINITIONS. As used in this section and s. 165.84:

(b) "Law enforcement agency" means a governmental unit of one or more persons employed full time by the state or a political subdivision of the state for the purpose of preventing and detecting crime and enforcing state laws or local ordinances, employees of which unit are authorized to make arrests for crimes while acting within the scope of their authority.

(c) "Offense" means any of the following:

1. An act that is committed by a person who has attained the age of 17 and that is a felony or a misdemeanor.

2. An act that is committed by a person who has attained the age of 10 but who has not attained the age of 17 and that would be a felony or misdemeanor if committed by an adult.

3. An act that is committed by any person and that is a violation of a city, county, village or town ordinance.

(d) "Reservation lands" has the meaning given in s. 165.92 (1) (a).

(e) "Tribal law enforcement agency" means any of the following:

1. An agency of a tribe that is established for the purpose of preventing and detecting crime on the reservation or trust lands of the tribe and enforcing the tribe's laws or ordinances, that employs full time one or more persons who are granted law enforcement and arrest powers under s. 165.92 (2) (a), and that was created by a tribe that agrees that its law enforcement agency will perform the duties required of the agency under this section and s. 165.84.

2. The Great Lakes Indian Fish and Wildlife Commission, if the Great Lakes Indian Fish and Wildlife Commission agrees to perform the duties required under this section and s. 165.84.

(f) "Tribe" has the meaning given in s. 165.92 (1) (c).

(g) "Trust lands" has the meaning given in s. 165.92 (1) (d).

(2) The department shall:

(a) Obtain and file fingerprints, descriptions, photographs and any other available identifying data on persons who have been arrested or taken into custody in this state:

1. For an offense which is a felony or which would be a felony if committed by an adult.

2. For an offense which is a misdemeanor, which would be a misdemeanor if committed by an adult or which is a violation of an ordinance, and the offense involves burglary tools, commercial gambling, dealing in gambling devices, contributing to the delinquency of a child, dealing in stolen property, controlled substances or controlled substance analogs under ch. 961, firearms, dangerous weapons, explosives, pandering, prostitution, sex offenses where children are victims, or worthless checks.

3. For an offense charged or alleged as disorderly conduct but which relates to an act connected with one or more of the offenses under subd. 2.

4. As a fugitive from justice.

5. For any other offense designated by the attorney general.

(b) Accept for filing fingerprints and other identifying data, taken at the discretion of the law enforcement or tribal law enforcement agency involved, on persons arrested or taken into custody for offenses other than those listed in par. (a).

(c) Obtain and file fingerprints and other available identifying data on unidentified human corpses found in this state.

(d) Obtain and file information relating to identifiable stolen or lost property.

(e) Obtain and file a copy or detailed description of each arrest warrant issued in this state for the offenses under par. (a) or s. 346.63 (1) or (5) but not served because the whereabouts of the person named on the warrant is unknown or because that person has left the state. All available identifying data shall be obtained with the copy of the warrant, including any information indicating that the person named on the warrant may be armed, dangerous or possessed of suicidal tendencies.

(f) Collect information concerning the legal action taken in connection with offenses committed in this state from the inception of the complaint to the final discharge of the defendant and such other information as may be useful in the study of crime and the administration of justice. The department may determine any other information to be obtained regarding crime records.

(g) Furnish all reporting officials with forms and instructions which specify in detail the nature of the information required under pars. (a) to (f) and any other matters which facilitate collection.

(h) Cooperate with and assist all law enforcement and tribal law enforcement agencies in the state in the establishment of a state system of criminal identification and in obtaining fingerprints and other identifying data on all persons described in pars. (a), (b) and (c).

(i) Offer assistance and, when practicable, instructions to all local and tribal law enforcement agencies in establishing efficient local and tribal bureaus of identification and records systems.

(j) Compare the fingerprints and descriptions that are received from law enforcement and tribal law enforcement agencies with the fingerprints and descriptions already on file and, if the person arrested or taken into custody is a fugitive from justice or has a criminal record, immediately notify the law enforcement and tribal law enforcement agencies concerned and supply copies of the criminal record to these agencies.

(k) Make available all statistical information obtained to the governor and the legislature.

(m) Prepare and publish reports and releases, at least once a year, containing the statistical information gathered under this section and presenting an accurate picture of the operation of the agencies of criminal justice.

(n) Make available upon request, to all local, state and tribal law enforcement agencies in this state, to all federal law enforcement and criminal identification agencies, and to state law enforcement and criminal identification agencies in other states, any information in the law enforcement files of the department which will aid these agencies in the performance of their official duties. For this purpose the department shall operate on a 24-hour a day basis, 7 days a week. The information may also be made available to any other agency of this state or political subdivision of this state, and to any other federal agency, upon assurance by the agency concerned that the information is to be used for official purposes only.

(p) Cooperate with other agencies of this state, tribal law enforcement agencies and the national crime information center systems of the F.B.I. in developing and conducting an interstate, national and international system of criminal identification, records and statistics.

History: 1971 c. 219; 1983 a. 27, 535; 1985 a. 29; 1993 a. 407; 1995 a. 448; 1997 a. 27; 2007 a. 27; 2009 a. 402.

NOTE: 1993 Wis. Act 407, which creates sub. (1) (d) to (g) and amends sub. (2), contains extensive explanatory notes.

Pursuant to sub. (2), identification records should be made by local law enforcement agencies of juveniles arrested or taken into custody for confidential reporting to the department of justice. 62 Atty. Gen. 45.

165.84 Cooperation in criminal identification, records and statistics. (1) All persons in charge of law enforcement and tribal law enforcement agencies shall obtain, or cause to be obtained, the fingerprints in duplicate, according to the fingerprint system of identification established by the director of the F.B.I., full face, profile and full length photographs, and other available identifying data, of each person arrested or taken into custody for an offense of a type designated in s. 165.83 (2) (a), of all persons arrested or taken into custody as fugitives from justice, and fingerprints in duplicate and other identifying data of all unidentified human corpses in their jurisdictions, but photographs need not be taken if it is known that photographs of the type listed, taken within the previous year, are on file at the department. Fingerprints and other identifying data of persons arrested or taken into custody for offenses other than those designated in s. 165.83 (2) (a) may be taken at the discretion of the law enforcement or tribal law enforcement agency concerned. Any person arrested or taken into custody and subsequently released without charge, or cleared of the offense through court proceedings, shall have any fingerprint record taken in connection therewith returned upon request.

(2) Fingerprints and other identifying data required to be taken under sub. (1) shall be forwarded to the department within 24 hours after taking for filing and classification, but the period of 24 hours may be extended to cover any intervening holiday or weekend. Photographs taken shall be forwarded at the discretion of the law enforcement or tribal law enforcement agency concerned, but, if not forwarded, the fingerprint record shall be marked "Photo available" and the photographs shall be forwarded subsequently if the department so requests.

(3) All persons in charge of law enforcement and tribal law enforcement agencies shall forward to the department copies or detailed descriptions of the arrest warrants and the identifying data described in s. 165.83 (2) (e) immediately upon determination of the fact that the warrant cannot be served for the reasons stated. If the warrant is subsequently served or withdrawn, the law enforcement or tribal law enforcement agency concerned must immediately notify the department of the service or withdrawal. In any case, the law enforcement or tribal law enforcement agency concerned must annually, no later than January 31 of each year, confirm to the department all arrest warrants of this type which continue to be outstanding.

(4) All persons in charge of state penal and correctional institutions shall obtain fingerprints, according to the fingerprint system of identification established by the director of the F.B.I., and full face and profile photographs of all persons received on commitment to these institutions. The prints and photographs so taken shall be forwarded to the department, together with any other identifying data requested, within 10 days after the arrival at the institution of the person committed. Full length photographs in release dress shall be taken immediately prior to the release of these persons from these institutions. Immediately after release, these photographs shall be forwarded to the department.

(5) All persons in charge of law enforcement and tribal law enforcement agencies, all clerks of court, all municipal judges where they have no clerks, all persons in charge of state and county penal and correctional institutions, and all persons in charge of state and county probation, extended supervision and parole offices, shall supply the department with the information described in s. 165.83 (2) (f) on the basis of the forms and instructions to be supplied by the department under s. 165.83 (2) (g).

(6) All persons in charge of law enforcement and tribal law enforcement agencies in this state shall furnish the department with any other identifying data required in accordance with guidelines established by the department. All law enforcement and tribal law enforcement agencies and penal and correctional institutions in this state having criminal identification files shall cooperate in providing to the department copies of such items in

these files as will aid in establishing the nucleus of the state criminal identification file.

History: 1977 c. 305 s. 64; 1985 a. 29; 1993 a. 407; 1997 a. 283.

165.85 Law enforcement standards board. (1) FINDINGS AND POLICY. The legislature finds that the administration of criminal justice is of statewide concern, and that law enforcement work is of vital importance to the health, safety, and welfare of the people of this state and is of such a nature as to require training, education, and the establishment of standards of a proper professional character. The public interest requires that these standards be established and that this training and education be made available to persons who seek to become law enforcement, tribal law enforcement, jail or juvenile detention officers, persons who are serving as these officers in a temporary or probationary capacity, and persons already in regular service.

(2) DEFINITIONS. In this section and in s. 165.86:

(ac) "Alzheimer's disease" has the meaning given in s. 46.87 (1) (a).

(ah) "Board" means the law enforcement standards board.

(bc) "Fiscal year" has the meaning given in s. 20.902.

(bg) "Jail" means a county jail, rehabilitation facility established by s. 59.53 (8) or county house of correction under s. 303.16.

(bn) "Jail officer" means any person employed by any political subdivision of the state for the purpose of supervising, controlling or maintaining a jail or the persons confined in a jail. "Jail officer" includes officers regardless of whether they have been sworn regarding their duties or whether they serve on a full-time basis.

(br) "Juvenile detention facility" has the meaning given in s. 48.02 (10r).

(bt) "Juvenile detention officer" means any person employed by any political subdivision of the state or by any private entity contracting under s. 938.222 to supervise, control, or maintain a juvenile detention facility or the persons confined in a juvenile detention facility. "Juvenile detention officer" includes officers regardless of whether they have been sworn regarding their duties or whether they serve on a full-time basis.

(c) "Law enforcement officer" means any person employed by the state or any political subdivision of the state, for the purpose of detecting and preventing crime and enforcing laws or ordinances and who is authorized to make arrests for violations of the laws or ordinances that the person is employed to enforce.

(d) "Political subdivision" means counties, cities, villages, towns, town sanitary districts and public inland lake protection and rehabilitation districts.

(g) "Tribal law enforcement officer" means any of the following:

1. A person who is employed by a tribe for the purpose of detecting and preventing crime and enforcing the tribe's laws or ordinances, who is authorized by the tribe to make arrests of Indian persons for violations of the tribe's laws or ordinances, and who agrees to accept the duties of law enforcement officers under the laws of this state.

2. A conservation warden employed by the Great Lakes Indian Fish and Wildlife Commission who agrees to accept the duties of law enforcement officers under the laws of this state.

(3) POWERS. The board may:

(a) Promulgate rules for the administration of this section including the authority to require the submission of reports and information pertaining to the administration of this section by law enforcement and tribal law enforcement agencies in this state.

(b) Establish minimum educational and training standards for admission to employment as a law enforcement or tribal law enforcement officer in permanent positions and in temporary, probationary or part-time status. Educational and training standards for tribal law enforcement officers under this paragraph shall be identical to standards for other law enforcement officers.

(c) Except as provided under sub. (3m) (a), certify persons as being qualified under this section to be law enforcement, tribal law enforcement, jail or juvenile detention officers. Prior to being certified under this paragraph, a tribal law enforcement officer shall agree to accept the duties of law enforcement officers under the laws of this state.

(cm) Decertify law enforcement, tribal law enforcement, jail or juvenile detention officers who terminate employment or are terminated, who violate or fail to comply with a rule or order of the board relating to curriculum or training, who fail to pay court-ordered payments of child or family support, maintenance, birth expenses, medical expenses, or other expenses related to the support of a child or former spouse, or who fail to comply, after appropriate notice, with a subpoena or warrant issued by the department of children and families or a county child support agency under s. 59.53 (5) and related to paternity or child support proceedings. The board shall establish procedures for decertification in compliance with ch. 227, except that decertification for failure to pay court-ordered payments of child or family support, maintenance, birth expenses, medical expenses, or other expenses related to the support of a child or former spouse or for failure to comply, after appropriate notice, with a subpoena or warrant issued by the department of children and families or a county child support agency under s. 59.53 (5) and related to paternity or child support proceedings shall be done as provided under sub. (3m) (a).

(d) Establish minimum curriculum requirements for preparatory courses and programs, and recommend minimum curriculum requirements for recertification and advanced courses and programs, in schools operated by or for this state or any political subdivision of the state for the specific purpose of training law enforcement recruits, law enforcement officers, tribal law enforcement recruits, tribal law enforcement officers, jail officer recruits, jail officers, juvenile detention officer recruits, or juvenile detention officers in areas of knowledge and ability necessary to the attainment of effective performance as an officer, and ranging from subjects such as first aid, patrolling, statutory authority, techniques of arrest, protocols for official action by off-duty officers, firearms, and recording custodial interrogations to subjects designed to provide a better understanding of ever-increasing complex problems in law enforcement such as human relations, civil rights, constitutional law, and supervision, control, and maintenance of a jail or juvenile detention facility. The board shall appoint a 13-member advisory curriculum committee consisting of 6 chiefs of police and 6 sheriffs to be appointed on a geographic basis of not more than one chief of police and one sheriff from

any one of the 8 state administrative districts together with the director of training of the Wisconsin state patrol. This committee shall advise the board in the establishment of the curriculum requirements.

(e) Consult and cooperate with counties, municipalities, agencies of this state, other governmental agencies and with universities, colleges, the technical college system board and other institutions concerning the development of law enforcement training schools, degree programs or specialized courses of instruction.

(g) Conduct and stimulate research which is designed to improve law enforcement administration and performance.

(h) Make recommendations concerning any matter within its purview.

(i) Make such evaluations as are necessary to determine if participating governmental units are complying with this section.

(j) Adopt rules under ch. 227 for its internal management, control and administration.

(3m) DUTIES RELATING TO SUPPORT ENFORCEMENT. The board shall do all of the following:

(a) As provided in a memorandum of understanding entered into with the department of children and families under s. 49.857, refuse certification to an individual who applies for certification under this section, refuse recertification to an individual certified under this section or decertify an individual certified under this section if the individual fails to pay court-ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse or if the individual fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of children and families or a county child support agency under s. 59.53 (5) and related to paternity or child support proceedings.

(b) 1. Request that an individual provide the board with his or her social security number when he or she applies for certification or recertification under this section. Except as provided in subd. 2., if an individual who is requested by the board to provide his or her social security number under this paragraph does not comply with the board's request, the board shall deny the individual's application for certification or recertification. The board may disclose a social security number provided by an individual under this paragraph only to the department of children and families as provided in a memorandum of understanding entered into with the department of children and families under s. 49.857.

2. As a condition of applying for certification or recertification, an individual who does not have a social security number shall submit a statement made or subscribed under oath or affirmation to the board that he or she does not have a social security number. The form of the statement shall be prescribed by the department of children and families. A certification or recertification issued in reliance on a false statement submitted under this subdivision is invalid.

(4) REQUIRED STANDARDS. (a) The following law enforcement and tribal law enforcement officers are not required to meet any requirement of pars. (b) 1. and (c) as a condition of tenure or continued employment. The failure of any such law enforcement or tribal law enforcement officer to fulfill those requirements does not make that officer ineligible for any promotional examination for which he or she is otherwise eligible. Those law enforcement and tribal law enforcement officers may voluntarily participate in this program.

1. Law enforcement and tribal law enforcement officers serving under permanent appointment prior to January 1, 1974.

2. Law enforcement and tribal law enforcement officers who are elected by popular vote.

(an) Except as provided in pars. (ap) and (ar), jail officers are required to meet the requirements of pars. (b) 2., (bn) 2. and (c) as a condition of tenure or continued employment regardless of the date of their appointment.

(ap) Jail officers serving under permanent appointment prior to July 2, 1983, are not required to meet any requirement of pars. (b) and (c) as a condition of tenure or continued employment as either a jail officer or a juvenile detention officer. The failure of any such officer to fulfill those requirements does not make that officer ineligible for any promotional examination for which he or she is otherwise eligible. Any such officer may voluntarily participate in programs to fulfill those requirements.

(ar) 1. A jail officer permanently appointed after July 1, 1983, and prior to July 1, 1988, including an officer who after July 1, 1983, and prior to July 1, 1988, completed a program of at least 80 hours of training that met the requirements of s. 165.85 (4) (b) 2., 1985 stats., shall meet the requirements under par. (b) 2. by June 30, 1993.

2. A jail officer who has completed at least 80 hours of preparatory training which met the requirements of s. 165.85 (4) (b) 2., 1985 stats., may meet the requirements of subd. 1. by completing a program of training approved by the board. The program shall devote at least 16 hours to methods of supervision of special needs inmates, including inmates who may be emotionally distressed, mentally ill, suicidal, developmentally disabled or alcohol or drug abusers.

(at) Any person certified as a jail officer on July 1, 1994, is certified as a juvenile detention officer and remains certified as a juvenile detention officer subject to annual recertification requirements under par. (bn) 3. and the board's decertification authority under sub. (3) (cm).

(b) 1. No person may be appointed as a law enforcement or tribal law enforcement officer, except on a temporary or probationary basis, unless the person has satisfactorily completed a preparatory program of law enforcement training approved by the board and has been certified by the board as being qualified to be a law enforcement or tribal law enforcement officer. The program shall include 400 hours of training, except the program for law enforcement officers who serve as rangers for the department of natural resources includes 240 hours of training. The board shall promulgate a rule under ch. 227 providing a specific curriculum for a 400-hour conventional program and a 240-hour ranger program. The period of temporary or probationary employment established at the time of initial employment shall not be extended by more than one year for an officer lacking the training qualifications required by the board. The total period during which a person may serve as a law enforcement and tribal law enforcement officer on a temporary or probationary basis without completing a preparatory program of law enforcement training approved by the board shall not exceed 2 years, except that the board shall

permit part-time law enforcement and tribal law enforcement officers to serve on a temporary or probationary basis without completing a program of law enforcement training approved by the board to a period not exceeding 3 years. For purposes of this section, a part-time law enforcement or tribal law enforcement officer is a law enforcement or tribal law enforcement officer who routinely works not more than one-half the normal annual work hours of a full-time employee of the employing agency or unit of government. Law enforcement training programs including municipal, county and state programs meeting standards of the board are acceptable as meeting these training requirements.

1d. Any training program developed under subd. 1. shall include all of the following:

a. An adequate amount of training to enable the person being trained to deal effectively with domestic abuse incidents, including training that addresses the emotional and psychological effect that domestic abuse has on victims.

b. Training on emergency detention standards and procedures under s. 51.15, emergency protective placement standards and procedures under s. 55.135, and information on mental health and developmental disabilities agencies and other resources that may be available to assist the officer in interpreting the emergency detention and emergency protective placement standards, making emergency detentions and emergency protective placements, and locating appropriate facilities for the emergency detentions and emergency protective placements of persons.

c. At least one hour of instruction on recognizing the symptoms of Alzheimer's disease or other related dementias and interacting with and assisting persons who have Alzheimer's disease or other related dementias.

d. Training on police pursuit standards, guidelines, and driving techniques established under par. (cm) 2. b.

e. Training on responding to an act of terrorism, as defined in s. 256.15 (1) (ag).

2. No person may be appointed as a jail officer, except on a temporary or probationary basis, unless the person has satisfactorily completed a preparatory program of jail officer training approved by the board and has been certified by the board as being qualified to be a jail officer. The program shall include at least 120 hours of training. The training program shall devote at least 16 hours to methods of supervision of special needs inmates, including inmates who may be emotionally distressed, mentally ill, suicidal, developmentally disabled or alcohol or drug abusers. The period of temporary or probationary employment established at the time of initial employment shall not be extended by more than one year for an officer lacking the training qualifications required by the board. Jail officer training programs including municipal, county and state programs meeting standards of the board shall be acceptable as meeting these training requirements.

3. No person may be appointed as a juvenile detention officer, except on a temporary or probationary basis, unless the person has satisfactorily completed a preparatory program of juvenile detention officer training approved by the board and has been certified by the board as being qualified to be a juvenile detention officer. The program shall include at least 120 hours of training. The training program shall devote at least 16 hours to methods of supervision of special needs inmates, including inmates who may be emotionally distressed, mentally ill, suicidal, developmentally disabled, or alcohol or drug abusers. The period of temporary or probationary employment established at the time of initial employment shall not be extended by more than one year for an officer lacking the training qualifications required by the board. Juvenile detention officer training programs including municipal, county, and state programs meeting standards of the board shall be acceptable as meeting these training requirements.

(bn) 1. No person other than an officer elected by popular vote may continue as a law enforcement or tribal law enforcement officer, except on a temporary or probationary basis, unless that person completes annual recertification training. Any officer elected by popular vote who is also a certified officer must complete annual recertification training to maintain certification. Any officer who is subject to this subdivision shall complete at least 24 hours each fiscal year beginning in the fiscal year following the fiscal year in which he or she complies with par. (b) 1.

1m. Each officer who is subject to subd. 1. shall biennially complete at least 4 hours of training from curricula based upon model standards promulgated by the board under par. (cm) 2. b. Hours of training completed under this subdivision shall count toward the hours of training required under subd. 1.

2. No person may continue as a jail officer, except on a temporary or probationary basis, unless that person completes annual recertification training. The officer shall complete at least 24 hours each fiscal year beginning in the later of the following:

a. Fiscal year 1990-91.

b. The fiscal year following the fiscal year in which he or she complies with par. (b) 2.

3. No person may continue as a juvenile detention officer, except on a temporary or probationary basis, unless that person completes annual recertification training. The officer shall complete at least 24 hours each fiscal year beginning in the later of the following:

a. Fiscal year 1993-94.

b. The fiscal year following the fiscal year in which he or she complies with par. (b) 3.

(c) In addition to the requirements of pars. (b) and (bn), the board may, by rule, fix such other minimum qualifications for the employment of law enforcement, tribal law enforcement, jail or juvenile detention officers as relate to the competence and reliability of persons to assume and discharge the responsibilities of law enforcement, tribal law enforcement, jail or juvenile detention officers, and the board shall prescribe the means for presenting evidence of fulfillment of these requirements.

(cm) 1. In this paragraph, "police pursuit" has the meaning given in s. 85.07 (8) (a).

2. The board shall promulgate rules that do all of the following:

a. Establish model standards that could be used by any law enforcement agency to determine whether to initiate or continue police pursuit, to establish police pursuit driving techniques employed by that agency and to inform its officers of its written guidelines provided under s. 346.03 (6). The board shall review and, if considered appropriate by the board, revise the model standards established under this subd. 2. a. not later than

June 30 of each even-numbered year thereafter. The rules promulgated under this subd. 2. a. are advisory only, are not required to be included as a law enforcement training standard under this subsection and are inadmissible as evidence, except to show compliance with this subd. 2. a.

b. Establish the preparatory program and annual recertification training curricula required under pars. (b) 1. and (bn) 1m., respectively, relating to police pursuit standards, guidelines and driving techniques.

(d) Except as provided under sub. (3m) (a), the board shall issue a certificate evidencing satisfaction of the requirements of pars. (b), (bn) and (c) to any applicant who presents such evidence, as is required by its rules, of satisfactory completion of requirements equivalent in content and quality to those fixed by the board under the board's authority as set out in pars. (b), (bn) and (c).

(dm) The board may provide, by rule, that parts of the jail officer preparatory training and the juvenile detention officer preparatory training are identical and count toward either training requirement.

(e) This section does not preclude any law enforcement or tribal law enforcement agency or sheriff from setting recruit training and employment standards which are higher than the minimum standards set by the board.

(f) Except as provided under sub. (3m) (a), and in addition to certification procedures under pars. (a) to (d), the board may certify any person as being a tribal law enforcement officer on the basis of the person's completion of the training requirements for law enforcement officer certification prior to May 6, 1994. The officer must also meet the agreement requirements under sub. (3) (c) prior to certification as a tribal law enforcement officer.

(4m) TRAINING FOR CONSTABLES. The board shall establish a separate training program for those constables who are not required to complete training under sub. (4). Except as provided in s. 60.22 (4), a constable may voluntarily participate in the program under this subsection. Expenses incurred for this program are subject to reimbursement under sub. (5).

(5) SCHOOLS AND PROGRAMS; GRANTS. (a) The board may authorize and approve law enforcement, jail or juvenile detention officer training programs conducted by an agency of a political subdivision or an agency of the state when their programs meet the standards required by the board. No authority granted in this paragraph extends to the board selecting a site for a state police, jail or juvenile detention officer academy and expending funds thereon without further legislation.

(b) The board shall authorize the reimbursement to each political subdivision of approved expenses incurred by officers who satisfactorily complete training at schools certified by the board. Reimbursement of these expenses for law enforcement officer, jail officer and juvenile detention officer preparatory training shall be for approved tuition, living, and travel expenses for the first 400 hours of law enforcement preparatory training and for the first 120 hours of jail or juvenile detention officer preparatory training. Reimbursement of approved expenses for completion of annual recertification training under sub. (4) (bn) shall include at least $160 per officer thereafter. Funds may also be distributed for attendance at other training programs and courses or for training services on a priority basis to be decided by the department of justice.

(c) The board may provide grants as a reimbursement for actual expenses incurred by state agencies or political subdivisions for providing training programs to officers from other jurisdictions within the state.

(d) Any state agency which receives reimbursement for salary and fringe benefit costs under this subsection shall treat the reimbursement as revenue and deposit any such reimbursement in the appropriate program revenue account or segregated fund. If there is no such appropriate account or fund, the reimbursement shall be deposited as general purpose revenue — earned.

(5x) Notwithstanding sub. (5), in each fiscal year, the department of justice shall determine the amount of additional costs, including but not limited to tuition, lodging, travel, meals, salaries and fringe benefits, to each political subdivision as a result of the enactment of 1993 Wisconsin Act 460. In each fiscal year, the department shall pay each political subdivision the amount determined under this subsection for that political subdivision from the appropriation under s. 20.455 (2) (am), subject to the limitations under s. 20.455 (2) (am).

(6) FINANCES. The board may accept for any of its purposes and functions under this section any and all donations, both real and personal, and grants of money from any governmental unit or public agency, or from any institution or person, and may receive and utilize the same. Any arrangements pursuant to this subsection shall be detailed in any report of the board submitted under s. 15.07 (6), which shall include the identity of the donor, the nature of the transaction, and the conditions, if any.

History: 1973 c. 90, 333; 1975 c. 94 s. 91 (11); 1977 c. 29, 418; 1979 c. 111; 1981 c. 20; 1983 a. 27; 1985 a. 29, 260; 1987 a. 237, 366, 394; 1989 a. 31, 291; 1991 a. 39; 1993 a. 16, 167, 213, 399, 407, 460, 482, 491; 1995 a. 201, 225, 349; 1997 a. 27, 88, 191; 1999 a. 9; 2001 a. 16, 109; 2005 a. 60, 264, 344, 414; 2007 a. 20, 27, 97, 130; 2009 a. 28, 180; 2011 a. 29.

NOTE: 1993 Wis. Act 407, which creates subs. (2) (e) and (4) (f) and amends subs. (1), (3) and (4), contains extensive explanatory notes.

Cross-reference: See also ch. LES 1, Wis. adm. code.

A rule adopted under this section properly barred a nonpardoned felon from holding a police job. Law Enforcement Standards Board v. Lyndon Station, 101 Wis. 2d 472, 305 N.W.2d 89 (1981).

Sub. (4) (b) governs the terms of employment of a probationary sheriff's deputy so that the discipline procedures under s. 59.21 (8) (b) (now s. 59.28 (8) (b)) do not apply and an applicable collective bargaining agreement controls. Hussey v. Outagamie County, 201 Wis. 2d 14, 548 N.W.2d 848 (Ct. App. 1996), 95-2948.

A police officer promoted to sergeant, subject to a one-year period of probation, could not be demoted without a just cause hearing under s. 62.13 (5) (em). An original appointment is on a probationary basis under sub. (4) (b). Once that period has passed, no promotion can be taken away without a hearing under s. 62.13 (5) (em). Antisdel v. City of Oak Creek Police and Fire Commission, 2000 WI 35, 234 Wis. 2d 154, 609 N.W.2d 464, 97-3818.

Sub. (4) (b) 2. does not preclude temporary assignment of uncertified persons to fill in as jail officers when necessary as a result of sickness, vacations, or scheduling conflicts. 78 Atty. Gen. 146.

Chief of police was entitled to hearing meeting due process requirements prior to discharge from office. Jessen v. Village of Lyndon Station, 519 F. Supp. 1183 (1981).

A probationary police officer had no protected property interest in his job. Ratliff v. City of Milwaukee, 608 F. Supp. 1109 (1985).

165.86 Law enforcement training. The department shall:

(1) (a) Supply the staffing needs of the law enforcement standards board.

(b) Identify state agencies and political subdivisions that employ law enforcement officers in the state, notify the

appropriate officials of the standards of employment and preparatory and recertification training established by the board, and develop appropriate procedures whereby acceptable evidence of compliance with the board's employment and preparatory and recertification training standards may be submitted.

(c) Identify state agencies and political subdivisions that employ law enforcement officers in the state and notify the appropriate officials of the model law enforcement pursuit standards established by the board under s. 165.85 (4) (cm) 2. a.

(2) (a) Identify and coordinate all preparatory and recertification training activities in law enforcement in the state, and expand the coordinated program to the extent necessary to supply the training required for all recruits in the state under the preparatory training standards and time limits set by the board and for law enforcement officers, jail officers and juvenile detention officers in this state.

(b) Organize a program of training, which shall encourage utilization of existing facilities and programs through cooperation with federal, state, and local agencies and institutions presently active in this field. Priority shall be given to the establishment of the statewide preparatory and recertification training programs described in sub. (1), but the department shall cooperate in the creation and operation of other advanced and special courses, including courses relating to emergency detention of persons under s. 51.15 and emergency protective placement under s. 55.135, that meet the curriculum standards recommended by the board. The department may satisfy the requirement for cooperating in the development of special courses relating to emergency detention and emergency protective placement by cooperating with county departments of community programs in the development of these courses under s. 51.42 (3) (ar) 4. d. The department shall keep appropriate records of all such training courses given in the state and the results thereof in terms of persons attending, agencies represented, and, where applicable, individual grades given.

History: 1985 a. 29; 1987 a. 366; 1989 a. 31; 1993 a. 460; 1997 a. 88; 2005 a. 264; 2007 a. 97.

165.89 Grants to certain counties for law enforcement programs. (1) From the appropriation under s. 20.455 (2) (kq), the department shall provide grants to counties to fund county law enforcement services. The department may make a grant to a county under this section only if all of the following apply:

(a) The county borders one or more federally recognized Indian reservations.

(b) The county has not established a cooperative county-tribal law enforcement program under s. 165.90 with each federally recognized Indian tribe or band that has a reservation bordering the county.

(c) The county demonstrates a need for the law enforcement services to be funded with the grant.

(d) The county submits an application for a grant and a proposed plan that shows how the county will use the grant moneys to fund law enforcement services.

(2) The department shall review an application and plan submitted under sub. (1) (d) to determine if the application and plan meet the requirements of sub. (1) (a) to (c) and the criteria established under sub. (3). The department may not award an annual grant in excess of $50,000 to any county under this section.

(3) The department shall develop criteria and procedures for use in administering this section. Notwithstanding s. 227.10 (1), the criteria and procedures need not be promulgated as rules under ch. 227.

(4) Notwithstanding subs. (1) and (2) and any criteria and procedures developed under sub. (3), the department shall allocate $300,000 to Forest County each fiscal year from the appropriation account under s. 20.455 (2) (kq) to fund law enforcement services.

History: 2005 a. 25 ss. 88b, 2086s; Stats. 2005 s. 165.89.

165.90 County-tribal law enforcement programs. (1) Any county that has one or more federally recognized Indian reservations within or partially within its boundaries may enter into an agreement in accordance with s. 59.54 (12) with an Indian tribe located in the county to establish a cooperative county-tribal law enforcement program. To be eligible to receive aid under this section, a county and tribe shall develop and annually submit a joint program plan, by December 1 of the year prior to the year for which funding is sought, to the department of justice for approval. If funding is sought for the 2nd or any subsequent year of the program, the county and tribe shall submit the report required under sub. (4) (b) together with the plan.

(2) The joint program plan shall identify all of the following:

(a) A description of the proposed cooperative county-tribal law enforcement program for which funding is sought, including information on the population and geographic area or areas to be served by the program.

(b) The program's need for funding under this section and the amount of funding requested.

(c) The governmental unit that shall receive and administer aid and the method by which aid shall be disbursed. The joint program plan shall specify that either the tribe or the county shall receive and administer the full amount of the aid or that the tribe and the county each shall receive and administer specified portions of the aid.

(d) The types of law enforcement services to be performed on the reservation and the persons who shall perform those services.

(e) The person who shall exercise daily supervision and control over law enforcement officers participating in the program.

(f) The method by which county and tribal input into program planning and implementation shall be assured.

(g) The program's policies regarding deputization, training and insurance of law enforcement officers.

(h) The record-keeping procedures and types of data to be collected by the program.

(i) Any other information required by the department or deemed relevant by the county and tribe submitting the plan.

(3) Upon request, the department shall provide technical assistance to a county and tribe in formulating a joint program plan.

(3m) In determining whether to approve a program plan and, if approved, how much aid the program shall receive, the department shall consider the following factors:

(a) The population of the reservation area to be served by the program.

(b) The complexity of the law enforcement problems that the program proposes to address.

(c) The range of services that the program proposes to provide.

(4) If the department approves a plan, the department shall certify the program as eligible to receive aid under s. 20.455 (2) (kt). Prior to January 15 of the year for which funding is sought, the department shall distribute from the appropriations under s. 20.455 (2) (kt) to each eligible program the amount necessary to implement the plan. The department shall distribute the aid to the county, the tribe, or both, as specified in the joint program plan. Distribution of aid is subject to the following limitations:

(a) A program may use funds received under s. 20.455 (2) (kt) only for law enforcement operations.

(b) A program shall, prior to the receipt of funds under s. 20.455 (2) (kt) for the 2nd and any subsequent year, submit a report to the department regarding the performance of law enforcement activities on the reservation in the previous fiscal year.

(5) Annually, on or before January 15, the department shall report on the performance of cooperative county-tribal law enforcement programs receiving aid under this section to each of the following:

(a) The chief clerk of each house of the legislature for distribution to the legislature under s. 13.172 (2).

(b) The governor.

(c) The special committee on state-tribal relations under s. 13.83 (3).

History: 1983 a. 523; 1987 a. 326; 1989 a. 31; 1995 a. 201; 1999 a. 9, 60; 2009 a. 74.

165.91 Grants to tribes for law enforcement programs. (1) In this section, "tribe" means a federally recognized American Indian tribe or band in this state.

(2) (a) From the appropriation under s. 20.455 (2) (kw), the department shall provide grants to tribes to fund tribal law enforcement operations. To be eligible for a grant under this subsection, a tribe must submit an application for a grant to the department that includes a proposed plan for expenditure of the grant moneys. The department shall review any application and plan submitted to determine whether that application and plan meet the criteria established under par. (b). The department shall review the use of grant money provided under this subsection to ensure that the money is used according to the approved plan.

(b) The department shall develop criteria and procedures for use in administering this subsection. The department may not consider the grant under sub. (4) when determining grant awards under this subsection. Notwithstanding s. 227.10 (1), the criteria and procedures need not be promulgated as rules under ch. 227.

(4) From the appropriation under s. 20.455 (2) (kw) the department shall annually award the Lac Courte Oreilles band of Lake Superior Chippewa Indians $80,000 for tribal law enforcement services.

History: 2005 a. 25 ss. 87t to 87v, 2088m; Stats. 2005 s. 165.91; 2007 a. 20.

165.92 Tribal law enforcement officers; powers and duties. (1) DEFINITIONS. In this section:

(a) "Reservation lands" means all lands within the exterior boundaries of an Indian reservation in this state.

(b) "Tribal law enforcement officer" means a person who is employed by a tribe for the purpose of detecting and preventing crime and enforcing the tribe's laws or ordinances and who is authorized by the tribe to make arrests of Indian persons for violations of the tribe's laws or ordinances.

(c) "Tribe" means a federally recognized Indian tribe or band in this state.

(d) "Trust lands" means any lands in this state held in trust by the United States government for the benefit of a tribe or a member of a tribe.

(2) POWERS AND DUTIES. (a) A tribal law enforcement officer who meets the requirements of s. 165.85 (4) (b) 1., (bn) 1. and (c) shall have the same powers to enforce the laws of the state and to make arrests for violations of such laws that sheriffs have, including powers granted to sheriffs under ss. 59.27 and 59.28 and under the common law, and shall perform the duties accepted under s. 165.85 (3) (c).

(b) Except as provided in par. (c) and s. 175.40, the powers and duties described under par. (a) may be exercised or performed by a tribal law enforcement officer only on the reservation of the tribe or on trust lands held for the tribe or for a member of the tribe that employs the officer.

(c) Any tribal law enforcement officer making an arrest under the authority of this subsection may transport the arrested person to the jail or other detention facility of the county in which the arrest took place or to another jail or detention facility agreed upon by the tribe and the county in which the arrest took place.

(3) LIABILITY. Except as provided in s. 175.40 (6m) (c) 1. and unless otherwise provided in a joint program plan under s. 165.90 (2) or an agreement between a political subdivision of this state and a tribe, the tribe that employs a tribal law enforcement officer is liable for all acts and omissions of the officer while acting within the scope of his or her employment, and neither the state nor any political subdivision of the state may be held liable for any action of the officer taken under the authority of sub. (2).

(3m) REQUIREMENTS. No tribal law enforcement officer may exercise or perform the powers or duties described under sub. (2) (a) unless all of the following apply:

(a) One of the following:

1. The governing body of the tribe that employs the officer adopts and has in effect a resolution that includes a statement that the tribe waives its sovereign immunity to the extent necessary to allow the enforcement in the courts of this state of its liability under sub. (3) or another resolution that the department of justice determines will reasonably allow the enforcement in the courts of this state of the tribe's liability under sub. (3).

2. The tribe or tribal law enforcement agency that employs the officer maintains liability insurance that does all of the following:

a. Covers the tribal law enforcement agency for its liability under sub. (2) and s. 66.0513.

b. Has a limit of coverage not less than $2,000,000 for any occurrence.

c. Provides that the insurer, in defending a claim against the policy, may not raise the defense of sovereign immunity of the insured up to the limits of the policy.

(b) The tribe or tribal law enforcement agency that employs the officer has provided to the department of justice a copy of the resolution under par. (a) 1. or proof of insurance under par. (a) 2., and the department of justice has posted either a copy of the document or notice of the document on the Internet site it maintains for exchanging information with law enforcement agencies.

(4) DEPUTIZATION BY SHERIFF. Nothing in this section limits the authority of a county sheriff to depute a tribal law enforcement officer under s. 59.26 (5), including the authority to grant law enforcement and arrest powers outside the territory described in sub. (2) (b). Deputization of a tribal law enforcement officer by a sheriff shall not limit the powers and duties granted to the officer by sub. (2).

History: 1993 a. 407; 1995 a. 201; 2009 a. 232.

NOTE: 1993 Wis. Act 407, which creates this section, contains extensive explanatory notes.

165.93 Sexual assault victim services; grants. (1) DEFINITIONS. In this section:

(a) "Department" means the department of justice.

(b) "Sexual assault" means conduct that is in violation of s. 940.225, 948.02, 948.025, 948.03, 948.055, 948.06, 948.07, 948.08, 948.085, 948.09 or 948.10.

(e) "Victim" means an individual who has been sexually assaulted, regardless of whether the sexual assault has been reported to any governmental agency.

(2) GRANTS. (a) Beginning on January 1, 1995, the department shall provide grants to eligible organizations from the appropriation under s. 20.455 (5) (gc) to provide services for sexual assault victims.

(b) An organization is eligible to apply for and receive a grant under this section if the organization meets all of the following criteria:

1. The organization is a nonprofit corporation or a public agency.

2. The organization provides or proposes to provide, either directly or through a contract, subcontract, service agreement or collaborative agreement with other organizations, entities or individuals, all of the following for sexual assault victims:

a. Advocacy and counseling services.

b. Crisis telephone line services on a 24 hours per day and 7 days per week basis.

c. Professional education about intervention for sexual assault victims and community education programs for the prevention of sexual assault.

d. Services for persons living in rural areas, men, children, elderly persons, physically disabled persons, minority groups and other groups of victims that have special needs. This subdivision does not require the applicant to provide services to any group of persons that does not reside in the applicant's service area.

3. The organization does not receive more than 70% of its operating budget from grants under this section.

4. The organization does not provide all of its services under subd. 2. a. to d. by contract, subcontract, service agreement or collaborative agreement with other organizations, entities or individuals.

(c) Whenever the department reviews applications for grants under this section, the department shall consider all of the following:

1. The need for sexual assault victim services in the community in which the applicant provides services or proposes to provide services.

2. The degree to which the applicant's services or proposed services are coordinated with other resources in the community and state.

3. The needs of urban and rural communities.

4. The needs of existing and proposed programs and services.

(3) REPORTING REQUIREMENTS. An organization that receives a grant under this section shall report all of the following information to the department for each fiscal year covered by the grant:

(a) The total expenditures that the organization made on sexual assault victim services in the period for which the grant was provided during that fiscal year.

(b) The number of persons served by general type of sexual assault victim services provided in the period for which the grant was provided during that fiscal year. The department shall identify for organizations the general types of sexual assault services provided.

(c) The number of persons who requested sexual assault victim services in the period for which the grant was provided during that fiscal year but who did not receive the sexual assault victim services that they requested.

(4) LIST OF ELIGIBLE ORGANIZATIONS. The department shall certify to the government accountability board, on a continuous basis, a list containing the name and address of each organization that is eligible to receive grants under sub. (2).

History: 1993 a. 16, 227; 1995 a. 225; 2005 a. 253, 277, 278; 2007 a. 1.

165.982 Weed and seed project grants. (1) The department of justice may award grants from the appropriation under s. 20.455 (2) (dg) to any eligible city whose plan for the expenditure of funds is approved. The grant shall be used to carry out a comprehensive, multi-agency "weed and seed" project to restore safety and vitality to a targeted neighborhood that suffers from high levels of violent and drug-related crime. The grant moneys that a city receives under this section may not supplant existing local resources. A plan submitted for approval shall specify a strategy to achieve the goals of the grant and must include a concerted law enforcement effort to curb drug trafficking and related crime, a decentralized law enforcement and crime prevention effort in a targeted neighborhood, and a coordinated, community-based effort to strengthen the neighborhood's social base and revitalize the neighborhood. The department of justice, with the concurrence of the department of health services, shall develop criteria which, notwithstanding s. 227.10 (1), need not be promulgated as rules under ch. 227, for use in awarding grants under this section. The department of justice and department of health services shall jointly review any proposed plan and approve those plans that meet the criteria.

(2) To be eligible for the grant, a plan shall include all of the following:

(a) Oversight of the project by the mayor's office or by a steering committee appointed by the mayor.

(b) Written support by the chief of police and the superintendent of the school district.

(c) A law enforcement coordinating committee and a neighborhood revitalization coordinating committee to plan and implement project activities.

(3) The proposed site for the use of a grant shall be an identifiable neighborhood with high violent crime and drug arrest rates. The neighborhood shall have experience in neighborhood planning and organizing or, in lieu thereof, evidence shall be provided that such planning and organizing efforts would be supported by, and would be effective in, the neighborhood.

(4) Grant recipients shall provide a 25% match in funds or in-kind services. Grants shall be awarded for 3-year periods.

(5) The department of justice and the department of health services shall provide training and technical assistance to grant recipients. Both departments shall work with the steering committees and coordinating committees of the projects and participate in planning and implementing project initiatives as appropriate.

(6) A city shall submit a proposed plan for a grant under this section so that the plan is received by the department of justice on or before July 15, 1994.

History: 1993 a. 193; 1995 a. 27 s. 9126 (19); 2007 a. 20 s. 9121 (6) (a).

165.983 Law enforcement technology grants. The department of justice shall establish policies and procedures for the distribution of grants from the appropriation under s. 20.455 (2) (dg) to law enforcement agencies in cities with high levels of violent and drug-related crime to acquire law enforcement technology. Notwithstanding s. 227.10 (1), the department need not promulgate the required policies and procedures as rules under ch. 227. A law enforcement agency receiving a grant under this section shall provide matching funds equal to 50% of the grant awarded. The grant shall be used to acquire technology that is innovative to the applicant law enforcement agency and consistent with the technology, resources and operational procedures of the applicant law enforcement agency. A grant may not be used for the expansion or replacement of existing equipment or facilities. A law enforcement agency may apply to the department for a grant under this section and shall include a proposed plan of expenditure of the grant moneys. The department shall review each application and plan and may provide a grant to an eligible law enforcement agency.

History: 1993 a. 193.

165.984 Community policing. The department of justice shall establish policies and procedures for the distribution of grants from the appropriation under s. 20.455 (2) (dq) to the city of Milwaukee for activities related to decentralized law enforcement and crime prevention in targeted neighborhoods that suffer from high levels of violent and drug-related crime. Notwithstanding s. 227.10 (1), the department need not promulgate the required policies and procedures as rules under ch. 227. The city of Milwaukee may apply to the department for a grant under this section and shall include a proposed plan of expenditure of the grant moneys. The department shall review the application and plan and shall provide the grant to the city of Milwaukee if the application and plan meet the requirements under this section.

History: 1993 a. 193.

CHAPTER 167

SAFEGUARDS OF PERSONS AND PROPERTY

167.10 Regulation of fireworks. (1) DEFINITION. In this section, "fireworks" means anything manufactured, processed or packaged for exploding, emitting sparks or combustion which does not have another common use, but does not include any of the following:

(a) Fuel or a lubricant.

(b) A firearm cartridge or shotgun shell.

(c) A flare used or possessed or sold for use as a signal in an emergency or in the operation of a railway, aircraft, watercraft or motor vehicle.

(d) A match, cigarette lighter, stove, furnace, candle, lantern or space heater.

(e) A cap containing not more than one-quarter grain of explosive mixture, if the cap is used or possessed or sold for use in a device which prevents direct bodily contact with a cap when it is in place for explosion.

(f) A toy snake which contains no mercury.

(g) A model rocket engine.

(h) Tobacco and a tobacco product.

(i) A sparkler on a wire or wood stick not exceeding 36 inches in length that is designed to produce audible or visible effects or to produce audible and visible effects.

(j) A device designed to spray out paper confetti or streamers and which contains less than one-quarter grain of explosive mixture.

(k) A fuseless device that is designed to produce audible or visible effects or audible and visible effects, and that contains less than one-quarter grain of explosive mixture.

(L) A device that is designed primarily to burn pyrotechnic smoke-producing mixtures, at a controlled rate, and that produces audible or visible effects, or audible and visible effects.

(m) A cylindrical fountain that consists of one or more tubes and that is classified by the federal department of transportation as a Division 1.4 explosive, as defined in 49 CFR 173.50.

(n) A cone fountain that is classified by the federal department of transportation as a Division 1.4 explosive, as defined in 49 CFR 173.50.

(p) A novelty device that spins or moves on the ground.

(2) SALE. No person may sell or possess with intent to sell fireworks, unless any of the following apply:

(a) The person sells the fireworks, or possesses the fireworks with intent to sell them, to a person holding a permit under sub. (3) (c).

(b) The person sells the fireworks, or possesses the fireworks with intent to sell them, to a city, village or town.

(bg) The person sells the fireworks, or possesses the fireworks with intent to sell them, to a person who is not a resident of this state.

(c) The person sells the fireworks, or possesses the fireworks with intent to sell them, for a purpose specified under sub. (3) (b) 2. to 6.

(3) USE. (a) No person may possess or use fireworks without a user's permit from the mayor of the city, president of the village or chairperson of the town in which the possession or use is to occur or from a person designated by the mayor, president or chairperson to issue a user's permit. No person may use fireworks or a device listed under sub. (1) (e) to (g) or (i) to (n) while attending a fireworks display for which a permit has been issued to a person listed under par. (c) 1. to 5. or under par. (c) 6. if the display is open to the general public.

(b) Paragraph (a) does not apply to:

1. The city, village or town, but municipal fire and law enforcement officials shall be notified of the proposed use of fireworks at least 2 days in advance.

2. The possession or use of explosives in accordance with rules or general orders of the department of safety and professional services.

3. The disposal of hazardous substances in accordance with rules adopted by the department of natural resources.

4. The possession or use of explosive or combustible materials in any manufacturing process.

5. The possession or use of explosive or combustible materials in connection with classes conducted by educational institutions.

6. A possessor or manufacturer of explosives in possession of a license or permit under 18 USC 841 to 848 if the possession of the fireworks is authorized under the license or permit.

7. Except as provided in par. (bm), the possession of fireworks in any city, town or village while transporting the fireworks to a city, town or village where the possession of the fireworks is authorized by permit or ordinance.

(bm) Paragraph (a) applies to a person transporting fireworks under par. (b) 7. if, in the course of transporting the fireworks through a city, town or village, the person remains in that city, town or village for a period of at least 12 hours.

(c) A permit under this subsection may be issued only to the following persons:

1. A public authority.
2. A fair association.
3. An amusement park.
4. A park board.
5. A civic organization.
6. Any individual or group of individuals.

7. An agricultural producer for the protection of crops from predatory birds or animals.

(d) A person issued a permit for crop protection shall erect appropriate warning signs disclosing the use of fireworks for crop protection.

(e) The person issuing a permit under this subsection may require an indemnity bond with good and sufficient sureties or policy of liability insurance for the payment of all claims that may arise by reason of injuries to person or property from the handling, use or discharge of fireworks under the permit. The bond or policy, if required, shall be taken in the name of the city, village or town wherein the fireworks are to be used, and any person injured thereby may bring an action on the bond or policy in the person's own name to recover the damage the person has sustained, but the aggregate liability of the surety or insurer to all persons shall not exceed the amount of the bond or policy. The bond or policy, if required, together with a copy of the permit shall be filed in the office of the clerk of the city, village or town.

(f) A permit under this subsection shall specify all of the following:

1. The name and address of the permit holder.

2. The date on and after which fireworks may be purchased.

3. The general kind and approximate quantity of fireworks which may be purchased.

4. The date and location of permitted use.

5. Other special conditions prescribed by ordinance.

(fm) If a city, village, or town requires that a user's permit be signed or stamped, a person who is authorized to issue the permit under par. (a) may sign or stamp the permit before the permit is issued rather than signing or stamping the permit at the time that it is issued.

(g) A copy of a permit under this subsection shall be given to the municipal fire or law enforcement official at least 2 days before the date of authorized use. This paragraph does not apply to a permit authorizing only the sale or possession of fireworks that are classified by the federal department of transportation as Division 1.4 explosives, as defined in 49 CFR 173.50.

(h) A permit under this subsection may not be issued to a minor.

(4) OUT-OF-STATE AND IN-STATE SHIPPING. This section does not prohibit a vendor from selling fireworks to a nonresident person or to a person or group granted a permit under sub. (3) (c) 1. to 7. A vendor that ships fireworks sold under this subsection shall package and ship the fireworks in accordance with applicable state and federal law.

(5) LOCAL REGULATION. (a) Subject to pars. (b) to (e), a city, village, town or county may enact an ordinance for any of the following:

1. Defining "fireworks" to include all items included under sub. (1) (intro.) and anything under sub. (1) (e), (f), (i), (j), (k), (L), (m) and (n).

2. Prohibiting the sale, possession or use, as defined by ordinance, of fireworks.

3. Regulating the sale, possession or use, as defined by ordinance, of fireworks.

(b) An ordinance under par. (a) may not be less restrictive in its coverage, prohibition or regulation than this section but may be more restrictive than this section.

(d) A county ordinance enacted under par. (a) does not apply and may not be enforced within any city, village or town that has enacted or enacts an ordinance under par. (a).

(e) Notwithstanding par. (a) or par. (b), no city, village, town or county may enact an ordinance that prohibits the possession of fireworks in that city, town, village or county while transporting the fireworks to a city, town, village or county where the possession of the fireworks is authorized by permit or ordinance.

(6) STORAGE AND HANDLING. (a) No wholesaler, dealer or jobber may store or handle fireworks in premises unless the premises are equipped with fire extinguishers approved by the fire official of the municipality where the premises are located.

(b) No person may smoke where fireworks are stored or handled.

(c) A person who stores or handles fireworks shall notify the fire official of the municipality in which the fireworks are stored or handled of the location of the fireworks.

(d) No wholesaler, dealer or jobber may store fireworks within 50 feet of a dwelling.

(e) No person may store fireworks within 50 feet of a public assemblage or place where gasoline or volatile liquid is dispensed in quantities exceeding one gallon.

(6m) LICENSING AND INSPECTING MANUFACTURERS. (a) No person may manufacture in this state fireworks or a device listed under sub. (1) (e), (f) or (i) to (n) without a fireworks manufacturing license issued by the department of safety and professional services under par. (d).

(b) No person may manufacture in this state fireworks or a device listed under sub. (1) (e), (f) or (i) to (n) unless the person complies with the rules of the department of safety and professional services promulgated under par. (e).

(c) Any person who manufactures in this state fireworks or a device listed under sub. (1) (e), (f) or (i) to (n) shall provide the department of safety and professional services with a copy of each federal license issued under 18 USC 843 to that person.

(d) The department of safety and professional services shall issue a license to manufacture fireworks or devices listed under sub. (1) (e), (f) or (i) to (n) to a person who complies with the rules of the department promulgated under par. (e). The department may not issue a license to a person who does not comply with the rules promulgated under par. (e). The department may revoke a license under this subsection for the refusal to permit an inspection at reasonable times by the department or for a continuing violation of the rules promulgated under par. (e).

(e) The department of safety and professional services shall promulgate rules to establish safety standards for the manufacture in this state of fireworks and devices listed under sub. (1) (e), (f) or (i) to (n).

(f) The department of safety and professional services may inspect at reasonable times the premises on which each person licensed under this subsection manufactures fireworks or devices listed under sub. (1) (e), (f) or (i) to (n).

(7) PARENTAL LIABILITY. A parent, foster parent, family-operated group home parent, or legal guardian of a

minor who consents to the use of fireworks by the minor is liable for damages caused by the minor's use of the fireworks.

(7m) MUNICIPAL LIABILITY. No city, village, or town, or committee, official, or employee of a city, village, or town, is civilly liable for damage to any person or property caused by fireworks for the sole reason that the city, village, or town issued a permit in accordance with the requirements of sub. (3) and any applicable requirements authorized under sub. (5), that authorized the purchase, possession, or use of the fireworks.

(8) ENFORCEMENT. (a) A city, village or town may petition the circuit court for an order enjoining violations of sub. (2), (3) or (6) or an ordinance adopted under sub. (5).

(b) Fireworks stored, handled, sold, possessed or used by a person who violates this section, an ordinance adopted under sub. (5) or a court order under par. (a) may be seized and held as evidence of the violation. Except as provided in s. 968.20 (4), only the fireworks that are the subject of a violation of this section, an ordinance adopted under sub. (5) or a court order under par. (a) may be destroyed after conviction for a violation. Except as provided in s. 968.20 (4), fireworks that are seized as evidence of a violation for which no conviction results shall be returned to the owner in the same condition as they were when seized to the extent practicable.

(9) PENALTIES. (a) A person who violates a court order under sub. (8) (a) shall be fined not more than $10,000 or imprisoned not more than 9 months or both.

(b) A person who violates sub. (2), (3) or (6) or an ordinance adopted under sub. (5) shall forfeit not more than $1,000.

(c) A parent or legal guardian of a minor who consents to the use of fireworks by the minor shall forfeit not more than $1,000.

(g) Whoever violates sub. (6m) (a), (b) or (c) or a rule promulgated under sub. (6m) (e) is guilty of a Class G felony.

History: 1977 c. 260; 1983 a. 446, 538; 1985 a. 135; 1987 a. 377; 1987 a. 403 s. 256; 1989 a. 31; 1989 a. 56 s. 258; 1993 a. 208, 446, 491; 1995 a. 27 ss. 4464 to 4469 and 9116 (5); 1995 a. 330; 1997 a. 3, 35, 283; 2001 a. 109; 2003 a. 298; 2007 a. 20; 2009 a. 28; 2011 a. 32.

NOTE: 2003 Wis. Act 298, which created sub. (7m), contains explanatory notes.

Cross-reference: See also ss. SPS 305.21, 307.50, and 307.51, Wis. adm. code.

Sub. (4) may be violated in 3 ways: 1) the improper delivery of fireworks legitimately sold at wholesale; 2) the sale of fireworks at retail; or 3) both. Wholesale under sub. (4) is defined as the sale of goods in quantity for resale. State v. Seigel, 163 Wis. 2d 871, 472 N.W.2d 584 (Ct. App. 1991).

A fireworks purchaser must have a federal license, hold a valid permit under this section or be a municipality. There is no exception from this requirement because the seller holds a federal license. City of Wisconsin Dells v. Dells Fireworks, Inc. 197 Wis. 2d 1, 539 N.W.2d 916 (Ct. App. 1995).

Fireworks permits issued to groups do not authorize sales of fireworks to group members for their individual use. City of Wisconsin Dells v. Dells Fireworks, Inc. 197 Wis. 2d 1, 539 N.W.2d 916 (Ct. App. 1995), 94-1999.

Sub. (4) allows sales to purchasers physically outside of the state's boundaries but does not permit sales within the state's boundaries to nonresidents. Sub. (4) permits the purchase of restricted fireworks within the state only by purchasers with a permit or who fit within a specified exception under sub. (2). State v. Victory Fireworks, Inc. 230 Wis. 2d 721, 602 N.W.2d 128 (Ct. App. 1999), 99-0243.

167.30 Use of firearms, etc., near park, etc. (1) Any person who shall discharge or cause the discharge of any missile from any firearm, slung shot, bow and arrow or other weapon, within 40 rods of any public park, square or enclosure owned or controlled by any municipality within this state and resorted to for recreation or pleasure, when such park, square or enclosure is wholly situated without the limits of such municipality, shall be punished by imprisonment in the county jail not exceeding 60 days or by fine of not more than $25 nor less than one dollar.

(2) Subsection (1) does not apply to the discharge of a firearm if the actor's conduct is justified or, had it been subject to a criminal penalty, would have been subject to a defense described in s. 939.45.

History: 2011 a. 35.

167.31 Safe use and transportation of firearms and bows. (1) DEFINITIONS. In this section:

(a) "Aircraft" has the meaning given under s. 114.002 (3).

(b) "Encased" means enclosed in a case that is completely zipped, snapped, buckled, tied or otherwise fastened with no part of the firearm exposed.

(bg) "Family member of the landowner" means a person who is related to the landowner as a parent, child, spouse, or sibling.

(bn) "Farm tractor" has the meaning given in s. 340.01 (16).

(c) "Firearm" means a weapon that acts by force of gunpowder.

(cm) "Handgun" has the meaning given in s. 175.60 (1) (bm).

(d) "Highway" has the meaning given under s. 340.01 (22).

(dm) "Implement of husbandry" has the meaning given in s. 340.01 (24).

(e) "Motorboat" has the meaning given under s. 30.50 (6).

(em) "Peace officer" has the meaning given in s. 939.22 (22).

(et) "Private security person" has the meaning given in s. 440.26 (1m) (h).

(f) "Roadway" has the meaning given under s. 340.01 (54).

(fg) "Stationary" means not moving, regardless of whether the motor is running.

(fm) "Street" means a highway that is within the corporate limits of a city or village.

(fr) "Transmission facility" means any pipe, pipeline, duct, wire, cable, line, conduit, pole, tower, equipment, or other structure used to transmit or distribute electricity to or for the public or to transmit or distribute communications or data to or from the public.

(g) "Unloaded" means any of the following:

1. Having no shell or cartridge in the chamber of a firearm or in the magazine attached to a firearm.

2. In the case of a cap lock muzzle-loading firearm, having the cap removed.

3. In the case of a flint lock muzzle-loading firearm, having the flashpan cleaned of powder.

4. In the case of an electronic ignition muzzle-loading firearm, having the battery removed and disconnected from the firearm.

(h) "Vehicle" has the meaning given in s. 340.01 (74), but includes a snowmobile, as defined in s. 340.01 (58a), an all-terrain vehicle, as defined in s. 340.01 (2g), and an electric personal assistive mobility device, as defined in s. 340.01 (15pm), except that for purposes of subs. (4) (c) and (cg) and

(4m) "vehicle" has the meaning given for "motor vehicle" in s. 29.001 (57).

(2) PROHIBITIONS; MOTORBOATS AND VEHICLES; HIGHWAYS AND ROADWAYS. (a) Except as provided in sub. (4), no person may place, possess, or transport a firearm, bow, or crossbow in or on a motorboat with the motor running, unless one of the following applies:

1. The firearm is unloaded or is a handgun.

2. The bow does not have an arrow nocked.

3. The crossbow is not cocked or is unloaded and enclosed in a carrying case.

(b) Except as provided in sub. (4), no person may place, possess, or transport a firearm, bow, or crossbow in or on a vehicle, unless one of the following applies:

1. The firearm is unloaded or is a handgun.

2. The bow does not have an arrow nocked.

3. The crossbow is not cocked or is unloaded and enclosed in a carrying case.

(c) Except as provided in sub. (4), no person may load a firearm, other than a handgun, in a vehicle or discharge a firearm or shoot a bolt or an arrow from a bow or crossbow in or from a vehicle.

(d) Except as provided in sub. (4) (a), (bg), (cg), (e), and (g), no person may discharge a firearm or shoot a bolt or an arrow from a bow or crossbow from or across a highway or within 50 feet of the center of a roadway.

(e) A person who violates pars. (a) to (d) is subject to a forfeiture of not more than $100.

(3) PROHIBITIONS; AIRCRAFT. (a) Except as provided in sub. (4), no person may do any of the following:

1. Place, possess, or transport a firearm, bow, or crossbow in or on a commercial aircraft, unless the firearm is unloaded and encased or unless the bow or crossbow is unstrung or is enclosed in a carrying case.

2. Place, possess, or transport a firearm, bow, or crossbow in or on a noncommercial aircraft, unless the firearm is unloaded and encased or the firearm is a handgun or unless the bow or crossbow is unstrung or is enclosed in a carrying case.

(b) Except as provided in sub. (4), no person may load or discharge a firearm or shoot a bolt or an arrow from a bow or crossbow in or from an aircraft.

(c) A person who violates par. (a) or (b) shall be fined not more than $1,000 or imprisoned not more than 90 days or both.

(3m) PROHIBITIONS; TRANSMISSION FACILITIES. (a) Except as provided in sub. (4) (b) and (h), no person may intentionally discharge a firearm in the direction of a transmission facility.

(b) A person who violates par. (a) and causes damage to a transmission facility is subject to a forfeiture of not more than $100.

(c) In addition to any forfeiture imposed under par. (b), the court shall revoke any hunting license under ch. 29 that is issued to the person found in violation for a period of one year.

(d) In addition to any forfeiture imposed under par. (b) and the revocation required under par. (c), the court shall enter a restitution order that requires the defendant to pay to the owner of the transmission facility the reasonable cost of the repair or replacement of the transmission facility.

(4) EXCEPTIONS. (a) Subsections (2) and (3) do not apply to any of the following who, in the line of duty, place, possess, transport, load or discharge a firearm in, on or from a vehicle, motorboat or aircraft or discharge a firearm from or across a highway or within 50 feet of the center of a roadway:

2. A member of the U.S. armed forces.

3. A member of the national guard.

4. A private security person who meets all of the following requirements:

a. He or she holds either a private detective license issued under s. 440.26 (2) (a) 2. or a private security permit issued under s. 440.26 (5).

b. He or she holds a certificate of proficiency to carry a firearm issued by the department of safety and professional services.

c. He or she is performing his or her assigned duties or responsibilities.

d. He or she is wearing a uniform that clearly identifies him or her as a private security person.

e. His or her firearm is in plain view, as defined by rule by the department of safety and professional services.

(ag) Subsection (2) (b) 1. does not apply to a firearm that is placed or possessed on a vehicle that is stationary.

(am) 1. Subsections (2) (a), (c) and (d) and (3) (a) and (b) do not apply to a peace officer who, in the line of duty, loads or discharges a firearm in, on or from a vehicle, motorboat or aircraft or discharges a firearm from or across a highway or within 50 feet of the center of a roadway.

2. Subsection (2) (b) does not apply to a peace officer who places, possesses or transports a firearm in or on a vehicle, motorboat or aircraft while in the line of duty.

3. Subsection (2) (b) does not apply to a person employed as a peace officer who places, possesses or transports a firearm in or on a vehicle while traveling in the vehicle from his or her residence to his or her place of employment as a peace officer.

(at) Subsections (2) (c) and (d) and (3) (b) do not apply to the discharge of a firearm if the actor's conduct is justified or, had it been subject to a criminal penalty, would have been subject to a defense described in s. 939.45.

(b) Subsections (2) (a), (b) and (c), (3) (a) and (b), and (3m) do not apply to the holder of a scientific research license under s. 169.25 or a scientific collector permit under s. 29.614 who is using a net gun or tranquilizer gun in an activity related to the purpose for which the license or permit was issued.

(bg) 1. Subsection (2) (a), (b), (c), and (d) does not apply to a state employee or agent, or to a federal employee or agent, who is acting within the scope of his or her employment or agency, who is authorized by the department of natural resources to take animals in the wild for the purpose of controlling the spread of disease in animals and who is hunting in an area designated by the department of natural resources as a chronic wasting disease eradication zone, except that this subdivision does not authorize the discharge of a firearm or the shooting of a bolt or arrow from a bow or crossbow across a state trunk highway, county trunk highway, or paved town highway.

1g. Subsection (2) (b) and (c) does not apply to a landowner, a family member of the landowner, or an employee of the landowner who is using a firearm, bow, or crossbow to shoot wild animals from a farm tractor or an implement of husbandry on the landowner's land that is located in an area

designated by the department of natural resources as a chronic wasting disease eradication zone.

2. This paragraph does not apply after June 30, 2010.

(bn) Subsection (2) (a) does not apply to a person using a bow or a crossbow for fishing from a motorboat.

(bt) Subsection (2) (b) does not apply to the placement, possession, or transportation of an unloaded firearm in or on a vehicle if all of the following apply:

1. The vehicle is a self-propelled motor vehicle with 4 rubber-tired wheels.

2. The vehicle is not certified by the manufacturer for on-road use.

3. The vehicle is not an all-terrain vehicle, as defined in s. 340.01 (2g).

4. The vehicle is being used to transport individuals involved in sport shooting activities at sport shooting ranges, as defined in s. 895.527 (1), and is not being used to transport individuals involved in hunting.

5. The vehicle is being operated entirely on private property and is not being operated in the right-of-way of any highway.

(c) Subsection (2) (b) and (c) does not apply to the holder of a Class A or Class B permit under s. 29.193 (2) who is hunting from a stationary vehicle.

(cg) A holder of a Class A or Class B permit under s. 29.193 (2) who is hunting from a stationary vehicle may load and discharge a firearm or shoot a bolt or an arrow within 50 feet of the center of a roadway if all of the following apply:

1. The roadway is part of a county highway, a town highway or any other highway that is not part of a street or of a state trunk or federal highway.

2. The vehicle is located off the roadway and is not in violation of any prohibition or restriction that applies to the parking, stopping or standing of the vehicle under ss. 346.51 to 346.55 or under a regulation enacted under s. 349.06 or 349.13.

3. The holder of the permit is not hunting game to fill the tag of another person.

4. The holder of the permit has obtained permission from any person who is the owner or lessee of private property across or on to which the holder of the permit intends to discharge a firearm or shoot a bolt or an arrow.

5. The vehicle bears special registration plates issued under s. 341.14 (1), (1a), (1e), or (1m) or displays a sign that is at least 11 inches square on which is conspicuously written "disabled hunter".

6. The holder of the permit discharges the firearm or shoots the bolt or arrow away from and not across or parallel to the roadway.

(cm) For purposes of pars. (c) and (cg), the exemption from sub. (2) (b) under these paragraphs only applies to the firearm, bow or crossbow being used for hunting by the holder of the Class A or Class B permit under s. 29.193 (2).

(co) For purposes of par. (cg), a person may stop a vehicle off the roadway on the left side of the highway.

(cr) For purposes of par. (cg) 4., "private property" does not include property leased for hunting by the public, land that is subject to a contract under subch. I of ch. 77, or land that is subject to an order designating it as managed forest land under subch. VI of ch. 77 and that is not designated as closed to the public under s. 77.83 (1).

(d) Subsection (2) (b) does not prohibit a person from leaning an unloaded firearm against a vehicle.

(e) Subsection (2) (d) does not apply to a person who is legally hunting small game with a muzzle-loading firearm or with a shotgun loaded with shotshell or chilled shot number BB or smaller, if the surface of the highway or roadway is anything other than concrete or blacktop.

(f) Subsection (2) (d) does not prohibit a person from possessing a loaded firearm within 50 feet of the center of a roadway if the person does not violate sub. (2) (b) or (c).

(g) A person who is fishing with a bow and arrow may shoot an arrow from a bow, and a person who is fishing with a crossbow may shoot a bolt from a crossbow, within 50 feet of the center of a roadway if the person does not shoot the arrow or bolt from the roadway or across a highway.

(h) Subsection (3m) does not apply to any of the following who discharge a firearm in the direction of a transmission facility:

1. A member of the armed forces in the line of duty.

2. A member of the national guard in the line of duty.

3. A peace officer in the line of duty.

4. A private security person who meets all of the requirements under par. (a) 4.

(i) Subsection (2) (b) and (c) does not apply to a person legally hunting from a stationary nonmotorized vehicle that is not attached to a motor vehicle.

(4m) RULES. The department of natural resources may further restrict hunting from stationary vehicles on county or town highways by promulgating rules designating certain county and town highways, or portions thereof, upon which a holder of a Class A or Class B permit issued under s. 29.193 (2) may not discharge a firearm or shoot a bolt or an arrow from a bow or crossbow under sub. (4) (cg). For each restriction of hunting from a county or town highway contained in a rule to be promulgated under this subsection, the department shall submit a specific justification for the restriction with the rule submitted to legislative council staff for review under s. 227.15 (1).

(5) WEAPONS SURCHARGE. (a) If a court imposes a fine or forfeiture for a violation of this section, the court shall also impose a weapons surcharge under ch. 814 equal to 75% of the amount of the fine or forfeiture.

(b) If a fine or forfeiture is suspended in whole or in part, the weapons surcharge shall be reduced in proportion to the suspension.

(c) If any deposit is made for an offense to which this subsection applies, the person making the deposit shall also deposit a sufficient amount to include the weapons surcharge under this subsection. If the deposit is forfeited, the amount of the weapons surcharge shall be transmitted to the secretary of administration under par. (d). If the deposit is returned, the amount of the weapons surcharge shall also be returned.

(d) The clerk of the circuit court shall collect and transmit to the county treasurer the weapons surcharge as required under s. 59.40 (2) (m). The county treasurer shall then pay the secretary of administration as provided in s. 59.25 (3) (f) 2. The secretary of administration shall deposit all amounts

received under this paragraph in the conservation fund to be appropriated under s. 20.370 (3) (mu).

History: 1985 a. 36; 1987 a. 27, 353; 1991 a. 77; 1993 a. 147; 1995 a. 122, 201; 1997 a. 248, 249; 1999 a. 32, 158; 2001 a. 8, 56, 90, 108; 2003 a. 33, 139, 326; 2005 a. 169, 253, 286, 345; 2007 a. 97; 2009 a. 246; 2011 a. 32, 35, 51, 180, 265.

Cross-reference: See also ss. NR 10.001, 10.05, and 10.07, Wis. adm. code.

167.32 Safety at sporting events. (1) DEFINITIONS. In this section:

(a) "Alcohol beverages" means fermented malt beverages and intoxicating liquor.

(b) "Facility" means building or stadium.

(c) "Fermented malt beverages" has the meaning designated in s. 125.02 (6).

(d) "Intoxicating liquor" has the meaning designated in s. 125.02 (8).

(e) "Passing" includes pushing, pulling, throwing and moving.

(f) "Sports facility" means a facility where sporting events are held, regardless of whether that is the exclusive use of the facility.

(2) BODY PASSING. (a) A spectator at a sporting event at a sports facility shall not participate in the process of passing another person above the floor or ground from one location to another.

(b) Paragraph (a) does not apply to the act of a person moving another person in order to render first aid or otherwise assist or care for that other person.

(3) OBJECT PASSING. A spectator at a sporting event at a sports facility shall not participate in the process of passing bleachers, seats or other objects in a manner which threatens the safety of other persons.

(4) ALCOHOL CONSUMPTION. (a) A spectator shall not bring alcohol beverages into a sports facility where there is a sporting event at the sports facility.

(b) A spectator shall not possess or consume alcohol beverages at a sporting event at a sports facility if the alcohol beverages were brought to the facility as specified in par. (a).

(c) This subsection does not apply to any vendor or other person who brings alcohol beverages into a sports facility with the authorization of the person in charge of the facility.

(5) FORFEITURE. Any person who violates sub. (2), (3) or (4) shall forfeit $50.

(6) CITATION PROCEDURE. The state may use the citation procedures under s. 778.25 to enforce this section. A county or municipality may use the citation procedures under s. 778.25 to enforce a local ordinance strictly conforming to this section.

History: 1985 a. 254.

CHAPTER 172

ANIMALS DISTRAINED OR DOING DAMAGE

SUBCHAPTER I

ANIMALS DISTRAINED

172.01 Animals not to run at large. No stallion over one year old, nor bull over 6 months old, nor boar, nor ram, nor billy goat over 4 months old shall run at large. If the owner or keeper of an animal described in this section, for any reason, permit the animal to run at large, the owner or keeper shall forfeit $5 to the person taking up the animal and shall be liable in addition for all damages done by the animal while at large, regardless of whether the animal's escape was the fault of the owner or keeper. The construction of any fence enumerated in s. 90.02 does not relieve an owner or keeper from liability for any damage committed by an animal described in this section upon the enclosed premises of an adjoining owner.

History: 1993 a. 482; 1997 a. 254.

172.012 Exemption. This chapter does not apply to a humane officer appointed under ch. 173 or a law enforcement officer who takes custody of an animal under ch. 173 or other applicable law.

History: 1997 a. 192.

172.015 Livestock on highways; penalty. No livestock shall run at large on a highway at any time except to go from one farm parcel to another. If the owner or keeper of livestock knowingly permits livestock to run at large on a highway, except when going from one farm parcel to another, and after notice by any peace officer fails to remove the livestock from the highway, the owner or keeper may be fined not more than $200.

History: 1993 a. 482; 1997 a. 254.

172.02 Taking up animal; notice. Any person finding any animal described in s. 172.01 running at large may take it up, but shall within 7 days after taking up the animal notify the owner, if known to the person, and request the owner to pay all reasonable charges for the animal's keeping, together with the forfeiture required under s. 172.01 for taking up, and take the animal away within 5 days after being so notified.

History: 1993 a. 482; 1997 a. 254.

172.03 Notice, if owner unknown. If the owner of an animal taken up under s. 172.02 is unknown, the finder shall, within 10 days after taking up the animal, file a notice with the clerk of the town in which the animal is taken up and, if the value of the animal exceeds $50, shall publish in the county a class 3 notice, under ch. 985. The notice shall briefly describe the animal, by marks natural or artificial, as near as practicable, and give the name and residence of the finder and the time when the animal was taken up. A copy of the notice shall be sent immediately by the town clerk to the county clerk, who shall file the notice.

History: 1997 a. 254.

172.04 Appraisal of animals. The finder of animals taken up under s. 172.02 shall, within one month from taking them up, if the animals are of the value of $10 or more, apply to the town chairperson, village president or city mayor of the municipality where found for the appointment of a disinterested appraiser. A certificate of the appraisal shall be signed by the appraiser and filed in the municipal clerk's office. The finder shall pay the appraiser $3 for the certificate and 10 cents per mile for every mile necessarily traveled by the appraiser.

History: 1989 a. 56 s. 258; 1997 a. 254.

172.05 Restoring an animal to its owner. The owner or person entitled to the possession of an animal taken up under s. 172.02, at any time within 90 days after notice is filed with the municipal clerk under s. 172.03, may have the animal restored upon proving rights to the animal and paying all lawful charges incurred. If the claimant and the finder cannot agree as to the amount of the charges or for the use of the animal either party upon notice to the other may apply to the town chairperson, village president or city mayor or manager of the municipality to settle the dispute, who for that purpose may examine witnesses on oath. Any amount found to be due the finder over the value of the use of the animal, together with the costs of adjudication, shall be a lien upon the animal.

History: 1989 a. 56; 1997 a. 254.

172.06 Ownership by finder; sale. If no claimant for an animal taken up under s. 172.02 causes its return, and if the animal has not been appraised for more than $10, the finder shall become the absolute owner of the animal. If the appraised value of the animal exceeds $10, the animal shall be

sold at public auction by the sheriff or any constable of the county on the request of the finder. Notice of the sale shall be given and the sale shall be conducted and the same fees allowed as in the case of sales upon execution under ch. 815. The finder may bid at the sale and shall at the time of sale deliver to the officer conducting the sale a statement in writing of the finder's charges, which shall be filed by the officer with the municipal treasurer. After deducting the finder's charges, if just and reasonable, and the costs of the sale, the officer shall pay one-half of the remaining proceeds to the finder and, within 10 days after the sale, the other half to the treasurer of the municipality for its use. If the finder of any stray neglects or refuses to cause a sale to be made when required by law, the finder shall pay to the municipality the value of the stray, to be recovered in an action by the municipality.

History: Sup. Ct. Order, 67 Wis. 2d 585, 775 (1975); 1975 c. 218; 1997 a. 254.

172.07 Penalties. If any person, without the consent of the finder, takes any animal lawfully taken up from the finder's possession, without the payment of the finder's lawful charges incurred in relation to the animal, the person taking the animal shall be liable to the finder for the value of the animal. If the finder neglects to give the notices, procure the appraisals or perform any of the duties required of the finder, the finder shall be precluded from acquiring any right of property in the animal or receiving any charges or damages relative to the animal.

History: 1993 a. 482; 1997 a. 254.

172.08 Rams may be taken up; liability. (1) If the owner of any ram permits the ram to go at large or out of the ram's enclosure between July 15 and December 1 in the same year, the owner shall forfeit $10 for each time that the ram is found at large and taken up, 50% of which shall be paid to the prosecutor. The owner shall also be liable for any damages sustained by any person in consequence of the ram running at large.

(2) Any person may take up a ram described in sub. (1), and shall within 24 hours after taking up the ram do one of the following:

(a) If the owner of the ram is known, notify the owner that the ram has been taken up and of the place where the ram is secured.

(b) If the owner of the ram is unknown, file with the town clerk a notice of the taking up, describing the marks of the ram, natural and artificial, if any, and also post copies of the notice in 3 public places in the town.

(3) The owner of a ram taken up under this section may, within 6 days after the filing and posting of the notices under sub. (2), pay or tender to the town clerk the forfeiture under sub. (1) and 50 cents for the town clerk's fees. Upon payment of the forfeiture and fees, the ram shall be restored to the owner and the clerk shall immediately pay one-half of the forfeiture to the person who took the ram up and the other half to the county treasurer. If the ram's owner fails to pay the forfeiture and fees in the 6-day period under this subsection, the ram shall become the property of the person who took up the ram.

History: 1993 a. 482; 1997 a. 254.

SUBCHAPTER II

ANIMALS DOING DAMAGE

172.51 Animals distrained; proceedings. (1) The owner or occupant of any lands may distrain any beast doing damage on the premises, either while upon the premises or upon immediate pursuit of the beasts escaping from the premises and before returning to the enclosure of or to the immediate care of the owner or keeper. The person distraining the beasts may keep the beasts upon the premises or in a public pound in the person's town, city or village of residence until the person's damages are appraised.

(2) If the owner of the beasts is known to the person distraining the beasts and resides within the same county, the person distraining the beasts shall give written notice to the owner in accordance with whichever of the following applies:

(a) If the owner resides within the same town, city or village as the person distraining the beasts, notice shall be given within 24 hours, Sundays excepted, after the animal is distrained.

(b) If the owner does not reside in the same town, city or village as the person distraining the beasts, notice shall be given within 48 hours, Sundays excepted.

(3) The notice under sub. (2) shall specify all of the following:

(a) The time when and the place where the beasts were distrained.

(b) The number of beasts distrained and the place of their detention.

(c) That at a time, which shall not be less than 12 hours after the serving of the notice nor more than 3 days after distraining the beasts, and place designated in the notice, the person distraining will apply to the town chairperson, village president or city mayor or manager of the municipality where the beasts were found for the appointment of 3 disinterested freeholders of the town, city or village to appraise the damages.

(4) If the owner of the beasts is unknown or does not reside in the same county as the person distraining the beasts, the person distraining the beasts shall, in accordance with sub. (3) (c), apply for the appointment of appraisers without notice and within 24 hours after distraining the beasts.

(5) Upon application, the town chairperson, village president or city mayor or manager shall appoint in writing 3 disinterested freeholders of the town, city or village to appraise the damages. The appraisers shall receive 50 cents for the appointment.

History: 1989 a. 56; 1997 a. 192 s. 12; Stats. 1997 s. 172.51; 1997 a. 254.

172.52 Appraisal. The freeholders appointed as appraisers under s. 172.51 shall be immediately notified and shall immediately repair to the place damaged by the animals and view the damages done. The appraisers may take evidence of any witnesses of the facts and circumstances necessary to enable them to ascertain the extent of the damages and the sufficiency of any line fence on the premises where the damage was done, if any dispute arises regarding the damages or line fence. The appraisers may administer oaths to the witnesses. The appraisers shall certify under their hands the amount of damages, the cost of keeping the beasts to that time, their fees for services as appraisers not exceeding $1 per day each, and their determination as to the sufficiency of the line fence, if in dispute. The appraisers' decision as to damages and sufficiency of the fence is conclusive.

History: 1997 a. 192 s. 12; Stats. 1997 s. 172.52; 1997 a. 254; 1999 a. 32.

172.53 Impounding; care; expense. (1) Unless the damages determined under s. 172.52, together with the fees of the appraisers and chairperson, president or mayor, have been paid within 24 hours after the appraisal, the person distraining the beasts shall cause the beasts to be confined in accordance with whichever of the following applies:

(a) The beasts shall be put into the nearest pound in the distraining person's town, city or village of residence, if there is a pound.

(b) If there is no pound in the distraining person's town, city or village of residence, the beasts shall be put in some other secure enclosure.

(2) The beasts shall remain confined until sold under ss. 172.54 to 172.56, until the damages, fees and costs of keeping the beasts after appraisal are paid or until they are otherwise seized or discharged according to law. The confined beasts shall be furnished with suitable food from the time of seizure until they are discharged or sold. The expense of feeding the beasts, after the appraisal, shall be added to the amount determined under s. 172.52 and paid as additional costs. If the beasts are put in a pound, the certificate of appraisal shall be delivered to the keeper of the pound.

History: 1993 a. 184; 1997 a. 192 s. 12; Stats. 1997 s. 172.53; 1997 a. 254; 1999 a. 32.

172.54 Time and notice of sale. The poundmaster of any pound shall receive and keep any beasts delivered to the poundmaster under s. 172.53. Unless the beasts are seized or discharged according to law within 6 days, from the time of their delivery to the pound, the poundmaster shall sell at public auction the beasts or so many of them as is necessary to pay the damages, fees and costs enumerated under ss. 172.52 and 172.53. The poundmaster shall give 2 days' notice of the sale by notice posted upon the pound and at 3 public places in the town, city or village in which the pound is located.

History: 1993 a. 482; 1997 a. 192 s. 12; Stats. 1997 s. 172.54; 1997 a. 254; 1999 a. 32.

172.55 Sale of animal not impounded. If in consequence of there being no pound within the distraining person's city, town or village of residence the beasts distrained under s. 172.51 are kept in some other enclosure and the beasts are not discharged in the manner provided under this chapter within 6 days after being placed in the enclosure, the sheriff or any constable of the county shall sell the beasts or so many of them as shall be necessary to pay the damages, fees and costs of keeping, upon the same notice as is required in case of a constable's sale of personal property taken by execution.

History: 1997 a. 192 s. 12; Stats. 1997 s. 172.55; 1997 a. 254; 1999 a. 32.

172.56 Proceeds of sale. (1) From the proceeds of the sale under s. 172.54 or 172.55, the person making the sale shall retain his or her fees, which shall be the same as are allowed to constables upon sales of personal property on execution, and the cost of keeping the beasts. The person making the sale shall pay to the person who distrained the beasts the damages certified under s. 172.52, with the fees of the appraisers and chairperson, president or mayor.

(2) Any surplus remaining after distribution of the proceeds under sub. (1) shall be paid to the owner of the beast, if known. If no owner appears at the time of sale or within one week after the sale, and claims the surplus, it shall be paid to the treasurer of the distraining person's town, city or village of residence. If the money is not applied for within one year after the sale, the treasurer shall place the money in the town treasury. If the owner applies for the surplus and gives proper proof of ownership within 6 years after its receipt by the treasurer, the surplus, less a 2% deduction for fees, shall be paid over to the owner.

History: 1993 a. 184; 1997 a. 192 s. 12; Stats. 1997 s. 172.56; 1997 a. 254; 1999 a. 32.

172.57 Damaging, or taking animal from, pound. Any person who willfully damages any pound maintained or supported by any town, city, village or county or wrongfully and forcibly takes, drives or releases from the pound any animal lawfully confined in the pound shall forfeit not more than $50.

History: 1981 c. 285; 1997 a. 192 s. 12; Stats. 1997 s. 172.57.

CHAPTER 173

ANIMALS; HUMANE OFFICERS

173.03 Appointment of humane officer. (1) APPOINTMENT. The governing body of any political subdivision may appoint one or more humane officers. The governing body of a political subdivision shall report all appointments and terminations of appointments of humane officers to the department.

(2) ORDINANCE. Before, or at the time of, appointing a humane officer under sub. (1), the governing body making the appointment shall enact an ordinance that designates one or more officials of the political subdivision who may modify or withdraw abatement orders issued under s. 173.11 by humane officers appointed by the political subdivision.

(3) JURISDICTION. A humane officer appointed by a city, village or town shall carry out his or her duties within the boundaries of the city, village or town. A humane officer appointed by a county shall carry out his or her duties throughout the county, other than within the boundaries of a city or village whose governing body adopts a resolution withdrawing from county enforcement of humane laws and transmits a copy of the resolution to the county.

History: 1997 a. 192.
Cross-reference: See also ch. ATCP 15, Wis. adm. code.

173.05 Certification required. (1) (a) Any person appointed as a humane officer under s. 173.03 on or after December 1, 1999, shall, before appointment or by the applicable deadline established under s. 173.27 (1) (b), complete a course of training approved by the department, except as provided in par. (b) or (c), and receive certification under s. 173.27 (3).

(b) A person to whom par. (a) applies who is a veterinarian licensed under ch. 453 is not required to complete a course of training approved by the department if he or she takes an examination given by the department and passes the examination on the first attempt.

(c) A person to whom par. (a) applies who is certified or otherwise approved as a humane officer by another state is not required to complete a course of training approved by the department if he or she takes an examination given by the department and passes the examination on the first attempt.

(2) (a) A person appointed as a humane officer before December 1, 1999, shall complete a course of training approved by the department, except as provided in par. (b), and shall receive certification under s. 173.27 (3) by the applicable deadline established under s. 173.27 (1) (b).

(b) A person to whom par. (a) applies is not required to complete a course of training approved by the department if he or she takes an examination given by the department and passes the examination on the first attempt.

(3) The governing body of a political subdivision that appoints a humane officer who fails to obtain certification within the required time shall terminate the appointment.

History: 1997 a. 192.
Cross-reference: See also ch. ATCP 15, Wis. adm. code.

173.07 Powers and duties of humane officers. (1) ENFORCEMENT. A humane officer shall enforce s. 95.21, this chapter, chs. 174 and 951 and ordinances relating to animals enacted by political subdivisions in which the humane officer has jurisdiction under s. 173.03 (3).

(2) INVESTIGATION. A humane officer shall investigate alleged violations of statutes and ordinances relating to animals and, in the course of the investigations, may execute inspection warrants under s. 66.0119.

(3) SEEK SUBPOENAS. A humane officer may request the district attorney for the county to obtain subpoenas to compel testimony and obtain documents in aid of investigations.

(4) ISSUE CITATIONS. If authorized by the appointing political subdivision, a humane officer shall issue citations under s. 66.0113 for violations of ordinances relating to animals.

(4m) REQUEST PROSECUTIONS. A humane officer may request law enforcement officers and district attorneys to enforce and prosecute violations of state law and may cooperate in those prosecutions.

(5) PROHIBITED ACTIONS. Unless also a law enforcement officer, a humane officer may not in the course of his or her duties do any of the following:

(a) Execute a search warrant.

(b) Carry firearms.

(c) Stop or arrest persons.

(d) Stop, search, or detain vehicles, except under an inspection warrant under s. 66.0119.

(e) Enter any place or vehicle by force or without the consent of the owner, except in an emergency occasioned by fire or other circumstance in which that entry is reasonable and is necessary to save an animal from imminent death or a person from imminent death or injury.

(f) Remove any animal from the custody of another person by force.

(6) CONFLICT OF INTEREST PROHIBITED. No humane officer may sell or otherwise dispose of any animal that came into the humane officer's custody in the course of his or her duties.

History: 1997 a. 192; 2001 a. 30.

173.09 Investigations. In the course of investigation of suspected violations of statutes or ordinances, a humane officer may enter any building, vehicle, or place where animals may be present for the purpose of inspection, examination of animals, or the gathering of evidence. If the building, vehicle, or place to be entered is not public, and consent of the owner or person in charge is not obtained, entry shall be under authority of a special inspection warrant issued under s. 66.0119 or a search warrant.

History: 1997 a. 192; 2001 a. 30.

173.10 Investigation of cruelty complaints. A person may apply for a search warrant under s. 968.12 if there is reason to believe that a violation of ch. 951 has taken place or is taking place. If the court is satisfied that probable cause exists, it shall issue a search warrant directing a law enforcement officer in the county to proceed immediately to the location of the alleged violation with a doctor of veterinary medicine, if the court determines that a veterinarian is necessary for purposes of the search, and directing the law enforcement officer to search the place designated in the warrant, retaining in his or her custody subject to the order of the court such property or things as are specified in the warrant, including any animal. If the person applying for the search warrant is a humane officer, the warrant shall direct that the humane officer accompany the law enforcement officer who is directed to perform the search. The warrant shall be executed and returned to the court which issued the warrant in accordance with ss. 968.15 and 968.17. This section does not affect other powers and duties of law enforcement officers.

History: 1973 c. 314; 1977 c. 449; 1987 a. 332 s. 54; Stats. 1987 s. 951.16; 1995 a. 90; 1997 a. 192 s. 26; Stats. 1997 s. 173.10.

173.12 Animal fighting; seizure. (1) Any veterinarian who has reason to believe that an animal has been in a fight in violation of s. 951.08 shall report the matter to the local humane officer or to a local law enforcement agency. The report shall be in writing and shall include a description and the location of the animal, any injuries suffered by the animal and the name and address of the owner or person in charge of the animal, if known.

(1m) If an animal has been seized because it is alleged that the animal has been used in or constitutes evidence of any crime specified in s. 951.08, the animal may not be returned to the owner by an officer under s. 968.20 (2). In any hearing under s. 968.20 (1), the court shall determine if the animal is needed as evidence or there is reason to believe that the animal has participated in or been trained for fighting. If the court makes such a finding, the animal shall be retained in custody.

(2) If the charges under s. 951.08 are dismissed or if the owner is found not guilty of a crime specified in s. 951.08, the animal shall be returned to the owner unless he or she is subject to the restrictions under s. 951.08 (2m).

(3) (a) If the owner is convicted under s. 951.08 or is subject to the restrictions under s. 951.08 (2m), the animal shall be delivered to the local humane officer or county or municipal pound. If there is no local humane officer or pound, the animal may be delivered to a local humane society or to another person designated by the court. If the animal is one year old or older or shows indication of having participated in fighting, the animal shall be disposed of in a proper and humane manner.

(b) If the animal is less than one year old and shows no indication of having participated in fighting, the animal shall be released to a person other than the owner or disposed of in a proper and humane manner. If the animal is a dog, the release or disposal shall be in accordance with s. 173.23 (1m), except that the fees under s. 173.23 (1m) (a) 4. are covered under s. 173.24.

History: 1981 c. 160; 1983 a. 95; 1987 a. 248; 1987 a. 332 ss. 54, 64; Stats. 1987 s. 951.165; 1997 a. 192 ss. 28, 29; Stats. 1997 s. 173.12.

173.13 Taking custody of animals. (1) INTAKE. (a) A humane officer, on behalf of a political subdivision in which the humane officer has jurisdiction under s. 173.03 (3), or a law enforcement officer, on behalf of a political subdivision, may take custody of an animal if the humane officer or law enforcement officer has reasonable grounds to believe that the animal is one of the following:

1. An abandoned or stray animal.

2. An unwanted animal delivered to the humane officer or law enforcement officer.

3. A dog not tagged as required by ch. 174.

4. An animal not licensed in compliance with any ordinance.

5. An animal not confined as required by a quarantine order under any statute, rule or ordinance relating to the control of any animal disease.

6. An animal that has caused damage to persons or property.

7. A participant in an animal fight intentionally instigated by any person.

8. An animal mistreated in violation of ch. 951.

9. An animal delivered by a veterinarian under sub. (2).

(b) A humane officer shall accept into custody any animal delivered by a law enforcement officer or delivered under a court order.

(c) A person other than a humane officer or a law enforcement officer may not take an animal into custody on behalf of a political subdivision unless the animal is an abandoned or stray animal. If a person other than a humane officer or a law enforcement officer takes custody of an abandoned or stray animal on behalf of a political subdivision, he or she shall deliver the animal to a person contracting under s. 173.15 (1), to a humane officer or law enforcement officer for disposition under s. 173.23 or to a pound.

(2) DELIVERY OF ANIMAL BY VETERINARIAN. (a) A humane officer or law enforcement officer or a person contracting under s. 173.15 (1) may accept an animal delivered by a veterinarian, or his or her employee, if the animal has not been picked up by its owner and all of the following apply:

1. The veterinarian notified the owner of the animal by certified mail, return receipt requested, that the animal was ready to be picked up and that the animal would be delivered to a humane officer if not picked up within 7 days.

2. The veterinarian retained the animal for 7 days after the day on which the return receipt was signed or until the letter was returned to the veterinarian as undeliverable.

3. The veterinarian certifies in writing to the humane officer or law enforcement officer that subds. 1. and 2. apply.

(b) If an animal is accepted under par. (a), the veterinarian shall provide the person accepting the animal with any requested records concerning the animal's ownership, health or licensure.

(3) NOTIFICATION OF OWNER. (a) If a humane officer or law enforcement officer takes custody of an animal with the knowledge of the owner, the humane officer or law enforcement officer shall explain the procedure by which the owner can recover the animal, including the procedure under s. 173.22, and the procedure to be followed if the animal is not returned to the owner.

(b) If a humane officer or law enforcement officer takes custody of an animal without the knowledge of the owner, the humane officer or law enforcement officer shall promptly notify the owner in writing if he or she can be identified and located with reasonable effort. The notice shall explain the procedure by which the owner can recover the animal, including the procedure under s. 173.22, and the procedure to be followed if the animal is not returned to the owner. The notice shall also inform the owner that the owner must notify any person with a lien on the animal that the animal has been taken into custody.

(c) If the owner informs the humane officer or law enforcement officer in writing that he or she will not claim the animal, it may be treated as an unclaimed animal under s. 173.23 (1m).

History: 1997 a. 192; 1999 a. 32.

173.17 Records. A humane officer or law enforcement officer taking custody of an animal on behalf of a political subdivision shall maintain, or require any person to whom the animal is delivered under a contract under s. 173.15 (1) to maintain, as appropriate, records for each animal containing the following information:

(1) A physical description of the animal.

(2) The date that custody was taken of the animal, the date that the animal was delivered into the possession of another person and the identity of the person to whom delivered.

(3) The reason for taking custody of the animal.

(4) The ultimate disposition of the animal, including the name and address of any person into whose custody the animal was ultimately released.

History: 1997 a. 192.

173.19 Animals considered unclaimed. A political subdivision or person contracting under s. 173.15 (1) may treat any animal taken into custody under s. 173.13 (1) (a) 1., 3., 4. or 9. as an unclaimed animal subject to s. 173.23 (1m) if, within 7 days after custody is taken of the animal, it is not claimed by and returned to its owner under s. 173.23 (1), except that an animal taken into custody under s. 173.13 (1) (a) 3. or 4. may not be treated as unclaimed if its owner files a petition under s. 173.22 (1) within 7 days after custody is taken.

History: 1997 a. 192.

173.21 Holding animals for cause. (1) GROUNDS. A political subdivision may withhold, or direct a person contracting under s. 173.15 (1) to withhold, an animal in custody from an owner who makes an otherwise adequate claim for the animal under s. 173.23 (1) on any of the following grounds:

(a) There are reasonable grounds to believe that the owner has mistreated the animal in violation of ch. 951.

(b) There are reasonable grounds to believe that the animal poses a significant threat to public health, safety or welfare.

(c) The animal may be used as evidence in a pending prosecution.

(d) A court has ordered the animal withheld for any reason.

(2) EXAMINATION PERMITTED. If an animal is withheld under sub. (1), upon request by the owner, a veterinarian retained by the owner may examine the animal.

(3) COSTS. The owner of an animal withheld under sub. (1) is not liable for any costs of custody, care or treatment except as provided by court order.

(4) RETURN. A political subdivision or person contracting under s. 173.15 (1) having custody of an animal withheld under sub. (1) shall release the animal to the owner at the direction of the humane officer or law enforcement officer that took custody of the animal if the requirements of s. 173.23 (1) (a) to (c) are satisfied.

History: 1997 a. 192.

173.23 Disposition of animals. (1) CLAIM AND RETURN. Except as provided in sub. (4) or s. 173.21 (1), a political subdivision or person contracting under s. 173.15 (1) shall return an animal described in s. 173.13 (1) (a) 1., 3., 4., 6., 8. or 9. to its owner upon the happening of all of the following:

(a) The owner claims the animal and provides reasonable evidence of ownership.

(b) If licensure is required by statute or ordinance, the animal is licensed or assurance of licensure by prepayment is given.

(c) If vaccination is required by statute or ordinance, the animal is vaccinated or assurance of vaccination by prepayment is given.

(d) All charges for custody, care, vaccination and treatment are paid.

(1m) UNCLAIMED ANIMALS. A political subdivision or a person contracting under s. 173.15 (1) that has custody of an animal considered unclaimed under sub. (5) (c) or (6) or s. 173.13 (3) (c) or 173.19 or an unwanted animal may do any of the following:

(a) Release the animal to any person other than the owner if all of the following apply:

1. The person provides his or her name and address.

2. If licensure is required by statute or ordinance, the animal is licensed or assurance of licensure is given by evidence of prepayment.

3. If vaccination is required by statute or ordinance, the animal is vaccinated or assurance of vaccination is given by evidence of prepayment.

4. Any charges imposed by the political subdivision or person contracting under s. 173.15 (1) for custody, care, vaccination and treatment are paid or waived.

(b) If the animal is not a dog or cat, sell the animal at public auction, including sale at a licensed animal market.

(c) Euthanize the animal.

(d) If the animal is a stray or abandoned dog, release the dog under s. 174.13.

(1s) PROCEEDS OF SALE. If the owner of an animal sold under sub. (1m) (b) files a claim and provides proof of ownership within 30 days after the sale, the sale proceeds, less the cost of custody, care, treatment and sale, shall be returned to the owner.

(2) ANIMALS NOT RETURNED TO OWNER. If an animal in the custody of a political subdivision, other than an animal to which sub. (1m) applies, is not returned to the owner under sub. (1) or (5) (b) or s. 173.12 (2), 173.21 (4) or 173.22 or disposed of under sub. (4) or (5) (a) or s. 173.12 (3), it shall be disposed of under a court order under sub. (3) or s. 951.18 (4).

(3) COURT ORDER. (a) A political subdivision may petition the circuit court for an order doing any of the following with respect to an animal taken into custody by a law enforcement officer or a humane officer or withheld under s. 173.21 (1):

1. Providing for payment for the custody, care or treatment of the animal.

2. Requiring the owner of the animal to post bond for the costs of custody, care or treatment of the animal pending the outcome of any other proceeding.

3. Authorizing the sale, destruction or other disposal of the animal.

(b) The petition shall set forth the basis for the petitioned-for relief.

(c) The political subdivision shall serve a copy of the petition, in the manner provided in s. 801.11, upon the owner of the animal, if known.

(d) The court shall conduct a hearing on the petition. The petitioner and any person upon whom a copy of the petition was served may appear as a party.

(e) The court shall issue its order after hearing and may grant, modify and grant or deny the petitioned-for relief, after considering the interests of the animal, the owner of the animal, the political subdivision and the public.

(4) INJURED OR DANGEROUS ANIMALS. A political subdivision or person contracting under s. 173.15 (1) who has custody of an animal may have the animal euthanized if there are reasonable grounds to believe that any of the following applies:

(a) The animal is hopelessly injured beyond any reasonable chance of recovery.

(b) The animal poses an imminent threat to public health or safety.

(c) The animal poses an imminent threat to the health or safety of itself or its custodian.

(5) ANIMAL NOT CONFINED AS REQUIRED BY QUARANTINE ORDER. (a) A political subdivision or person contracting under s. 173.15 (1) that has custody of an animal that was not confined as required by a quarantine order issued under any statute, rule or ordinance relating to the control of any animal disease shall confine the animal for the duration of the quarantine or shall euthanize the animal with the written permission of the owner or, if the animal is determined to be diseased, at the direction of the person issuing the quarantine order.

(b) Unless the person issuing the quarantine order directs that the animal be euthanized because it is diseased, at the end of the quarantine period the political subdivision or person contracting under s. 173.15 (1) shall return the animal to its owner if the owner complies with sub. (1) (a) to (d) no later than the 7th day after the day on which the political subdivision or person contracting under s. 173.15 (1) demands that the owner claim the animal and pay for its custody, care and treatment.

(c) If an owner does not comply with sub. (1) (a) to (d) within the time provided in par. (b), the animal is considered an unclaimed animal under sub. (1m).

(d) Before euthanizing an animal that is in custody because it was not confined as required by a quarantine order, the person with custody of the animal shall notify the person who issued the order. If the person who issued the order determines that testing of specimens is necessary to determine the disease status of the animal, the person with custody shall collect the specimens.

(6) NONCOMPLIANCE BY OWNER. If an owner is ordered under sub. (3) to pay, or post bond for the payment of, costs of custody, care or treatment of an animal, and refuses to do so upon demand, the animal shall be treated as an unclaimed animal subject to sub. (1m).

History: 1997 a. 192; 2001 a. 56; 2005 a. 253.

173.24 Reimbursement for expenses. **(1)** A court shall assess the expenses under this section in any case in which there has been a search authorized under s. 173.10 or in which an animal has been seized because it is alleged that the animal has been used in or constitutes evidence of any crime under ch. 951.

(2) Expenses covered under this section include:

(a) Investigative expenses of any search under s. 173.10 or any seizure under this chapter.

(b) Any fees of a doctor of veterinary medicine.

(c) Expenses of taking any animal into custody under this chapter, including expenses reasonably incident to taking the animal into custody.

(d) Expenses of keeping or disposing of any animal taken into custody.

(3) If the person alleged to have violated ch. 951 is found guilty of the violation, the person shall be assessed the expenses under subs. (1) and (2). If the person is not found guilty, the county treasurer shall pay the expenses from the general fund of the county.

History: 1973 c. 314; 1983 a. 95; 1987 a. 332 ss. 54, 64; Stats. 1987 s. 951.17; 1997 a. 192 s. 30; Stats. 1997 s. 173.24.

A court may only assess reasonable expenses for maintenance of seized animals. State v. Berndt, 161 Wis. 2d 116, 467 N.W.2d 205 (Ct. App. 1991).

173.25 Immunity for euthanizing animals. A political subdivision, a person contracting under s. 173.15 (1), a humane officer or a law enforcement officer who has reasonable grounds to believe that s. 173.23 (1m) (c), (4) or (5) or a court order issued under s. 173.23 (3) authorize an animal to be euthanized is not liable for damages for the loss of the animal resulting from euthanizing the animal.

History: 1997 a. 192.

173.27 Duties of the department. The department shall do all of the following:

(1) RULES. (a) Adopt, by rule, standards for the training and certification of humane officers to ensure that humane officers are at least minimally qualified to perform the duties of a humane officer. The standards shall provide for training offered by the department or by others.

(b) Adopt, by rule, deadlines by which humane officers must obtain certification.

(2) TRAINING. Offer training courses for humane officers or approve training courses offered by others, or both. The department may charge a fee sufficient to recover the costs of training courses that it provides.

(3) CERTIFICATION. Examine, as necessary, and certify humane officers as qualified. The department may charge a fee, established by rule, sufficient to recover the costs of certification.

(4) REGISTRY OF HUMANE OFFICERS. Maintain and keep current a registry of all persons serving as humane officers for political subdivisions.

History: 1997 a. 192.
Cross-reference: See also ch. ATCP 15, Wis. adm. code.

173.41 Regulation of persons who sell dogs or operate animal shelters. (1) DEFINITIONS. In this section:

(a) "Animal control facility" means a facility for the care of animals operated under a contract with a political subdivision under s. 173.15 (1).

(b) "Animal shelter" means a facility that is operated for the purpose of providing for and promoting the welfare, protection, and humane treatment of animals, that is used to shelter at least 25 dogs in a year, and that is operated by a humane society, animal welfare society, animal rescue group, or other nonprofit group.

(c) "Dog breeder" means a person who sells 25 or more dogs in a year that the person has bred and raised, except that "dog breeder" does not include a person who sells 25 or more dogs in a year that the person has bred and raised if all of those dogs are from no more than 3 litters.

(d) "Dog breeding facility" means a place at which dogs are bred and raised and from which 25 or more dogs are sold in a year, except that "dog breeding facility" does not include a place at which dogs are bred and raised and from which 25 or more dogs are sold in a year if all of the dogs that are sold in a year are from no more than 3 litters.

(e) "Dog dealer" means a person, other than an out-of-state dog dealer, who sells, distributes, or trades, or offers for sale, distribution, or trade, 25 or more dogs in a year that the person has not bred and raised or who operates an auction at which 50 or more dogs are sold or offered for sale in a year.

(em) "Dog trial" means an organized competitive field event involving sporting dog breeds that is sanctioned, licensed, or recognized by a local, state, regional, or national dog organization.

(f) "Out-of-state dog dealer" means a person who is not a resident of this state who brings 25 or more dogs into this state for sale in this state in a year.

(g) "Temporary dog market" means a place at which persons sell dogs, and may sell other items, from booths or other spaces that are rented from or provided at no cost by the person operating the place, except that "temporary dog market" does not include a dog trial.

(h) "Transfer" means to grant physical possession to another.

(2) LICENSE REQUIRED. (a) Except as provided in par. (e), (f), or (g), beginning on June 1, 2011, no person may do any of the following without an annual license from the department:

1. Operate an animal shelter.
2. Operate an animal control facility.
3. Operate as a dog breeder.
4. Operate a dog breeding facility.
5. Operate as a dog dealer.
6. Operate as an out-of-state dog dealer.

(b) A person operating as an out-of-state dog dealer shall obtain one license under this subsection. Any other person required to obtain a license under this subsection shall obtain one license for each premises at which the person operates an animal shelter, animal control facility, or dog breeding facility or operates as a dog breeder or dog dealer.

(c) A person shall apply for a license under par. (a) on a form provided by the department and shall provide information reasonably required by the department. An applicant shall submit the applicable fees required under sub. (3) with the application.

(d) The department shall grant or deny an application for an initial license within 30 days after the application is complete and the applicable fees have been submitted.

(e) A veterinarian licensed under ch. 453 practicing in the normal course of veterinary business within the scope of the license is not required to obtain a license under this subsection.

(f) An individual providing foster care to a dog in the individual's home at the request of a person operating an animal shelter that is licensed under this subsection is not required to obtain a license under this subsection.

(g) An individual is not required to obtain a license for the purpose of conducting a one-time kennel liquidation, if all of the following apply:

1. The individual sells no more than 30 dogs and makes all of the dogs initially available for sale at the same time.
2. The individual sells only dogs that he or she owns.
3. The individual does not intend to engage in activities for which a license is required under this subsection in the next year.
4. The individual was not licensed under this subsection during the previous year.
5. The individual notifies the department at least 30 days before offering the dogs for sale.

(h) A person licensed under par. (a) 1. to 5. shall post a copy of the license in a location visible to any person coming onto the licensed premises.

(3) LICENSE FEES. (a) Except as provided under par. (b) or (c), the annual fee for a license under sub. (2) is as follows:

1. For a person who sells or offers to sell at least 25 but fewer than 50 dogs per year, $250.
2. For a person who sells or offers to sell at least 50 but fewer than 100 dogs per year, $500.
3. For a person who sells or offers to sell at least 100 but fewer than 250 dogs per year, $750.
4. For a person who sells or offers to sell 250 or more dogs per year, $1,000.
5. For a person who operates an animal shelter or animal control facility, $125.

(b) Except as provided under par. (c), the annual license fee for an out-of-state dog dealer is 150 percent of the fee determined under par. (a), based on the number of dogs sold in this state.

(c) The department may promulgate rules specifying fees for licenses under sub. (2) that are higher than the fees in pars. (a) and (b) if necessary to cover the costs of administering this section.

(4) LICENSE DENIAL OR REVOCATION. (a) The department may deny, refuse to renew, or revoke any license under sub. (2) if the applicant or licensee is not fit, qualified, or equipped to conduct the activity for which the license is required, has violated or failed to obey any applicable law, order, or regulation, or has misrepresented or intentionally failed to disclose a material fact in applying for the license.

(b) The department may issue any license under sub. (2) conditioned upon relevant circumstances or acts. If a license is conditioned upon compliance within a specified period and the condition is not met within the specified period, the license is void.

(5) SUMMARY LICENSE SUSPENSION. (a) The department may, by written notice, without prior notice or hearing, suspend a license issued under sub. (2) if, upon inspection of the licensed premises, the department finds any condition that imminently threatens the health, safety, or welfare of any animal on the licensed premises or there is evidence that an act of animal cruelty in violation of ch. 951 has been committed by the licensee or has occurred on the licensed premises.

(b) In the notice under par. (a), the department shall state the reasons for the suspension and specify conditions that must be met for reinstatement.

(c) The department shall specify in the notice under par. (a) a date after which a reinspection of the licensed premises may take place. The department may conduct a reinspection without notice to the licensee. The department may reinstate a license following a summary suspension if the department finds, based upon reinspection or evidence presented by the licensee, that circumstances warrant reinstatement. The department may specify a reinstatement date that it considers appropriate.

(d) A licensee may request a hearing contesting a summary suspension under par. (a), by written appeal to the department, within 10 days of receiving the notice of summary suspension. The department shall describe the right of hearing in the notice to the licensee under par. (a). The department shall promptly initiate proceedings to hear the appeal.

(6) INSPECTIONS. (a) The department shall inspect the premises at which a person who is required to obtain a license under sub. (2) (a) 1. to 5. operates before issuing the initial license and at least once every 2 years after the year in which the person is first licensed. The department is not required to inspect the out-of-state premises at which an out-of-state dog dealer operates.

(b) The department may enter and inspect the premises for which a person is required to obtain a license under sub. (2) at any time during normal business hours to ensure compliance with this section.

(c) The department may charge a fee for an inspection that it undertakes to determine whether a previous violation of this section or rules promulgated under this section has been corrected.

(d) An inspection fee under par. (c) is due upon written demand from the department. Unless otherwise specified by the department by rule, the fee for an inspection under par. (c) is $150.

(7) OUT-OF-STATE DEALERS. The department may not issue a license under sub. (2) to a person who is an out-of-state dog dealer unless the person provides to the department a copy of any license required by the person's state of residence and any license required under federal law.

(8) HEALTH REQUIREMENTS FOR SELLING DOGS. (a) No person who is required to be licensed under sub. (2) may sell a dog without providing all of the following to the purchaser:

1. A certificate of veterinary inspection from a licensed veterinarian stating that the veterinarian has examined the dog and found that it has no signs of infectious or contagious diseases as of the date of the examination.

2. A copy of all vaccination records for the dog showing the date the vaccine was administered and the name of the person who administered the vaccine.

(b) No person who is required to be licensed under sub. (2) may sell at auction a dog that is not spayed or neutered without providing written proof that the dog has tested negative for brucellosis using a test approved by the department that was conducted no more than 30 days before the day of sale.

(9) AGE FOR TRANSFER OF PUPPY. A person required to be licensed under sub. (2) may not transfer a dog to a buyer until the dog is 7 weeks of age.

(10) STANDARDS OF CARE. A person who is required to be licensed under sub. (2) shall do all of the following with respect to each dog kept by the person:

(a) Provide sufficient food to maintain the dog in good health.

(b) Provide sufficient water to maintain the dog in good health. If fresh water is not available to the dog at all times, the person shall provide fresh water daily and in sufficient quantity for the health of the dog.

(c) Ensure that necessary and standard veterinary care is provided in a timely manner.

(d) Ensure that the dog is not kept in an enclosure unless all of the following apply:

1. The enclosure is of an appropriate size, as determined by the department, based on the size, age, and number of dogs kept in the enclosure and the length of time the dog is kept in the enclosure.

2. The enclosure is structurally sound and maintained in good repair to protect the dog from injury.

3. If wire flooring is used, it is coated, is of a sufficient gauge to ensure that it will not cause injury to the dog, and is used only in the manner specified by the department.

4. The enclosure is maintained in a clean and sanitary condition.

(e) Ensure that the dog is not kept in an enclosure for a period that the department determines to be excessive, considering the size of the enclosure and any other factors that the department considers relevant.

(f) Ensure that the dog is kept outdoors only if all of the following apply:

1. The dog is of a breed or type that is typically kept outdoors.

2. The dog is acclimated to the outdoors.

3. The person provides adequate shelter from the sun and inclement weather.

(g) Ensure that all facilities in which the person keeps the dog have adequate lighting and ventilation and that a proper temperature is maintained for the dog, considering its type or breed.

(h) Ensure that the dog is provided adequate daily access to exercise, as determined by the department.

(i) Ensure that the dog is observed every day by the caretaker of the premises at which the person operates or an individual under the direct supervision of the caretaker to monitor the health and temperament of the dog and to provide care to the dog as needed.

(10m) VACCINATIONS. A person who is required to be licensed under sub. (2) may have a dog kept by the person vaccinated by an individual who is not a veterinarian unless that is prohibited by law.

(11) RECORD KEEPING. A person who is required to be licensed under sub. (2) shall keep a record of each dog that comes into the person's possession that includes all of the following information:

(a) A description of the dog including the dog's breed or type, sex, date of birth or approximate age, color, and any distinctive markings.

(b) The dog's official federal department of agriculture tag number or tattoo or microchip information, if any.

(c) A statement that the dog was born in the person's possession or the name and address of the person from whom the dog was acquired and that person's federal department of agriculture license or registration number or, if the person is not licensed or registered by the federal department of agriculture, the person's state of residence.

(d) If the dog was not born in the person's possession, the date on which the person acquired the dog.

(e) The date and method of disposition of the dog.

(f) Any other information required by the department.

(12) TEMPORARY DOG MARKETS. (a) *Operator responsibilities.* A person who operates a temporary dog market shall do all of the following:

1. Register with the department.

2. Take reasonable steps to ensure that all persons selling or offering to sell dogs at the temporary dog market comply with par. (b).

3. Obtain, review, and keep, for at least 5 years, copies of the information provided under par. (b) and make the information available to the department for inspection and copying upon request.

4. If persons sell or offer to sell dogs at the temporary dog market for 2 or more consecutive days, employ or contract with a veterinarian licensed under ch. 453 to conduct an examination of the dogs offered for sale at the temporary dog market on each day on which dogs are offered for sale and to review the information provided under par. (b).

(b) *Seller responsibilities.* A person who sells or offers to sell a dog at a temporary dog market shall provide all of the following information to the operator of the temporary dog market:

1. The person's name and address.

2. If the person is required to be licensed under sub. (2), the person's license number.

3. A description of each dog sold or being offered for sale, including the dog's breed or type, sex, date of birth or approximate age, color, and any distinctive markings, and either a statement that the dog was born in the person's possession or the name and address of the person from whom the dog was acquired.

4. Documentation showing that the person complied with s. 95.21 (2) and with any applicable rules of the department relating to bringing dogs into this state.

(c) *Inspection.* The department may inspect a temporary dog market and the information provided under par. (b) at any time during normal business hours.

(13) REPORTING MISTREATMENT OF DOGS. If the department has reasonable grounds to believe that a dog in the possession of a person required to be licensed under sub. (2) is being mistreated in violation of ch. 951, the department shall report the information that supports its belief to a humane officer or law enforcement agency with jurisdiction over the area in which the dog is located.

(14) RULES. (a) The department, in consultation with the advisory committee established under par. (b), shall promulgate rules to implement and administer this section.

(b) Before the department promulgates rules under par. (a), it shall establish an advisory committee to assist in writing the rules that consists of at least one representative from each of the following groups but that does not consist of more than 12 members:

1. Persons selling dogs at retail.

2. Dog breeders that sell large dogs and that sell fewer than 50 dogs per year.

3. Dog breeders that sell small dogs and that sell fewer than 50 dogs per year.

4. Dog breeders that sell large dogs and that sell 50 or more dogs per year.

5. Dog breeders that sell small dogs and that sell 50 or more dogs per year.

6. Sporting associations whose primary activities involve dogs.

7. Humane societies providing shelter to fewer than 500 dogs per year.

8. Humane societies providing shelter to 500 or more dogs per year.

9. Veterinarians.

10. Animal control facilities.

11. Breed rescue groups.

(c) The department shall select any member of an advisory committee under par. (b) who represents veterinarians from nominations made by the Wisconsin Veterinary Medical Association and shall select each other member from nominations made by one or more organizations representing the group that the member represents.

(d) An advisory committee under par. (b) does not expire until 12 months after the rules are promulgated and shall make recommendations to the department for amendments to the rules.

(15) PENALTIES. (a) A person who operates without a license required under sub. (2) may be fined not more than $10,000 or imprisoned for not more than 9 months or both.

(b) 1. Except as provided under par. (a), a person who violates this section or a rule promulgated under this section may be required to forfeit not more than $1,000 for the first offense and may be required to forfeit not less than $200 nor more than $2,000 for the 2nd or any subsequent offense within 5 years.

2. If a violation under subd. 1. involves the keeping of animals, each animal with respect to which the statute or rule is violated constitutes a separate violation.

(c) In addition to the penalties under pars. (a) and (b), a court may order a person who violates this section to pay the expenses of caring for dogs that are removed from the person's possession because of mistreatment.

History: 2009 a. 90.

Cross-reference: See also ch. ATCP 16, Wis. adm. code.

Enhancing Animal Welfare Laws. Goode & Aizenberg. Wis. Law. Dec. 2011.

CHAPTER 174

DOGS

174.01 Restraining action against dogs. (1) KILLING A DOG. (a) Except as provided in par. (b), a person may intentionally kill a dog only if a person is threatened with serious bodily harm by the dog and:

1. Other restraining actions were tried and failed; or
2. Immediate action is necessary.

(b) A person may intentionally kill a dog if a domestic animal that is owned or in the custody of the person is threatened with serious bodily harm by the dog and the dog is on property owned or controlled by the person and:

1. Other restraining actions were tried and failed; or
2. Immediate action is necessary.

(2) INAPPLICABLE TO OFFICERS, VETERINARIANS, AND PERSONS KILLING THEIR OWN DOG. This section does not apply to an officer acting in the lawful performance of his or her duties under s. 29.921 (7), 95.21, 173.23 (1m) (c), (3), or (4), or 174.02 (3), or to a veterinarian killing a dog in a proper and humane manner, or to a person killing his or her own dog in a proper and humane manner.

(3) LIABILITY AND PENALTIES. A person who violates this section:

(a) Is liable to the owner of the dog for double damages resulting from the killing;

(b) Is subject to the penalties provided under s. 174.15; and

(c) May be subject to prosecution, depending on the circumstances of the case, under s. 951.02.

History: Sup. Ct. Order, 67 Wis. 2d 585, 775 (1975); 1975 c. 218; 1979 c. 289; 1981 c. 285; 1983 a. 451; 1987 a. 332 s. 64; 1997 a. 192, 248; 1999 a. 32; 2005 a. 162.

Within the meaning of the 4th amendment, domestic animals are effects and the killing of a companion dog constitutes a seizure, which is constitutional only if reasonable. Viilo v. Eyre, 547 F.3d 707 (2008).

174.02 Owner's liability for damage caused by dog; penalties; court order to kill a dog. (1) LIABILITY FOR INJURY. (a) *Without notice.* Subject to s. 895.045 and except as provided in s. 895.57 (4), the owner of a dog is liable for the full amount of damages caused by the dog injuring or causing injury to a person, domestic animal or property.

(b) *After notice.* Subject to s. 895.045 and except as provided in s. 895.57 (4), the owner of a dog is liable for 2 times the full amount of damages caused by the dog injuring or causing injury to a person, domestic animal or property if the owner was notified or knew that the dog previously injured or caused injury to a person, domestic animal or property.

(2) PENALTIES IMPOSED ON OWNER OF DOG CAUSING DAMAGE. (a) *Without notice.* The owner of a dog shall forfeit not less than $50 nor more than $500 if the dog injures or causes injury to a person, domestic animal, property, deer, game birds or the nests or eggs of game birds.

(b) *After notice.* The owner of a dog shall forfeit not less than $200 nor more than $1,000 if the dog injures or causes injury to a person, domestic animal, property, deer, game birds or the nests or eggs of game birds, if the owner was notified or knew that the dog previously injured or caused injury to a person, domestic animal, property, deer, game birds or the nests or eggs of game birds.

(c) *Penalties in addition to liability for damages.* The penalties in this subsection are in addition to any other liability imposed on the owner of a dog.

(3) COURT ORDER TO KILL A DOG. (a) The state or any municipality may commence a civil action to obtain a judgment from a court ordering an officer to kill a dog. The court may grant the judgment if the court finds both of the following:

1. The dog caused serious injury to a person or domestic animal on 2 separate occasions off the owner's property, without reasonable cause.

2. The owner of the dog was notified or knew prior to the 2nd injury, that the dog caused the first injury.

(b) Any officer enforcing a judgment under this subsection shall kill a dog in a proper and humane manner.

(4) LAW ENFORCEMENT DOGS. (a) In this subsection, "law enforcement agency" has the meaning given in s. 165.83 (1) (b).

(b) The owner of a dog that is used by a law enforcement agency is not liable under sub. (1) for damages caused by the dog to a crime suspect while the dog is performing law enforcement functions.

(c) Subsection (2) does not apply to the owner of a dog that is used by a law enforcement agency if the dog injures a crime suspect while the dog is performing law enforcement functions.

(d) Subsection (3) does not apply to a dog that is used by a law enforcement agency if the dog injures a crime suspect while the dog is performing law enforcement functions.

History: 1981 c. 285; 1983 a. 451; 1985 a. 92; 1993 a. 154; 1995 a. 181; 1997 a. 141; 1999 a. 45.

Public policy does not prohibit insurance coverage for statutorily imposed multiple damages. Cieslewicz v. Mutual Service Cas. Ins. Co. 84 Wis. 2d 91, 267 N.W.2d 595 (1978).

Doubling of damages under s. 174.02 (1) (b) operates only after application of the laws of comparative negligence. Sprague v. Sprague, 132 Wis. 2d 68, 389 N.W.2d 823 (Ct. App. 1986).

To be a "keeper" of a dog within the definition of "owner" under this statute, the person must exercise some measure of custody, care, or control. An "owner" injured while in control of the dog may not use the statute to hold another owner liable. Armstrong v. Milwaukee Mutual Insurance Co. 202 Wis. 2d 258, 549 N.W.2d 723 (1996), 93-1918.

A landlord does not become a harborer of a tenant's dog by merely permitting the tenant to keep the dog. Malone v. Fons, 217 Wis. 2d 746, 580 N.W.2d 697 (Ct. App. 1998), 96-3326.

Armstrong has no application when one who is neither an owner or keeper of the dog is injured. Sub. (1) imposes strict liability on an owner when the person injured is neither the dog's owner or keeper. Fifer v. Dix, 2000 WI App 66, 234 Wis. 2d 117, 608 N.W.2d 740, 99-1717.

An owner may sue a keeper for contribution when an innocent 3rd-party has been injured. Fire Insurance Exchange v. Cincinnati Insurance Company, 2000 WI App 82, 234 Wis. 2d 314, 610 N.W.2d 98, 99-1094.

This statute applies in the case of a person tripping over a sleeping dog, but public policy precludes liability. Alwin v. State Farm Fire and Casualty Company, 2000 WI App 92, 234 Wis. 2d 441, 610 N.W.2d 218, 99-1957.

A keeper of a dog may not recover under this section, notwithstanding an allegation that the actual owner was negligent. While the keeper may pursue a common law negligence claim, sub. (1) (b) and its provision of double damages are not applicable to that action. Malik v. American Family Mutual Insurance Co. 2001 WI App 82, 243 Wis. 2d 27, 625 N.W.2d 640, 00-1129.

A dog owner does not have notice under sub. (1) (b) because the owner knows that the dog as a puppy chewed on household items in the course of normal teething behavior. Gasper v. Parbs, 2001 WI App 259, 249 Wis. 2d 106, 637 N.W.2d 399, 00-2476.

Courts may utilize the traditional 6 public policy factors, formerly referred to as proximate cause, to limit liability in appropriate cases under this section. Fandrey v. American Family, 2004 WI 62, 272 Wis. 2d 46, 680 N.W.2d 345, 02-2628.

Public policy does not preclude a police officer from suing for injuries received because of a dog attack that occurred during the course of the officer's duties. Cole v. Hubanks, 2004 WI 74, 272 Wis. 2d 539, 681 N.W.2d 147, 02-1416.

Under s. 174.001 (5), "owner" includes anyone who keeps or harbors a dog. The concepts of "harbor" and "keep" are similar, and the liability of one who harbors a dog and one who keeps a dog is the same. When a homeowner has become a statutory owner by virtue of the dog's living in her residence for several months, that status does not vary on a minute-to-minute basis, depending on which person controls the dog. The homeowner's status as a harborer of the dog is not extinguished when the dog's legal owner takes momentary control of the dog. Pawlowski v. American Family Mutual Insurance Co. 2009 WI 105, 322 Wis. 2d 21, 777 N.W.2d 67, 07-2651.

Recent changes in the statutory liability of Wisconsin dog owners: How expensive is fido? Eiche. WBB April 1984.

Unleashed: Wisconsin's Dog Statute. Mullaney. Wis. Law. June 2006.

174.042 Dogs running at large and untagged dogs subject to impoundment; penalties. (1) DOG RUNNING AT LARGE. (a) Except as provided in par. (b), a dog is considered to be running at large if it is off the premises of its owner and not under the control of the owner or some other person.

(b) A dog that is actively engaged in a legal hunting activity, including training, is not considered to be running at large if the dog is monitored or supervised by a person and the dog is on land that is open to hunting or on land on which the person has obtained permission to hunt or to train a dog.

(2) UNTAGGED DOG. A dog is considered to be untagged if a valid license tag is not attached to a collar which is kept on the dog whenever the dog is outdoors unless the dog is securely confined in a fenced area.

(3) DOG RUNNING AT LARGE OR UNTAGGED DOG SUBJECT TO IMPOUNDMENT. An officer shall attempt to capture and restrain any dog running at large and any untagged dog.

(4) PENALTIES. If the owner of a dog negligently or otherwise permits the dog to run at large or be untagged, the owner shall forfeit not less than $25 nor more than $100 for the first offense and not less than $50 nor more than $200 for subsequent offenses.

History: 1979 c. 289; 1983 a. 451; 1999 a. 50.

174.13 Humane use of dogs for scientific or educational purposes. (2) Any officer or pound which has custody of an unclaimed dog may release the dog to the University of Wisconsin System, the Medical College of Wisconsin, Inc., or to any other educational institution of higher learning chartered under the laws of the state and accredited to the University of Wisconsin System, upon requisition by the institution. The requisition shall be in writing, shall bear the signature of an authorized agent, and shall state that the dog is requisitioned for scientific or educational purposes. If a requisition is made for a greater number of dogs than is available at a given time, the officer or pound may supply those immediately available and may withhold from other disposition all unclaimed dogs coming into the officer's or pound's custody until the requisition is fully discharged, excluding impounded dogs as to which ownership is established within a reasonable period. A dog left by its owner for disposition is not considered an unclaimed dog under this section. If operated by a county, city, village or town, the officer or pound is entitled to the payment of $1 for each dog requisitioned. An institution making a requisition shall provide for the transportation of the dog.

(3) An officer or pound that has custody of unclaimed dogs shall maintain records as provided under s. 173.17.

(4) It shall be unlawful for any person, except a person licensed or registered and regulated under federal animal welfare laws, to take or send outside the state or to purchase or otherwise acquire in this state for the purpose of taking or sending outside the state, any living cat or dog to be used for any medical, surgical or chemical investigation, experiment or demonstration.

History: 1971 c. 40 s. 93; 1973 c. 130; 1977 c. 418, 447; 1979 c. 289; 1991 a. 189; 1997 a. 192.

174.15 Penalty. Any person who violates this chapter shall be fined not more than $500 or imprisoned up to 60 days or both.

History: 1979 c. 289 ss. 34, 36; Stats. 1979 s. 174.15.

CHAPTER 175

MISCELLANEOUS POLICE PROVISIONS

175.09 Standard time. (1) The standard of time in this state shall be the solar time of the ninetieth meridian west of Greenwich, commonly known as central time, and no department of the state government, and no county, city, town or village shall employ any other time, or adopt any ordinance or order providing for the use of any other than the standard of time.

(2) No person operating or maintaining a place of business of whatsoever kind or nature, shall employ, display or maintain or use any other than the standard of time in connection with such place of business.

(3) Whoever shall in connection with any place of business use any other than the standard of time shall be fined not less than $25 nor more than $500 or imprisoned for not less than 10 days nor more than 30 days or both.

History: 1997 a. 254.

175.22 Policy on privacy in locker rooms. (1) In this section:

(a) "Person" includes the state.

(b) "Recording device" means a camera, a video recorder, or any other device that may be used to record or transfer images.

(2) Any person that owns or operates a locker room in this state shall adopt a written policy that does all of the following:

(a) Specifies who may enter and remain in the locker room to interview or seek information from any individual in the locker room.

(b) Specifies the recording devices that may be used in the locker room and the circumstances under which they may be used.

(c) Reflects the privacy interests of individuals who use the locker room.

(d) Specifies that no person may use a cell phone to capture, record, or transfer a representation of a nude or partially nude person in the locker room.

History: 2007 a. 118.

175.35 Waiting period for purchase of handguns. (1) In this section:

(ag) "Criminal history record" includes information reported to the department under s. 938.396 (2g) (n) that indicates a person was adjudicated delinquent for an act that if committed by an adult in this state would be a felony.

(ar) "Firearms dealer" means any person engaged in the business of importing, manufacturing or dealing in firearms and having a license as an importer, manufacturer or dealer issued by the U.S. department of the treasury.

(at) "Firearms restrictions record search" means a search of department of justice records to determine whether a person seeking to purchase a handgun is prohibited from possessing a firearm under s. 941.29. "Firearms restriction record search" includes a criminal history record search, a search to determine whether a person is prohibited from possessing a firearm under s. 51.20 (13) (cv) 1., 2007 stats., a search in the national instant criminal background check system to determine whether a person has been ordered not to possess a firearm under s. 51.20 (13) (cv) 1., 51.45 (13) (i) 1., 54.10 (3) (f) 1., or 55.12 (10) (a), a search to determine whether the person is subject to an injunction under s. 813.12 or 813.122, or a tribal injunction, as defined in s. 813.12 (1) (e), issued by a court established by any federally recognized Wisconsin Indian tribe or band, except the Menominee Indian tribe of Wisconsin, that includes notice to the respondent that he or she is subject to the requirements and penalties under s. 941.29 and that has been filed with the circuit court under s. 806.247 (3), and a search to determine whether the person is prohibited from possessing a firearm under s. 813.125 (4m).

(b) "Handgun" means any weapon designed or redesigned, or made or remade, and intended to be fired while held in one hand and to use the energy of an explosive to expel a projectile through a smooth or rifled bore.

(c) "Working day" means each day except Saturday, Sunday, or a legal holiday under s. 995.20.

(2) When a firearms dealer sells a handgun, he or she may not transfer possession of that handgun to any other person until all of the following have occurred:

(a) The transferee has provided identification as required by rule under sub. (2g) (a).

(b) The transferee has completed the notification form described in sub. (2g) (b).

(c) The firearms dealer has conveyed the information from the completed notification form to the department of justice as required by rule under sub. (2g) (b) and requested a firearms restrictions record search.

(d) Forty-eight hours, subject to extension under sub. (2g) (c) 4. c., have elapsed from the time that the firearms dealer has received a confirmation number regarding the firearms restrictions record search under sub. (2g) (c) from the department of justice and the firearms dealer has not been notified that the transfer would be in violation of s. 941.29.

(2e) When a transferee completes the notification form described in sub. (2g) (b), the transferee shall provide truthful information.

(2f) When a firearms dealer requests that the department of justice provide a firearms restrictions record search under sub. (2g), he or she shall provide truthful information about his or her status as a firearms dealer and shall provide an accurate firearms dealer identification number obtained under sub. (2h). A person may request that the department provide a firearms restrictions record search under sub. (2g) only if he or she is a firearms dealer.

(2g) (a) The department of justice shall promulgate rules prescribing procedures for a transferee to provide and a firearms dealer to inspect identification containing a photograph of the transferee.

(b) The department of justice shall promulgate rules prescribing a notification form for use under sub. (2) requiring the transferee to provide his or her name, date of birth, gender, race and social security number and other identification necessary to permit an accurate firearms restrictions record search under par. (c) 3. and the required notification under par. (c) 4. The department of justice shall make the forms available at locations throughout the state.

(c) The department of justice shall promulgate rules for firearms restrictions record searches regarding transferees under sub. (2), including procedures for all of the following:

1. A firearms dealer to convey the information from a completed notification form to the department using a toll-free telephone number provided by the department.

2. The department to provide the firearms dealer with a confirmation number confirming the receipt of the information under subd. 1.

3. The department to conduct the firearms restrictions record search regarding the transferee. The rules shall include, but not be limited to, a requirement that the department use the transaction information for management of enforcement system and the national crime information center system.

4. The department to notify the dealer, either during the initial telephone call or as soon thereafter as practicable, of the results of the firearms restrictions record search as follows:

a. If the search indicates that the transferee is prohibited from possessing a firearm under s. 941.29, the department shall provide the firearms dealer with a unique nonapproval number. The department may not disclose to the firearms dealer the reason the transferee is prohibited from possessing a firearm under s. 941.29.

b. If the search indicates that the transferee is not prohibited from possessing a firearm under s. 941.29, the department shall provide the firearms dealer with a unique approval number.

c. If the search indicates a felony charge without a recorded disposition, the deadline under sub. (2) (d) is extended to the end of the 3rd complete working day commencing after the day on which the finding is made. The department shall notify the firearms dealer of the extension as soon as practicable. During the extended period, the department shall make every reasonable effort to determine the disposition of the charge and notify the firearms dealer of the results as soon as practicable.

(d) 1. The department of justice shall promulgate rules to convey information in a timely manner to the national instant criminal background check system regarding individuals ordered not to possess a firearm under s. 51.20 (13) (cv) 1., 51.45 (13) (i) 1., 54.10 (3) (f) 1., or 55.12 (10) (a).

2. The department of justice shall promulgate rules to convey information in a timely manner to the national instant criminal background check system regarding the cancellation under s. 51.20 (13) (cv) 1m. c., 51.45 (13) (i) 2. c., 54.10 (3) (f) 2. c., or 55.12 (10) (b) 3. of an order not to possess a firearm.

(2h) Upon the request of any firearms dealer, the department of justice shall provide that firearms dealer with a unique firearms dealer identification number for use under this section.

(2i) The department shall charge a firearms dealer a $13 fee for each firearms restrictions record search that the firearms dealer requests under sub. (2) (c). The firearms dealer may collect the fee from the transferee. The department may refuse to conduct firearms restrictions record searches for any firearms dealer who fails to pay any fee under this subsection within 30 days after billing by the department.

(2j) A firearms dealer shall maintain the original record of all completed notification forms and a record of all confirmation numbers and corresponding approval or nonapproval numbers that he or she receives regarding firearms restrictions record searches under sub. (2g). The firearms dealer shall mail the duplicate copy of each completed notification form to the department of justice.

(2k) (ag) In this subsection:

1. "Law enforcement agency of a physically adjacent state" has the meaning given in s. 175.46 (1) (b).

2. "Wisconsin law enforcement agency" means a governmental unit of one or more persons employed by this state or a political subdivision of this state for the purpose of preventing and detecting crime and enforcing state laws or local ordinances, employees of which unit are authorized to make arrests for crimes while acting within the scope of their authority.

(ar) Except as provided in pars. (b) to (j) and as necessary to administer this section, the department of justice shall do all of the following:

1. Deny access to any record kept under this section.

2. Check each duplicate notification form received under sub. (2j) against the information recorded by the department regarding the corresponding request for a firearms restrictions record search under sub. (2g). If the department previously provided a unique approval number regarding the request and nothing in the duplicate completed notification form indicates that the transferee is prohibited from possessing a firearm under s. 941.29, the department shall destroy all records regarding that firearms restrictions record search within 30 days after receiving the duplicate form.

(b) Notwithstanding par. (ar), the department of justice may maintain all of the following:

1. Records necessary to comply with federal law.

2. a. Except as provided in subd. 2. b., a log of dates of requests for firearms restrictions record searches under sub. (2g) together with confirmation numbers, unique approval and nonapproval numbers and firearms dealer identification numbers corresponding to those dates.

b. Within 3 years after the department issues a unique approval number, the department shall destroy all corresponding information contained in the log under subd. 2. a.

3. Records necessary to administer this section.

(c) Notwithstanding par. (ar), the department of justice shall provide access to any record under this section under all of the following circumstances:

1. The department of justice receives a record request that is submitted in writing by a Wisconsin law enforcement agency.

2. The request submitted under subd. 1. appears on the Wisconsin law enforcement agency's letterhead and contains all of the following:

a. A statement that the Wisconsin law enforcement agency is conducting an investigation of a crime in which a handgun was used or was attempted to be used or was unlawfully possessed.

b. A statement by a division commander or higher authority within the Wisconsin law enforcement agency that he or she has a reasonable suspicion that the person who is the subject of the information request has obtained or is attempting to obtain a handgun.

c. The signature of a division commander or higher authority within the Wisconsin law enforcement agency.

(d) Whenever a Wisconsin law enforcement agency makes a request for information under par. (c), the agency shall report to the subject of the information request the fact that a request has been made and the name of the Wisconsin law enforcement agency that made the request. The agency shall make the report whenever the earliest of the following occurs:

1. The person who is the subject of the information request under par. (c) 2. b. is no longer material to the investigation conducted under par. (c) 2. a.

2. The Wisconsin law enforcement agency has completed its investigation under par. (c) 2. a.

3. One year after the date that the Wisconsin law enforcement agency made the request under par. (c).

(e) A Wisconsin law enforcement agency may disclose information that is provided by the department of justice under par. (c) to another law enforcement agency. If there is a request for information from a requester other than a law enforcement agency, the Wisconsin law enforcement agency shall not disclose information to the requester that is provided by the department of justice under par. (c). If there is a request by a requester other than a law enforcement agency to copy or inspect any record of the Wisconsin law enforcement agency that contains that information, the agency, acting under s. 19.36 (6), shall delete any portion of the record that relates to that information before release.

(f) A Wisconsin law enforcement agency that is provided access to a record under par. (c) shall destroy all corresponding information contained in the record when the earliest of the following occurs:

1. The person who is the subject of the information request under par. (c) 2. b. is no longer material to the investigation conducted under par. (c) 2. a.

2. The Wisconsin law enforcement agency has completed its investigation under par. (c) 2. a.

3. One year after the date the Wisconsin law enforcement agency made the request under par. (c).

(g) If a search conducted under sub. (2g) indicates that the transferee is prohibited from possessing a firearm under s. 941.29, the attorney general or his or her designee may disclose to a law enforcement agency that the transferee has attempted to obtain a handgun.

(h) If a search conducted under sub. (2g) indicates a felony charge without a recorded disposition and the attorney general or his or her designee has reasonable grounds to believe the transferee may pose a danger to himself, herself or another, the attorney general or his or her designee may disclose to a law enforcement agency that the transferee has obtained or has attempted to obtain a handgun.

(i) The department of justice may not charge a fee for any services that the department provides under pars. (c) to (j).

(j) If a law enforcement agency of a physically adjacent state makes a request under par. (c), the department shall comply with the request under all of the following circumstances:

1. The law enforcement agency of the physically adjacent state agrees to comply with all the requirements under this subsection.

2. The physically adjacent state allows Wisconsin law enforcement agencies similar or greater access to similar information from that physically adjacent state.

(2L) The department of justice shall promulgate rules providing for the review of nonapprovals under sub. (2g) (c) 4. a. Any person who is denied the right to purchase a handgun because the firearms dealer received a nonapproval number under sub. (2g) (c) 4. a. may request a firearms restrictions record search review under those rules. If the person disagrees with the results of that review, the person may file an appeal under rules promulgated by the department.

(2t) This section does not apply to any of the following:

(a) Transfers of any handgun classified as an antique by regulations of the U.S. department of the treasury.

(b) Transfers of any handgun between firearms dealers or between wholesalers and dealers.

(c) Transfers of any handgun to law enforcement or armed services agencies.

(3) Any person who intentionally violates sub. (2), (2e), (2f) or (2j) shall be fined not less than $500 nor more than $10,000 and may be imprisoned for not more than 9 months.

History: 1975 c. 167; 1991 a. 11; 1993 a. 16, 195, 196; 1995 a. 71, 77, 159, 306; 2005 a. 155, 344; 2009 a. 28, 258.

Cross-reference: See also ch. Jus 10, Wis. adm. code.

175.37 Warning whenever transferring a firearm. (1) Upon the retail commercial sale or retail commercial transfer of any firearm, the seller or transferor shall provide to the buyer or transferee the following written warning in block letters not less than one-fourth inch in height: "IF YOU LEAVE A LOADED FIREARM WITHIN THE REACH OR EASY ACCESS OF A CHILD YOU MAY BE FINED OR IMPRISONED OR BOTH IF THE CHILD IMPROPERLY DISCHARGES, POSSESSES OR EXHIBITS THE FIREARM."

(2) Any person who violates sub. (1) may be fined not more than $500 or imprisoned for not more than 30 days or both.

History: 1991 a. 139.

175.38 Enforcement of video gambling law. (1) In this section, "law enforcement officer" has the meaning given in

s. 165.85 (2) (c) but does not include a special agent of the department of revenue.

(2) Notwithstanding s. 945.041, no law enforcement officer may investigate violations of or otherwise enforce s. 945.03 (2m) or 945.04 (2m).

(3) No law enforcement officer may investigate violations of or otherwise enforce s. 945.05 (1m) unless he or she reasonably believes that the video gambling machine involved may be used in connection with a violation of ch. 945 other than a violation of s. 945.03 (2m) or 945.04 (2m).

History: 2003 a. 33.

175.40 Arrests; assistance. (1) In this section:

(a) "Highway" has the meaning specified in s. 340.01 (22).

(b) "Intersection" has the meaning specified in s. 340.01 (25).

(bn) "Law enforcement officer" has the meaning specified in s. 165.85 (2) (c).

(c) "Peace officer" has the meaning specified in s. 939.22 (22), but does not include a commission warden, as defined in s. 939.22 (5). "Peace officer" includes any tribal law enforcement officer who is empowered to act under s. 165.92 (2) (a).

(2) For purposes of civil and criminal liability, any peace officer may, when in fresh pursuit, follow anywhere in the state and arrest any person for the violation of any law or ordinance the officer is authorized to enforce.

(3) For purposes of civil and criminal liability, any peace officer outside his or her territorial jurisdiction acting under sub. (2) is considered to be acting in an official capacity while in fresh pursuit under sub. (2), making an arrest under sub. (2) or transporting a person arrested under sub. (2).

(4) A peace officer whose boundary is a highway may enforce any law or ordinance that he or she is otherwise authorized to enforce by arrest or issuance of a citation on the entire width of such a highway and on the entire intersection of such a highway and a highway located in an adjacent jurisdiction. This subsection does not extend an officer's jurisdiction outside the boundaries of this state.

(5) (a) For any county having a population of 500,000 or more, if any law enforcement officer has territorial jurisdiction that is wholly or partially within that county and has authority to arrest a person within the officer's territorial jurisdiction, the officer may arrest that person anywhere in the county.

(b) A law enforcement officer specified in par. (a) has the additional arrest authority under this subsection only if the officer's law enforcement agency has adopted policies under par. (d) and the officer complies with those policies.

(c) A law enforcement agency in the jurisdiction where a person is arrested under par. (a) is immune from liability for the acts or omissions of any officer of a different law enforcement agency exercising authority under par. (a).

(d) In order to allow its officers to exercise authority under par. (a), a law enforcement agency for a municipality or county must adopt and implement written policies regarding the arrest authority under this subsection, including at least all of the following:

1. Investigations conducted in another jurisdiction.

2. Arrests made in another jurisdiction if the crime is observed by a law enforcement officer.

3. Arrests made in another jurisdiction if the crime is not observed by a law enforcement officer.

4. Notification to and cooperation with the law enforcement agency of another jurisdiction regarding investigations conducted and arrests made in the other jurisdiction.

(e) The authority under this subsection is in addition to any other arrest authority, including authority granted under any charter.

(6) (a) A peace officer outside of his or her territorial jurisdiction may arrest a person or provide aid or assistance anywhere in the state if the criteria under subds. 1. to 3. are met:

1. The officer is on duty and on official business.

2. The officer is taking action that he or she would be authorized to take under the same circumstances in his or her territorial jurisdiction.

3. The officer is acting to respond to any of the following:

a. An emergency situation that poses a significant threat to life or of bodily harm.

b. Acts that the officer believes, on reasonable grounds, constitute a felony.

(b) A peace officer specified in par. (a) has the additional arrest and other authority under this subsection only if the peace officer's supervisory agency has adopted policies under par. (d) and the officer complies with those policies.

(c) For purposes of civil and criminal liability, any peace officer outside of his or her territorial jurisdiction acting under par. (a) is considered to be acting in an official capacity.

(d) In order to allow a peace officer to exercise authority under par. (a), the peace officer's supervisory agency must adopt and implement written policies regarding the arrest and other authority under this subsection, including at least a policy on notification to and cooperation with the law enforcement agency of another jurisdiction regarding arrests made and other actions taken in the other jurisdiction.

(6m) (a) An off-duty peace officer may arrest a person or provide aid or assistance outside of his or her territorial jurisdiction but in the state if all of the following apply:

1. The officer is responding to an emergency situation that poses a significant threat to life or of bodily harm.

2. The officer is taking action that he or she would be authorized to take under the same circumstances in the officer's territorial jurisdiction.

3. The officer's supervising agency has adopted written policies authorizing off-duty officers to make arrests or provide aid or assistance outside of the agency's territorial jurisdiction but in the state, and the policies at a minimum address all of the following:

a. Reasonable responses to an emergency situation under subd. 1.

b. Arrests made in response to an emergency situation under subd. 1.

c. Notification of and cooperation with a law enforcement agency of another jurisdiction regarding arrests made and other actions taken in the other jurisdiction.

4. The officer's action is in compliance with the policies under subd. 3.

(b) A supervising agency may limit its officer's authority to act under this subsection by including limitations in the written policies under par. (a) 3.

(c) 1. For purposes of civil and criminal liability and for purposes of s. 895.46, an off-duty peace officer acting outside the officer's jurisdiction as authorized under this subsection is considered to be acting in an official capacity as an officer of the state, state employee, or agent of the state.

2. For purposes of worker's compensation under ch. 102, an off-duty peace officer acting outside the officer's territorial jurisdiction as authorized under this subsection is considered to be an employee of the state and the officer is eligible for the same benefits as if the officer had sustained the injury while performing services growing out of and incidental to the officer's employment with the employing supervisory agency.

3. An off-duty peace officer acting outside the officer's territorial jurisdiction as authorized under this subsection is considered to be performing his or her duty and engaging in his or her occupation.

4. By no later than 30 days after the end of each calendar quarter, the department of administration shall submit a report to the joint committee on finance detailing all moneys expended or encumbered from the appropriation account under s. 20.505 (2) (am) during that calendar quarter for costs and judgments under subd. 1. or 2.

(7) (a) In this subsection:

1. "Federal law enforcement officer" means a person employed full-time by the federal government who may make an arrest with or without a warrant for a violation of the U.S. Code and who may carry a firearm in the performance of the person's duties.

2. "Wisconsin law enforcement agency" has the meaning given in s. 175.46 (1) (f).

3. "Wisconsin law enforcement officer" has the meaning given in s. 175.46 (1) (g).

(b) A federal law enforcement officer, while engaged in the performance of official duties, may do any of the following anywhere in the state:

1. Make an arrest for a violation of state law or render aid or assistance if the officer has reasonable grounds for believing that a felony has been or is being committed in his or her presence and has reasonable grounds for believing that the person to be arrested has committed the felony.

2. Render assistance to a Wisconsin law enforcement officer in an emergency or at the request of the Wisconsin law enforcement officer.

(c) A federal law enforcement officer acting under par. (b) has any immunity from liability or limit on liability to the same extent as a Wisconsin law enforcement officer.

(d) No federal law enforcement officer, acting solely under the authority under par. (b), may be considered, for liability purposes, as an employee or agent of this state or any Wisconsin law enforcement agency for his or her actions within this state. The federal law enforcement officer is considered as continuing to be an employee of the agency employing him or her.

(e) This subsection does not limit any authority to act that a federal law enforcement officer has under federal law.

History: 1981 c. 324; 1987 a. 231, 399, 403; 1991 a. 135; 1993 a. 98, 407; 1995 a. 337; 2005 a. 414; 2007 a. 20, 27.

A motorist, injured while fleeing police was, as matter of law, more negligent than pursuing officer. Brunette v. Employers Mut. Liability Ins. Co. 107 Wis. 2d 361, 320 N.W.2d 43 (Ct. App. 1982).

To determine whether an officer acts in "fresh pursuit" under sub. (2) three criteria are considered: 1) whether officer acted without unnecessary delay; 2) whether pursuit is continuous; and 3) whether the time periods were reasonable. City of Brookfield v. Collar, 148 Wis. 2d 839, 436 N.W.2d 911 (Ct. App. 1989).

Sub. (4) permits enforcement of one municipality's ordinance on the entire width of a boundary highway. City of Brookfield v. Berghauer, 170 Wis. 2d 603, 489 N.W.2d 695 (Ct. App. 1992).

In addition to issuing a citation for an observed violation, an officer, after observing a traffic violation and pursuing the defendant into another jurisdiction where the stop was made, was entitled to question the defendant beyond the purpose for which the stop was made and to issue citations for other violations when additional suspicious factors came to the officer's attention during the stop. State v. Haynes, 2001 WI App 266, 248 Wis. 2d 724, 638 N.W.2d 82, 00-3083.

Suppression is not required when a police officer acts without authority outside his or her jurisdiction. Suppression is not required except when evidence is obtained in violation of a constitutional right or in violation of a statute providing suppression as a remedy. State v. Keith, 2003 WI App 47, 260 Wis. 2d 592, 659 N.W.2d 403, 02-0583.

Municipal Police Officers Right to Stop and Arrest in Foreign Jurisdictions. Kershek. Wis. Law. Dec. 1992.

175.405 Sexual assault; evidence where no suspect has been identified.

(1) In this section, "law enforcement agency" has the meaning given in s. 165.83 (1) (b).

(2) Whenever a Wisconsin law enforcement agency collects, in a case of alleged or suspected sexual assault, evidence upon which deoxyribonucleic acid analysis can be performed, and the person who committed the alleged or suspected sexual assault has not been identified, the agency shall follow the procedures specified in s. 165.77 (8) and shall, in a timely manner, submit the evidence it collects to a crime laboratory, as identified in s. 165.75.

History: 2011 a. 32.

175.41 Arrest and assistance; wardens employed by the Great Lakes Indian Fish and Wildlife Commission.

(1) In this section:

(a) "Ceded territory" means the territory in Wisconsin ceded by the Chippewa Indians to the United States in the treaty of 1837, 7 Stat. 536, and the treaty of 1842, 7 Stat. 591.

(b) "Commission" means the Great Lakes Indian Fish and Wildlife Commission.

(c) "Commission warden" means a conservation warden employed by the commission.

(2) For purposes of civil and criminal liability, a commission warden may, when in fresh pursuit, follow anywhere in the state outside the ceded territory and arrest any of the following:

(a) A Chippewa tribal member for violation of the Chippewa off-reservation conservation code, if the conditions of sub. (3) (a) and (e) are met.

(b) Any person for violation of the laws of this state, if the conditions of sub. (3) (a) to (e) are met.

(3) Within the ceded territory, a commission warden may arrest a person for violation of state law or provide aid or assistance to a Wisconsin peace officer if all of the following criteria are met:

(a) The commission warden is on duty and on official business.

(b) Any of the following applies:

1. The commission warden is responding to any of the following:

a. An emergency situation that poses a significant threat to life or a significant threat of bodily harm.

b. Acts that the commission warden believes, on reasonable grounds, constitute a felony.

2. The commission warden is rendering aid or assistance to a Wisconsin peace officer in an emergency or at the request of the Wisconsin peace officer.

(c) The commission warden meets the requirements of s. 165.85 (4) (b) 1., (bn) 1., and (c) and has agreed to accept the duties of a law enforcement officer under the laws of this state.

(d) The commission has adopted and implemented written policies regarding making arrests and rendering aid or assistance under this subsection, including a policy on notification to and cooperation with the law enforcement agency of the jurisdiction in which such arrests are made.

(e) The commission maintains liability insurance that does all of the following:

1. Covers the commission and commission wardens for acts and omissions under sub. (4).

2. Has a limit of coverage not less than $2,000,000 for any occurrence.

3. Provides that the insurer, in defending a claim against the policy, may not raise the defense of sovereign immunity of the insured up to the limits of the policy.

(4) Except as otherwise provided in an agreement between the commission and the state or a subdivision of the state, the commission is liable for all acts and omissions of a commission warden while acting under sub. (2) or (3), and neither the state nor any political subdivision of the state may be held liable for any action of a commission warden taken under the authority of sub. (2) or (3). For purposes of civil and criminal liability, a commission warden acting under sub. (2) or (3) is considered to be acting in an official capacity.

(5) Subsections (2) and (3) apply only if the commission has presented evidence to the department of justice of the insurance under sub. (3) (e). Upon receipt of evidence of insurance under sub. (3) (e), the department of justice shall notify the sheriff of each county in the ceded territory that the commission has met this criterion for performing the powers and duties described under subs. (2) and (3).

History: 2007 a. 27.

175.46 Mutual aid agreements. (1) In this section:

(a) "Border county" means any of the following:

1. Any Wisconsin county that has land that is within 5 miles from any land of a physically adjacent state, as measured, where applicable, by any land that is above the ordinary high water mark.

2. Any county of a physically adjacent state which county has land that is within 5 miles from any land of Wisconsin, as measured, where applicable, by any land that is above the ordinary high water mark.

(b) "Law enforcement agency of a physically adjacent state" means a governmental unit of one or more persons employed by a physically adjacent state or a political subdivision of a physically adjacent state for the purpose of preventing and detecting crime and enforcing state laws or local ordinances, employees of which unit are authorized to make arrests for crimes while acting within the scope of their authority.

(c) "Law enforcement officer of a physically adjacent state" means any person employed by a physically adjacent state or any political subdivision of a physically adjacent state, for the purpose of detecting and preventing crime and enforcing laws or ordinances and who is authorized to make arrests for violations of the laws or ordinances he or she is employed to enforce.

(d) "Physically adjacent state" means Minnesota, Iowa, Illinois or Michigan.

(e) "Political subdivision" means a county, city, village or town.

(f) "Wisconsin law enforcement agency" means a governmental unit of one or more persons employed by this state or a political subdivision of this state for the purpose of preventing and detecting crime and enforcing state laws or local ordinances, employees of which unit are authorized to make arrests for crimes while acting within the scope of their authority.

(g) "Wisconsin law enforcement officer" means any person employed by this state or any political subdivision of this state, for the purpose of detecting and preventing crime and enforcing laws or ordinances and who is authorized to make arrests for violations of the laws or ordinances he or she is employed to enforce.

(2) Except as provided in sub. (8), a Wisconsin law enforcement agency may enter into a mutual aid agreement with a law enforcement agency of a physically adjacent state authorizing one or more of the following:

(a) Law enforcement officers of the law enforcement agency of the physically adjacent state to act with some or all of the arrest and other police authority of a law enforcement officer of the Wisconsin law enforcement agency while within the Wisconsin law enforcement agency's territorial jurisdiction and within a border county.

(b) Law enforcement officers of the Wisconsin law enforcement agency to act with some or all of the arrest and other police authority of a law enforcement officer of the law enforcement agency of the physically adjacent state while within that agency's territorial jurisdiction and within a border county.

(3) An agreement under this section shall be written and may be on an individual case-by-case basis or may be on a continuing basis until terminated by either agency.

(4) An agreement under this section may grant authority to an officer only to enforce laws and make arrests for violations of laws that are similar to the types of laws that he or she is authorized to enforce or make arrests for regarding violations of in his or her home state.

(5) (a) Except as provided in par. (b), any agreement under this section shall provide that any Wisconsin law enforcement officer, acting under the agreement in another state, shall continue to be covered by his or her employing agency for purposes of worker's compensation, unemployment insurance, benefits under ch. 40 and civil liability and any officer of another state acting in Wisconsin under the agreement shall continue to be covered for worker's compensation, unemployment insurance, disability and other employee benefits and civil liability purposes by his or her employing agency in his or her home state. Any Wisconsin officer acting within an adjoining state, under the agreement, is considered

while so acting to be in the ordinary course of his or her employment with his or her employing Wisconsin law enforcement agency.

(b) An agreement under this section shall provide that any Wisconsin law enforcement officer, acting under the agreement in another state, is subject to any immunity from liability or limit on liability to the same extent as any officer of the other state. An agreement under this section shall provide that any law enforcement officer of another state, acting under the agreement in Wisconsin, is subject to any immunity from liability or limit on liability to the same extent as a Wisconsin law enforcement officer.

(6) No law enforcement officer of a physically adjacent state, acting under an agreement under this section, may be considered, for liability purposes, as an employee or agent of this state or any Wisconsin law enforcement agency for his or her actions within this state regardless of the supervision or control of the officer's actions while within this state. The officer of the physically adjacent state is considered as continuing to be an employee of the agency employing him or her in the officer's home state.

(7) Any agreement under this section entered into by a Wisconsin law enforcement agency may include any terms and conditions considered appropriate by that agency, except the agreement shall comply with this section.

(8) At least 30 days prior to entering into an agreement under sub. (2), a Wisconsin law enforcement agency shall submit a copy of the proposed agreement to the department of justice for the department's review and comment. The department shall provide its comments to the Wisconsin law enforcement agency within 21 days after the department receives the proposed agreement. The Wisconsin law enforcement agency need not have the consent of the department to enter into the agreement. The Wisconsin law enforcement agency may revise the proposed agreement without having to resubmit the proposed agreement to the department.

History: 1993 a. 49; 1993 a. 490 s. 154; Stats. 1993 s. 175.46; 1997 a. 39.

175.48 Law enforcement officer identification cards.

(1) In this section, "Wisconsin law enforcement agency" has the meaning given in s. 175.46 (1) (f).

(2) If a Wisconsin law enforcement agency issues photographic identification cards to its officers, it may not require an officer to relinquish his or her card when the officer separates from service with the Wisconsin law enforcement agency unless one of the following applies:

(a) The officer may not lawfully possess a firearm under federal law.

(b) The officer did not separate from service in good standing as a law enforcement officer with the agency.

(c) The officer served as a law enforcement officer for an aggregate of less than 10 years. This paragraph does not apply if the officer, after completing any applicable probationary period of service with the agency, separated from service with the agency due to a service-connected disability, as determined by the agency.

(d) Either of the following applies:

1. A qualified medical professional employed by the law enforcement agency has found the officer to be unqualified to be a law enforcement officer for reasons related to the officer's mental health.

2. The officer has entered into an agreement with the law enforcement agency from which he or she is separating from service in which the officer acknowledges that he or she is not qualified to be a law enforcement officer for reasons related to the officer's mental health and in which the officer declines the photographic identification for that reason.

(3) Unless sub. (2) (a), (b), (c), or (d) applies, if a Wisconsin law enforcement agency does not issue photographic identification cards to its officers, it shall issue such a card to an officer who separates from service with that agency upon the separating officer's request and at his or her expense.

(4) This section does not restrict the right of an officer who has separated from service to go armed with a firearm that is not concealed.

History: 2011 a. 35.

175.49 Former law enforcement officers seeking to carry concealed weapons.

(1) DEFINITIONS. In this section:

(a) "Department" means the department of justice.

(b) "Destructive device" has the meaning given in 18 USC 921 (a) (4).

(c) "Firearm silencer" has the meaning given in s. 941.298 (1).

(d) "Former federal law enforcement officer" means a person who separated from service as a law enforcement officer at a federal law enforcement agency and who resides in Wisconsin.

(e) "Former law enforcement officer" means a person who separated from service as a law enforcement officer at a state or local law enforcement agency in Wisconsin.

(f) "Law enforcement agency" means an agency that consists of one or more persons employed by the federal government, including any agency described under 18 USC 926C (e) (2); a state, or a political subdivision of a state; the U.S. armed forces; or the national guard, that has as its purposes the prevention and detection of crime and the enforcement of laws or ordinances, and that is authorized to make arrests for crimes.

(g) "Law enforcement officer" means a person who is employed by a law enforcement agency for the purpose of engaging in, or supervising others engaging in, the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law and who has statutory powers of arrest.

(h) "Machine gun" has the meaning given in s. 941.27 (1).

(2) CERTIFICATION OF FORMER LAW ENFORCEMENT OFFICERS. (a) Upon the request of a former law enforcement officer and at the expense of the former law enforcement agency officer, a law enforcement agency that employed the former law enforcement officer shall, except as provided in par. (b), issue the former law enforcement officer a certification card as described in sub. (4) stating all of the following:

1. The type of firearm the former law enforcement officer is certified to carry, but no former law enforcement officer may be certified to carry a machine gun, a firearm silencer, or a destructive device.

2. The former law enforcement officer has been found by the state, or by a certified firearms instructor if such an instructor is qualified to conduct a firearms qualification test for active law enforcement officers in the state, to meet the standards for qualification in firearms training for active law enforcement officers to carry a firearm of the type under subd. 1., that are established by the state or, if the state does not establish standards, by the law enforcement agency from which the former law enforcement officer separated.

3. The date on which the finding under subd. 2. was made and an expiration date that is 12 months later than that date.

4. That, due to the finding under subd. 2., the former law enforcement officer is qualified to carry a concealed firearm of the type under subd. 1.

(b) The law enforcement agency may not issue the former law enforcement officer a certification card under par. (a) unless the law enforcement agency first verifies all of the following:

1. The former law enforcement officer separated from service as a law enforcement officer with the law enforcement agency in good standing.

2. The former law enforcement officer served as a law enforcement officer for an aggregate of at least 10 years or the former law enforcement officer separated from law enforcement service due to a service-connected disability, as determined by the law enforcement agency, after completing any applicable probationary period.

3. Both of the following:

a. A qualified medical professional employed by the law enforcement agency has not found the former law enforcement officer to be unqualified to be a law enforcement officer for reasons related to the former officer's mental health.

b. The former law enforcement officer has not entered into an agreement with the law enforcement agency from which he or she separated from service in which the former officer acknowledges that he or she is not qualified to be a law enforcement officer for reasons related to his or her mental health and in which he or she declines the photographic identification for that reason.

4. The former law enforcement officer is not prohibited under federal law from possessing a firearm as indicated by a search of the transaction information for management of enforcement system and the national criminal background check system.

5. The former law enforcement officer has, during the previous 12 months at his or her own expense, been found by the state, or by a certified firearms instructor if such an instructor is qualified to conduct a firearms qualification test for active law enforcement officers in the state, to meet the standards for qualification in firearms training for active law enforcement officers to carry a firearm of the type under par. (a) 1., that are established by the state or, if the state does not establish standards, by the law enforcement agency from which the former law enforcement officer separated.

(3) CERTIFICATION OF FORMER FEDERAL LAW ENFORCEMENT OFFICERS. (a) Upon the request of a former federal law enforcement officer and at the expense of the former federal law enforcement officer, the department may, except as provided in par. (b), issue the former federal law enforcement officer a certification card as described in sub. (4) stating all of the following:

1. The type of firearm the former federal law enforcement officer is certified to carry, but no former federal law enforcement officer may be certified to carry a machine gun, a firearm silencer, or a destructive device.

2. The former federal law enforcement officer [has] been found by the state, or by a certified firearms instructor if such an instructor is qualified to conduct a firearms qualification test for active law enforcement officers in the state, to meet the standards for qualification in firearms training for active law enforcement officers to carry a firearm of the type under subd. 1., that are established by the state or, if the state does not establish standards, by any law enforcement agency in the state.

NOTE: A missing word is shown in brackets. Corrective legislation is pending.

3. The date on which the finding under subd. 2. was made and an expiration date that is 12 months later than that date.

4. That, due to the finding under subd. 2., the former federal law enforcement officer is qualified to carry a concealed firearm of the type under subd. 1.

(b) The department may not issue the former federal law enforcement officer a certification card under par. (a) unless the department first verifies all of the following:

1. The former federal law enforcement officer separated from service as a law enforcement officer with the law enforcement agency in good standing.

2. The former federal law enforcement officer served as a law enforcement officer for an aggregate of at least 10 years or the former federal law enforcement officer separated from law enforcement service due to a service-connected disability, as determined by the law enforcement agency from which the former federal law enforcement officer separated, after completing any applicable probationary period.

3. a. A qualified medical professional employed by the law enforcement agency from which the former federal law enforcement officer separated has not found the former federal law enforcement officer to be unqualified to be a law enforcement officer for reasons related to the former officer's mental health.

b. The former federal law enforcement officer has not entered into an agreement with the law enforcement agency from which he or she separated from service in which the former officer acknowledges that he or she is not qualified to be a law enforcement officer for reasons related to his or her mental health.

4. The former federal law enforcement officer is not prohibited under federal law from possessing a firearm as indicated by a search of the transaction information for management of enforcement system and the national criminal background check system.

5. The former federal law enforcement officer has, during the previous 12 months at his or her own expense, been found by the state, or by a certified firearms instructor if such an instructor is qualified to conduct a firearms qualification test for active law enforcement officers in the state, to meet the standards for qualification in firearms training for active law enforcement officers to carry a firearm of the type under par. (a) 1., that are established by the state or, if the state does not establish standards, by any law enforcement agency in the state.

(c) If, under par. (a), the department issues a former federal law enforcement officer a certification card, the department

shall add the former federal law enforcement officer's information to the list the department maintains under s. 175.60 (12) (a).

(4) CERTIFICATION CARDS. (a) 1. Subject to pars. (b), (c), and (d) and sub. (3) (a), the department shall design a certification card to be issued by the department under sub. (3) (a).

2. Subject to pars. (b), (c), and (d) and sub. (2) (a), each law enforcement agency, upon a request, shall design a certification card to be issued by the law enforcement agency under sub. (2) (a).

(b) A certification card shall contain on one side all of the following:

1. The full name, date of birth, and residence address of the person who holds the certification card.

2. A photograph of the certification card holder and a physical description that includes sex, height, and eye color.

3. The name of this state.

(c) A certification card shall include a statement that the certification card does not confer any law enforcement authority on the certification card holder and does not make the certification card holder an employee or agent of the certifying agency or department.

(d) A certification card may not contain the certification card holder's social security number.

(5) RENEWAL OF CERTIFICATION CARDS. A person who holds a current certification card issued under sub. (2) or (3) may renew the certification card by requesting the law enforcement agency or the department, whichever issued the current certification card, to renew the certification card at the expense of the person holding the card, if, before the date the certification card expires, the law enforcement agency verifies sub. (2) (b) 4. and 5. if the certification card holder is a former law enforcement officer, or the department verifies sub. (3) (b) 4. and 5. if the certification card holder is a former federal law enforcement officer, and the certification card holder provides any information necessary for the verification. The renewal shall state the date on which verification was made and an expiration date that is 12 months later than that date.

(5m) FEES. The department may charge a fee to verify eligibility for a certification card under this section, for the issuance of a certification card under sub. (3), or for the renewal of a certification card under sub. (5), but the fee may not exceed the costs the department incurs in verifying eligibility or for issuing or renewing a certification card. Payments made to the department under this subsection shall be credited to the appropriation account under s. 20.455 (2) (gu).

(6) IMMUNITY. (a) When acting in good faith under this section, the department and its employees and a law enforcement agency and its employees are immune from civil and criminal liability arising from any act or omission under this section.

(b) When acting in good faith under this section, an entity providing firearms training to comply with the requirements under sub. (2) (a) 2., (3) (a) 2., or (5) and its employees are immune from civil and criminal liability arising from any act or omission that is related to that training.

(7) GOING ARMED WITH A FIREARM. This section does not limit a former officer's right to go armed with a firearm that is not concealed.

History: 2011 a. 35.

175.50 Eyewitness identification procedures. (1) In this section:

(a) "Law enforcement agency" has the meaning given in s. 165.83 (1) (b).

(b) "Suspect" means a person suspected of committing a crime.

(2) Each law enforcement agency shall adopt written policies for using an eyewitness to identify a suspect upon viewing the suspect in person or upon viewing a representation of the suspect. The policies shall be designed to reduce the potential for erroneous identifications by eyewitnesses in criminal cases.

(3) A law enforcement agency shall biennially review policies adopted under this section.

(4) In developing and revising policies under this section, a law enforcement agency shall consider model policies and policies adopted by other jurisdictions.

(5) A law enforcement agency shall consider including in policies adopted under this section practices to enhance the objectivity and reliability of eyewitness identifications and to minimize the possibility of mistaken identifications, including the following:

(a) To the extent feasible, having a person who does not know the identity of the suspect administer the eyewitness' viewing of individuals or representations.

(b) To the extent feasible, showing individuals or representations sequentially rather than simultaneously to an eyewitness.

(c) Minimizing factors that influence an eyewitness to identify a suspect or overstate his or her confidence level in identifying a suspect, including verbal or nonverbal reactions of the person administering the eyewitness' viewing of individuals or representations.

(d) Documenting the procedure by which the eyewitness views the suspect or a representation of the suspect and documenting the results or outcome of the procedure.

History: 2005 a. 60.

Instituting Innocence Reform: Wisconsin's New Government Experiment. Kruse. 2006 WLR 645.

175.60 License to carry a concealed weapon. (1) DEFINITIONS. In this section:

(ac) "Background check" means the searches the department conducts under sub. (9g) to determine a person's eligibility for a license to carry a concealed weapon.

(ag) "Carry" means to go armed with.

(b) "Department" means the department of justice.

(bm) "Handgun" means any weapon designed or redesigned, or made or remade, and intended to be fired while held in one hand and to use the energy of an explosive to expel a projectile through a smooth or rifled bore. "Handgun" does not include a machine gun, as defined in s. 941.27 (1), a short-barreled rifle, as defined in s. 941.28 (1) (b), or a short-barreled shotgun, as defined in s. 941.28 (1) (c).

(bv) "Law enforcement agency" does not include the department.

(c) "Law enforcement officer" has the meaning given in s. 165.85 (2) (c).

(d) "Licensee" means an individual holding a valid license to carry a concealed weapon issued under this section.

(e) "Motor vehicle" has the meaning given in s. 340.01 (35).

(f) "Out-of-state license" means a valid permit, license, approval, or other authorization issued by another state if all of the following apply:

1. The permit, license, approval, or other authorization is for the carrying of a concealed weapon.

2. The state is listed in the rule promulgated by the department under s. 165.25 (12m) and, if that state does not require a background search for the permit, license, approval, or authorization, the permit, license, approval, or authorization designates that the holder chose to submit to a background search.

NOTE: The cross-reference to s. 165.25 (12m) was changed from s. 165.25 (12) by the legislative reference bureau under s. 13.92 (1) (bm) 2. to reflect the renumbering under s. 13.92 (1) (bm) 2. of s. 165.25 (12), as created by 2011 Wis. Act 35.

(g) "Out-of-state licensee" means an individual who is 21 years of age or over, who is not a Wisconsin resident, and who has been issued an out-of-state license.

(h) "Photographic identification card" means one of the following:

1. An operator's license issued under ch. 343 or an identification card issued under s. 343.50.

2. A license or card issued by a state other than Wisconsin that is substantially equivalent to a license or card under subd. 1.

(i) "State identification card number" means the unique identifying driver number assigned to a person by the department of transportation under s. 343.17 (3) (a) 4. or, if the person has no driver number, the number assigned to the person on an identification card issued under s. 343.50.

(j) "Weapon" means a handgun, an electric weapon, as defined in s. 941.295 (1c) (a), a knife other than a switchblade knife under s. 941.24, or a billy club.

(2) ISSUANCE AND SCOPE OF LICENSE. (a) The department shall issue a license to carry a concealed weapon to any individual who is not disqualified under sub. (3) and who completes the application process specified in sub. (7). A license to carry a concealed weapon issued under this section shall meet the requirements specified in sub. (2m).

(b) The department may not impose conditions, limitations, or requirements that are not expressly provided for in this section on the issuance, scope, effect, or content of a license.

(c) Unless expressly provided in this section, this section does not limit an individual's right to carry a firearm that is not concealed.

(d) For purposes of 18 USC 922 (q) (2) (B) (ii), an out-of-state licensee is licensed by this state.

(2g) CARRYING A CONCEALED WEAPON; POSSESSION AND DISPLAY OF LICENSE DOCUMENT OR AUTHORIZATION. (a) A licensee or an out-of-state licensee may carry a concealed weapon anywhere in this state except as provided under subs. (15m) and (16) and ss. 943.13 (1m) (c) and 948.605 (2) (b) 1r.

(b) Unless the licensee or out-of-state licensee is carrying a concealed weapon in a manner described under s. 941.23 (2) (e), a licensee shall have with him or her his or her license document and photographic identification card and an out-of-state licensee shall have with him or her his or her out-of-state license and photographic identification card at all times during which he or she is carrying a concealed weapon.

(c) Unless the licensee or out-of-state licensee is carrying a concealed weapon in a manner described under s. 941.23 (2) (e), a licensee who is carrying a concealed weapon shall display his or her license document and photographic identification card and an out-of-state licensee who is carrying a concealed weapon shall display his or her out-of-state license and photographic identification card to a law enforcement officer upon the request of the law enforcement officer while the law enforcement officer is acting in an official capacity and with lawful authority.

(2m) LICENSE DOCUMENT; CONTENT OF LICENSE. (a) Subject to pars. (b), (bm), (c), and (d), the department shall design a single license document for licenses issued and renewed under this section. The department shall complete the design of the license document no later than September 1, 2011.

(b) A license document for a license issued under this section shall contain all of the following on one side:

1. The full name, date of birth, and residence address of the licensee.

2. A physical description of the licensee, including sex, height, and eye color.

3. The date on which the license was issued.

4. The date on which the license expires.

5. The name of this state.

6. A unique identification number for each licensee.

(bm) The reverse side of a license document issued under this section shall contain the requirement under sub. (11) (b) that the licensee shall inform the department of any address change no later than 30 days after his or her address changes and the penalty for a violation of the requirement.

(c) The license document may not contain the licensee's social security number.

(d) 1. The contents of the license document shall be included in the document in substantially the same way that the contents of an operator's license document issued under s. 343.17 are included in that document.

2. The license document issued under this section shall be tamper proof in substantially the same way that the operator's license is tamper proof under s. 343.17 (2).

(e) The department of justice may contract with the department of transportation to produce and issue license documents under this section. Neither the department of transportation nor any employee of the department of transportation may store, maintain, or access the information provided by the department of justice for the production or issuance of license documents other than to the extent necessary to produce or issue the license documents.

(3) RESTRICTIONS ON ISSUING A LICENSE. The department shall issue a license under this section to an individual who submits an application under sub. (7) unless any of the following applies:

(a) The individual is less than 21 years of age.

(b) The individual is prohibited under federal law from possessing a firearm that has been transported in interstate or foreign commerce.

(c) The individual is prohibited from possessing a firearm under s. 941.29.

(d) The court has prohibited the individual from possessing a dangerous weapon under s. 969.02 (3) (c) or 969.03 (1) (c).

(e) The individual is on release under s. 969.01 and the individual may not possess a dangerous weapon as a condition of the release.

(f) The individual is not a Wisconsin resident.

(g) The individual has not provided proof of training as described under sub. (4) (a).

(4) TRAINING REQUIREMENTS. (a) The proof of training requirement under sub. (7) (e) may be met by any of the following:

1. A copy of a document, or an affidavit from an instructor or organization that conducted the course or program, that indicates the individual completed any of the following:

a. The hunter education program established under s. 29.591 or a substantially similar program that is established by another state, country, or province and that is recognized by the department of natural resources.

b. A firearms safety or training course that is conducted by a national or state organization that certifies firearms instructors.

c. A firearms safety or training course that is available to the public and is offered by a law enforcement agency or, if the course is taught by an instructor who is certified by a national or state organization that certifies firearms instructors or by the department, by a technical college, a college or a university, a private or public institution or organization, or a firearms training school.

d. A firearms safety or training course that is offered to law enforcement officers or to owners and employees of licensed private detective and security agencies.

e. A firearms safety or training course that is conducted by a firearms instructor who is certified by a national or state organization that certifies firearms instructors or who is certified by the department.

2. Documentation that the individual completed military, law enforcement, or security training that gave the individual experience with firearms that is substantially equivalent to a course or program under subd. 1.

3. A current or expired license, or a photocopy of a current or expired license, that the individual holds or has held that indicates that the individual is licensed or has been licensed to carry a firearm in this state or in another state or in a county or municipality of this state or of another state unless the license has been revoked for cause.

4. Documentation of completion of small arms training while serving in the U.S. armed forces, reserves, or national guard as demonstrated by an honorable discharge or general discharge under honorable conditions or a certificate of completion of basic training with a service record of successful completion of small arms training and certification.

(b) 1. The department shall certify instructors for the purposes of par. (a) 1. c. and e. and shall maintain a list of instructors that it certifies. To be certified by the department as an instructor, a person must meet all of the following criteria:

a. Be qualified under sub. (3) to carry a concealed weapon.

b. Be able to demonstrate the ability and knowledge required for providing firearms safety and training.

2. The department may not require firing live ammunition to meet the training requirements under par. (a).

(5) APPLICATION AND RENEWAL FORMS. (a) The department shall design an application form for use by individuals who apply for a license under this section and a renewal form for use by individuals applying for renewal of a license under sub. (15). The department shall complete the design of the application form no later than September 1, 2011, and shall complete the design of the renewal form no later than July 1, 2014. The forms shall require the applicant to provide only his or her name, address, date of birth, state identification card number, race, sex, height, and eye color and shall include all of the following:

1. A statement that the applicant is ineligible for a license if sub. (3) (a), (b), (c), (d), (e), (f), or (g) applies to the applicant.

2. A statement explaining self-defense and defense of others under s. 939.48, with a place for the applicant to sign his or her name to indicate that he or she has read and understands the statement.

3. A statement, with a place for the applicant to sign his or her name, to indicate that the applicant has read and understands the requirements of this section.

4. A statement that an applicant may be prosecuted if he or she intentionally gives a false answer to any question on the application or intentionally submits a falsified document with the application.

5. A statement of the penalties for intentionally giving a false answer to any question on the application or intentionally submitting a falsified document with the application.

6. A statement of the places under sub. (16) where a licensee is prohibited from carrying a weapon, as well as an explanation of the provisions under sub. (15m) and ss. 943.13 (1m) (c) and 948.605 (2) (b) 1r. that could limit the places where the licensee may carry a weapon, with a place for the applicant to sign his or her name to indicate that he or she has read and understands the statement.

(b) The department shall make the forms described in this subsection available on the Internet and, upon request, by mail.

(7) SUBMISSION OF APPLICATION. An individual may apply for a license under this section with the department by submitting, by mail or other means made available by the department, to the department all of the following:

(a) A completed application in the form prescribed under sub. (5) (a).

(b) A statement that states that the information that he or she is providing in the application submitted under par. (a) and any document submitted with the application is true and complete to the best of his or her knowledge.

(c) A license fee in an amount, as determined by the department by rule, that is equal to the cost of issuing the license but does not exceed $37. The department shall determine the costs of issuing a license by using a 5-year planning period.

(d) A fee for a background check that is equal to the fee charged under s. 175.35 (2i).

(e) Proof of training as described under sub. (4) (a).

(9) PROCESSING OF APPLICATION. (a) Upon receiving an application submitted under sub. (7), the department shall conduct a background check.

(b) Within 21 days after receiving a complete application under sub. (7), the department shall do one of the following:

1. Issue the license and promptly send the licensee his or her license document by 1st class mail.

2. Deny the application, but only if sub. (3) (a), (b), (c), (d), (e), (f), or (g) applies to the applicant. If the department denies the application, the department shall inform the applicant in writing, stating the reason and factual basis for the denial.

(9g) BACKGROUND CHECKS. (a) The department shall conduct a background check regarding an applicant for a license using the following procedure:

1. The department shall create a confirmation number associated with the applicant.

2. The department shall conduct a criminal history record search and shall search its records and conduct a search in the national instant criminal background check system to determine whether the applicant is prohibited from possessing a firearm under federal law; whether the applicant is prohibited from possessing a firearm under s. 941.29; whether the applicant is prohibited from possessing a firearm under s. 51.20 (13) (cv) 1., 2007 stats.; whether the applicant has been ordered not to possess a firearm under s. 51.20 (13) (cv) 1., 51.45 (13) (i) 1., 54.10 (3) (f) 1., or 55.12 (10) (a); whether the applicant is subject to an injunction under s. 813.12 or 813.122, or a tribal injunction, as defined in s. 813.12 (1) (e), issued by a court established by any federally recognized Wisconsin Indian tribe or band, except the Menominee Indian tribe of Wisconsin, that includes notice to the respondent that he or she is subject to the requirements and penalties under s. 941.29 and that has been filed with the circuit court under s. 806.247 (3); and whether the applicant is prohibited from possessing a firearm under s. 813.125 (4m); and to determine if the court has prohibited the applicant from possessing a dangerous weapon under s. 969.02 (3) (c) or 969.03 (1) (c) and if the applicant is prohibited from possessing a dangerous weapon as a condition of release under s. 969.01.

3. As soon as practicable, the department shall do the following:

a. If the background check indicates sub. (3) (b), (c), (d), or (e) applies to the applicant, create a unique nonapproval number for the applicant.

b. If the completed background check does not indicate that sub. (3) (b), (c), (d), or (e) applies to the applicant, create a unique approval number for the applicant.

(b) The department shall maintain a record of all completed application forms and a record of all approval or nonapproval numbers regarding background checks under this subsection.

(9r) EMERGENCY LICENSE. (a) An individual who requires an immediate license may petition the court in the county in which he or she resides for such a license. Unless the court knows that the individual is ineligible for a license under sub. (3), a court may issue an emergency license to an individual if the court determines that immediate licensure is warranted to protect the individual from death or great bodily harm, as defined in s. 939.22 (14).

(b) An emergency license issued under this subsection is valid for 30 days unless it is revoked under par. (bm) or it is void under par. (c).

(bm) If the court determines that a holder of an emergency license issued under par. (a) is ineligible under sub. (3) for a license, the court shall revoke the emergency license.

(c) If the holder of an emergency license issued under par. (a) applies for a license under sub. (7) and is determined to be ineligible under sub. (3) for a license, the emergency license is void.

(11) UPDATED INFORMATION. (a) 1. In this paragraph:

a. "Clerk" means the clerk of the circuit court or, if it has enacted a law or an ordinance in conformity with s. 346.63, the clerk of the court for a federally recognized American Indian tribe or band in this state, a city, a village, or a town.

b. "Court automated information systems" means the systems under s. 758.19 (4).

2. The court automated information systems, or the clerk or register in probate, if the information is not contained in or cannot be transmitted by the court automated information systems, shall promptly notify the department of the name of any individual with respect to whom any of the following occurs and the specific reason for the notification:

a. The individual is found by a court to have committed a felony or any other crime that would disqualify the individual from having a license under this section.

b. The individual is found incompetent under s. 971.14.

c. The individual is found not guilty of any crime by reason of mental disease or mental defect under s. 971.17.

d. The individual is involuntarily committed for treatment under s. 51.20 or 51.45.

e. The individual is found incompetent under ch. 54.

f. The individual becomes subject to an injunction described in s. 941.29 (1) (f) or is ordered not to possess a firearm under s. 813.125 (4m).

g. A court has prohibited the individual from possessing a dangerous weapon under s. 969.02 (3) (c) or 969.03 (1) (c).

h. A court has ordered the individual not to possess a firearm under s. 51.20 (13) (cv) 1., 51.45 (13) (i) 1., 54.10 (3) (f) 1., or 55.12 (10) (a).

i. The individual is on release under s. 969.01 and the individual may not possess a dangerous weapon as a condition of the release.

3. Upon receiving a notice under subd. 2., the department shall immediately determine if the individual who is the subject of the notice is a licensee, using the list maintained under sub. (12) (a).

(b) 1. No later than 30 days after changing his or her address, a licensee shall inform the department of the new address. The department shall include the individual's new address in the list under sub. (12) (a).

2. Except as provided in subd. 3., for a first violation of subd. 1., the department must issue the licensee a warning.

3. If an individual is in violation of subd. 1. and his or her license has been suspended or revoked under sub. (14), the individual is subject to the penalty under sub. (17) (ac).

4. A licensee may not be charged with a violation of subd. 1. if the department learns of the violation when the licensee informs the department of the address change.

(12) MAINTENANCE, USE, AND PUBLICATION OF RECORDS BY THE DEPARTMENT. (a) The department shall maintain a computerized record listing the names and the information specified in sub. (2m) (b) of all individuals who have been issued a license under this section and all individuals issued a certification card under s. 175.49 (3). Subject to par. (b) 1. b., neither the department nor any employee of the department may store, maintain, format, sort, or access the information in any way other than by the names, dates of birth, or sex of licensees or individuals or by the identification numbers assigned to licensees under sub. (2m) (b) 6.

(b) 1. A law enforcement officer may not request or be provided information under par. (a) concerning a specific individual except for one of the following purposes:

a. To confirm that a license or certification card produced by an individual at the request of a law enforcement officer is valid.

b. If an individual is carrying a concealed weapon and claims to hold a valid license issued under this section or a valid certification card issued under s. 175.49 (3) but does not have his or her license document or certification card, to confirm that the individual holds a valid license or certification card.

c. To investigate whether an individual submitted an intentionally false statement under sub. (7) (b) or (15) (b) 2.

d. To investigate whether an individual complied with sub. (14) (b) 3.

2. A person who is a law enforcement officer in a state other than Wisconsin may request and be provided information under subd. 1. a. and b.

(c) Notwithstanding s. 19.35, the department of justice, the department of transportation, or any employee of either department may not make information obtained under this section available to the public except in the context of a prosecution for an offense in which the person's status as a licensee or holder of a certification card is relevant or through a report created under sub. (19).

(12g) PROVIDING LICENSEE INFORMATION TO LAW ENFORCEMENT AGENCIES. (a) The department shall provide information concerning a specific individual on the list maintained under sub. (12) (a) to a law enforcement agency, but only if the law enforcement agency is requesting the information for any of the following purposes:

1. To confirm that a license or certification card produced by an individual at the request of a law enforcement officer is valid.

2. If an individual is carrying a concealed weapon and claims to hold a valid license issued under this section or a valid certification card issued under s. 175.49 (3) but does not have his or her license document or certification card, to confirm that an individual holds a valid license or certification card.

3. If the law enforcement agency is a Wisconsin law enforcement agency, to investigate whether an individual submitted an intentionally false statement under sub. (7) (b) or (15) (b) 2.

(b) 1. Notwithstanding s. 19.35, neither a law enforcement agency nor any of its employees may make information regarding an individual that was obtained from the department under this subsection available to the public except in the context of a prosecution for an offense in which the person's status as a licensee or holder of a certification card is relevant.

2. Neither a law enforcement agency nor any of its employees may store or maintain information regarding an individual that was obtained from the department under this subsection based on the individual's status as a licensee or holder of a certificate card.

3. Neither a law enforcement agency nor any of its employees may sort or access information regarding vehicle stops, investigations, civil or criminal offenses, or other activities involving the agency based on the status as licensees or holders of certification cards of any individuals involved.

(13) LOST OR DESTROYED LICENSE. If a license document is lost, a licensee no longer has possession of his or her license, or a license document is destroyed, unreadable, or unusable, a licensee may submit to the department a statement requesting a replacement license document, the license document or any portions of the license document if available, and a $12 replacement fee. The department shall issue a replacement license document to the licensee within 14 days of receiving the statement and fee. If the licensee does not submit the original license document to the department, the department shall terminate the unique approval number of the original request and issue a new unique approval number for the replacement request.

(14) LICENSE REVOCATION AND SUSPENSION. (a) The department shall revoke a license issued under this section if the department determines that sub. (3) (b), (c), (d), (e), (f), or (g) applies to the licensee.

(am) The department shall suspend a license issued under this section if a court has prohibited the licensee from possessing a dangerous weapon under s. 969.02 (3) (c) or 969.03 (1) (c). If the individual whose license was suspended is no longer subject to the prohibition under s. 969.02 (3) (c) or 969.03 (1) (c), whichever is applicable, sub. (3) (b), (c), (d), (e), (f), or (g) does not apply to the individual, and the suspended license would not have expired under sub. (15) (a) had it not been suspended, the department shall restore the license within 5 business days of notification that the licensee is no longer subject to the prohibition.

(b) 1. If the department suspends or revokes a license issued under this section, the department shall send by mail the individual whose license has been suspended or revoked notice of the suspension or revocation within one day after the suspension or revocation.

2. If the department suspends or revokes a license under this section, the suspension or revocation takes effect when the individual whose license has been suspended or revoked receives the notice under subd. 1.

3. Within 7 days after receiving the notice, the individual whose license has been suspended or revoked shall do one of the following:

a. Deliver the license document personally or by certified mail to the department.

b. Mail a signed statement to the department stating that he or she no longer has possession of his or her license document and stating the reasons why he or she no longer has possession.

(14g) DEPARTMENTAL REVIEW. The department shall promulgate rules providing for the review of any action by the department denying an application for, or suspending or revoking, a license under this section.

(14m) APPEALS TO THE CIRCUIT COURT. (a) An individual aggrieved by any action by the department denying an application for, or suspending or revoking, a license under this section, may appeal directly to the circuit court of the county in which the individual resides without regard to whether the individual has sought review under the process established in sub. (14g).

(b) To begin an appeal under this subsection, the aggrieved individual shall file a petition for review with the clerk of the applicable circuit court within 30 days of receiving notice of denial of an application for a license or of suspension or revocation of a license. The petition shall state the substance of the department's action from which the individual is appealing and the grounds upon which the individual believes the department's action to be improper. The petition may include a copy of any records or documents that are relevant to the grounds upon which the individual believes the department's action to be improper.

(c) A copy of the petition shall be served upon the department either personally or by registered or certified mail within 5 days after the individual files his or her petition under par. (b).

(d) The department shall file an answer within 15 days after being served with the petition under par. (c). The answer shall include a brief statement of the actions taken by the department. The department shall include with the answer when filed a copy of any documents or records on which the department based its action.

(e) The court shall review the petition, the answer, and any records or documents submitted with the petition or the answer. The review under this paragraph shall be conducted by the court without a jury but the court may schedule a hearing and take testimony.

(f) The court shall reverse the department's action if the court finds any of the following:

1. That the department failed to follow any procedure, or take any action, prescribed under this section.

2. That the department erroneously interpreted a provision of law and a correct interpretation compels a different action.

3. That the department's action depends on a finding of fact that is not supported by substantial evidence in the record.

4. a. If the appeal is regarding a denial, that the denial was based on factors other than the factors under sub. (3).

b. If the appeal is regarding a suspension or revocation, that the suspension or revocation was based on criteria other than those under sub. (14) (a) or (am).

(g) 1. The court's decision shall provide whatever relief is appropriate regardless of the original form of the petition.

2. If the court reverses the department's action, the court may order the department to pay the aggrieved individual all court costs and reasonable attorney fees.

(15) LICENSE EXPIRATION AND RENEWAL. (a) Except as provided in par. (e) and sub. (9r) (b), a license issued under this section is valid for a period of 5 years from the date on which the license is issued unless the license is suspended or revoked under sub. (14).

(b) The department shall design a notice of expiration form. At least 90 days before the expiration date of a license issued under this section, the department shall mail to the licensee a notice of expiration form and a form for renewing the license. The department shall renew the license if, no later than 90 days after the expiration date of the license, the licensee does all of the following:

1. Submits a renewal application on the form provided by the department.

2. Submits a statement reporting that the information provided under subd. 1. is true and complete to the best of his or her knowledge and that he or she is not disqualified under sub. (3).

4. Pays all of the following:

a. A renewal fee in an amount, as determined by the department by rule, that is equal to the cost of renewing the license but does not exceed $12. The department shall determine the costs of renewing a license by using a 5-year planning period.

b. A fee for a background check that is equal to the fee charged under s. 175.35 (2i).

(c) The department shall conduct a background check of a licensee as provided under sub. (9g) before renewing the licensee's license under par. (b).

(d) The department shall issue a renewal license by 1st class mail within 21 days of receiving a renewal application, statement, and fees under par. (b).

(e) The license of a member of the U.S. armed forces, a reserve unit of the armed forces, or the national guard who is deployed overseas while on active duty may not expire until at least 90 days after the end of the licensee's overseas deployment unless the license is suspended or revoked under sub. (14).

(15m) EMPLOYER RESTRICTIONS. (a) Except as provided in par. (b), an employer may prohibit a licensee or an out-of-state licensee that it employs from carrying a concealed weapon or a particular type of concealed weapon in the course of the licensee's or out-of-state licensee's employment or during any part of the licensee's or out-of-state licensee's course of employment.

(b) An employer may not prohibit a licensee or an out-of-state licensee, as a condition of employment, from carrying a concealed weapon, a particular type of concealed weapon, or ammunition or from storing a weapon, a particular type of weapon, or ammunition in the licensee's or out-of-state licensee's own motor vehicle, regardless of whether the motor vehicle is used in the course of employment or whether the motor vehicle is driven or parked on property used by the employer.

(16) PROHIBITED ACTIVITY. (a) Except as provided in par. (b), neither a licensee nor an out-of-state licensee may knowingly carry a concealed weapon, a weapon that is not concealed, or a firearm that is not a weapon in any of the following places:

1. Any portion of a building that is a police station, sheriff's office, state patrol station, or the office of a division of criminal investigation special agent of the department.

2. Any portion of a building that is a prison, jail, house of correction, or secured correctional facility.

3. The facility established under s. 46.055.

4. The center established under s. 46.056.

5. Any secured unit or secured portion of a mental health institute under s. 51.05, including a facility designated as the Maximum Security Facility at Mendota Mental Health Institute.

6. Any portion of a building that is a county, state, or federal courthouse.

7. Any portion of a building that is a municipal courtroom if court is in session.

8. A place beyond a security checkpoint in an airport.

(b) The prohibitions under par. (a) do not apply to any of the following:

1. A weapon in a vehicle driven or parked in a parking facility located in a building that is used as, or any portion of which is used as, a location under par. (a).

2. A weapon in a courthouse or courtroom if a judge who is a licensee is carrying the weapon or if another licensee or out-of-state licensee, whom a judge has permitted in writing to carry a weapon, is carrying the weapon.

3. A weapon in a courthouse or courtroom if a district attorney, or an assistant district attorney, who is a licensee is carrying the weapon.

(17) PENALTIES. (a) Any person who violates sub. (2g) (b) or (c) may be required to forfeit not more than $25, except that the person shall be exempted from the forfeiture if the person presents, within 48 hours, his or her license document or out-of-state license and photographic identification to the law enforcement agency that employs the requesting law enforcement officer.

(ac) Except as provided in sub. (11) (b) 2., any person who violates sub. (11) (b) 1. may be required to forfeit $50.

(ag) Any person who violates sub. (2m) (e), (12), or (12g) may be fined not more than $500 or sentenced to a term of imprisonment of not more than 30 days or both.

(ar) Any law enforcement officer who uses excessive force based solely on an individual's status as a licensee may be fined not more than $500 or sentenced to a term of imprisonment of not more than 30 days or both. The application of the criminal penalty under this paragraph does not preclude the application of any other civil or criminal remedy.

(b) Any person who violates sub. (16) may be fined not more than $500 or imprisoned for not more than 30 days or both.

(c) An instructor of a training course under sub. (4) (a) who intentionally submits false documentation indicating that an individual has met the training requirements under sub. (4) (a) may be prosecuted for a violation of s. 946.32.

(e) Any person required under sub. (14) (b) 3. to relinquish or deliver a license document to the department who intentionally violates the requirements of that subdivision shall be fined not more than $500 and may be imprisoned for not more than 30 days or both.

(18) RECIPROCITY AGREEMENTS. The department may enter into reciprocity agreements with other states as to matters relating to licenses or other authorization to carry concealed weapons.

(19) STATISTICAL REPORT. By March 1 of each year, the department shall submit a statistical report to the legislature under s. 13.172 (2) and to the governor that indicates the number of licenses applied for, issued, denied, suspended, and revoked under this section during the previous calendar year. For the licenses denied, the report shall indicate the reasons for the denials and the part of the application process in which the reasons for denial were discovered. For the licenses suspended or revoked, the report shall indicate the reasons for the suspensions and revocations. The department may not include in the report any information that may be used to identify an applicant or a licensee, including, but not limited to, a name, address, birth date, or social security number.

(21) IMMUNITY. (a) The department of justice, the department of transportation, and the employees of each department; clerks, as defined in sub. (11) (a) 1. a., and their staff; and court automated information systems, as defined under sub. (11) (a) 1. b., and their employees are immune from liability arising from any act or omission under this section, if done so in good faith.

(b) A person that does not prohibit an individual from carrying a concealed weapon on property that the person owns or occupies is immune from any liability arising from its decision.

(c) An employer that does not prohibit one or more employees from carrying a concealed weapon under sub. (15m) is immune from any liability arising from its decision.

(d) A person providing a firearms training course in good faith is immune from liability arising from any act or omission related to the course if the course is one described in sub. (4) (a).

History: 2011 a. 35; s. 13.92 (1) (bm) 2.

Wisconsin's Concealed Carry Law. Hinkston. Wis. Law. July 2012.

CHAPTER 343

OPERATORS' LICENSES

Cross-reference: See also chs. Trans 102 and 112, Wis. adm. code.

SUBCHAPTER I

GENERAL PROVISIONS

343.01 Words and phrases defined. (1) Words and phrases defined in s. 340.01 are used in the same sense in this chapter unless a different definition is specifically provided.

(2) In this chapter and ch. 344 the following words and phrases have the designated meanings:

(cb) "Motorized construction equipment" means motor-driven construction equipment designed principally for off-road use, including a motorscraper, backhoe, motorgrader, compacter, excavator, tractor, trencher and bulldozer.

(cg) "Moving violation" means a violation of ch. 110, of ch. 194 or of chs. 341 to 349 and 351, or a local ordinance in conformity therewith or a law of a federally recognized American Indian tribe or band in this state in conformity with one or more provisions of ch. 110, of ch. 194 or of chs. 341 to 349 and 351, or the laws of another jurisdiction for which being on duty time with respect to a commercial motor vehicle or driving or operating a motor vehicle is an element of the offense.

(cr) "Occupational license" means an operator's license, issued in accordance with s. 343.10, which confers only limited authorization to operate a motor vehicle and imposes specified restrictions.

(d) "Photograph" means an unretouched image recorded by a camera and reproduced on a photosensitive surface, or a digital image.

(f) "Representative vehicle" means a motor vehicle of the same vehicle class and type that an applicant or permittee for an operator's license operates or intends to operate.

(g) "Resident" means an adult whose one home and customary and principal residence, to which the person has the intention of returning whenever he or she is absent, is in this state. A child under 18 years of age may qualify as a resident if the child lives in this state and at least one of the child's parents, or the child's guardian, is a resident of this state or the child meets any of the following requirements:

1. Is attending and residing at a full-time boarding school or similar live-in facility located in this state.

2. Is a foreign-exchange student from outside the United States residing with and in the care of a host family.

3. Is residing with and in the care of a relative or other adult acting in the place of a parent, with the consent of the child's parents or legal guardian.

4. Is on active duty with the U.S. armed forces.

(i) "Tank vehicle" means any commercial motor vehicle that is designed to transport a liquid or gaseous materials within a tank that is either permanently or temporarily attached to the commercial motor vehicle or the chassis. In this paragraph, "tank" does not include a portable tank, as defined in 49 CFR 171.8, having a rated capacity under 1,000 gallons. In this paragraph, "liquid" has the meaning given in 49 CFR 171.8.

History: 1971 c. 164 s. 83; 1971 c. 278; 1977 c. 29 s. 1654 (7) (a); 1977 c. 449; 1979 c. 110 s. 60 (6); 1979 c. 333 s. 5; 1981 c. 390 ss. 186, 252; 1983 a. 189, 223, 227, 270, 480, 538; 1989 a. 75, 105; 1991 a. 39; 1995 a. 113, 446; 2007 a. 20.

Summary judgment is inapplicable in ch. 343 hearings. State v. Baratka, 2002 WI App 288, 258 Wis. 2d 342, 654 N.W.2d 875, 02-0770.

343.05 Operators to be licensed; exceptions. (1) GENERAL PROVISIONS. (a) Except as provided in this subsection, no person may at any time have more than one operator's license. This prohibition includes, without limitation, having licenses from more than one state, having licenses under more than one name or birthdate, and having more than one license issued for the operation of different types or classes of vehicles. This paragraph does not apply to any person who has only operator's licenses issued by this state and by a country, province, or subdivision that is a party to an agreement under s. 343.16 (1) (d).

(b) During the 10-day period beginning on the date on which the person is issued an operator's license, a person may hold more than one operator's license.

(c) A person may have both an operator's license and a duly issued instruction permit allowing restricted operation of a vehicle group not authorized by the license.

(2) COMMERCIAL MOTOR VEHICLES. (a) No person may operate a commercial motor vehicle upon a highway in this state unless the person is one of the following:

1. A resident who is at least 18 years of age, who is not disqualified under s. 343.315, who has a valid commercial driver license which is not revoked, suspended, canceled or expired and, for the operation of any vehicle type under s. 343.04 (2), has an endorsement authorizing operation of the vehicle type.

2. A nonresident who has in his or her immediate possession a valid commercial driver license issued to the person in another jurisdiction or Mexico bearing all endorsements required for the specific class and type of vehicle being operated. A license is not valid under this subdivision if the license is restricted to operation inside the person's home jurisdiction, or if the person is otherwise violating restrictions or exceeding operating authorization stated on the person's license. If the nonresident is operating a commercial motor vehicle in interstate commerce, he or she must be at least 21 years of age.

4. A person with a temporary license under s. 343.305 (8) (a) which expressly authorizes the operation of the applicable class and type of commercial motor vehicle and which is not expired.

(b) This subsection does not apply to a person whose operation of a commercial motor vehicle is subject to waiver under s. 343.055.

(c) A tow truck operator holding a valid commercial driver license who is engaged in the removal of a disabled or wrecked vehicle from the highway or eliminating a hazard is not required to hold an endorsement to his or her commercial driver license regardless of the type of vehicle being towed. This exception to the requirement for an endorsement does not apply to any subsequent towing of the vehicle, including moving the vehicle from one repair facility to another, unless one of the following applies:

1. The tow truck operator is accompanied by a driver who holds the required endorsements.

2. The vehicle is a vehicle that requires a "P" endorsement for its operation.

(3) NONCOMMERCIAL VEHICLES. Except as provided in sub. (4):

(a) No person may operate a motor vehicle which is not a commercial motor vehicle upon a highway in this state unless the person possesses a valid operator's license issued to the person by the department which is not revoked, suspended, canceled or expired.

(b) No person may operate a Type 1 motorcycle unless the person possesses a valid operator's license specifically authorizing the operation of Type 1 motorcycles.

(c) No person may operate a moped or motor bicycle unless the person possesses a valid operator's license or a special restricted operator's license issued under s. 343.135 or a restricted license issued under s. 343.08. A license under this paragraph does not authorize operation of a moped or motor bicycle if the license is revoked, suspended, canceled or expired.

(4) EXEMPTIONS. (a) The following are exempt from the licensing requirements of this chapter:

1. A person in the armed services while operating a motor vehicle owned by or leased to the federal government.

2. A person while temporarily operating or moving a farm tractor or implement of husbandry on a highway between fields or between a farm and a field.

3m. A person while operating motorized construction equipment. This subdivision does not apply to a truck or a construction vehicle designed for use on a roadway or to any vehicle exceeding a speed of 35 miles per hour.

(b) The following are exempt from the licensing requirements of sub. (3):

1. A nonresident who is at least 16 years of age and who has in his or her immediate possession a valid operator's license issued to the person in the person's home jurisdiction.

2. Any nonresident of the United States who holds an international driving permit or a valid operator's license issued by a country which is a signatory to either the 1943 regulation of inter-American automotive traffic or the 1949 Geneva convention on road traffic.

3. Any nonresident of the United States who holds an international driving permit or a valid operator's license issued by Germany, Mexico, or Switzerland or by any other nation having a reciprocal agreement with the United States concerning driving privileges.

(c) An exemption under par. (b) 2. or 3. applies only for a period of one year after a nonresident's arrival in the United States.

(5) PENALTIES. (ag) In this subsection, "great bodily harm" has the meaning given in s. 939.22 (14).

(am) Any person who violates sub. (1) or (2) shall be:

1. Fined not less than $200 nor more than $600 or imprisoned for not more than 6 months or both for the first such violation.

2. Fined not less than $300 nor more than $1,000 or imprisoned for not less than 5 days nor more than 6 months or both for the 2nd offense occurring within 3 years.

3. Fined not less than $1,000 nor more than $2,000 and imprisoned for not less than 10 days nor more than 6 months for the 3rd or subsequent offense occurring within 3 years.

(b) 1. Except as provided in subds. 2. to 5. and sub. (6), any person who violates sub. (3) (a) may be required to forfeit not more than $200 for the first offense, may be fined not more

than $300 and imprisoned for not more than 30 days for the 2nd offense occurring within 3 years, and may be fined not more than $500 and imprisoned for not more than 6 months for the 3rd or subsequent offense occurring within 3 years. In this paragraph, a violation of a local ordinance in conformity with this section or a violation of a law of a federally recognized American Indian tribe or band in this state in conformity with this section shall count as a previous offense.

2. A person whose operator's license has expired not more than 3 months before a violation of sub. (3) (a) may be required to forfeit not more than $100 for the first offense.

4. Except as provided in subd. 2. and sub. (6), any person who violates sub. (3) (a) and, in the course of the violation, causes great bodily harm to another person is required to forfeit not less than $5,000 nor more than $7,500, except that, if the person knows at the time of the violation that he or she does not possess a valid operator's license, the person is guilty of a Class I felony.

5. Except as provided in subd. 2. and sub. (6), any person who violates sub. (3) (a) and, in the course of the violation, causes the death of another person is required to forfeit not less than $7,500 nor more than $10,000, except that, if the person knows at the time of the violation that he or she does not possess a valid operator's license, the person is guilty of a Class H felony.

(c) Any person who violates sub. (3) (b) or (c) may be required to forfeit not more than $100.

(6) OTHER OFFENSES; PENALTIES. Section 343.44 and the penalties thereunder shall apply in lieu of this section to any person operating a motor vehicle upon a highway in this state with an operator's license which is revoked or suspended.

History: 1971 c. 164 s. 83; 1977 c. 29 s. 1654 (7) (a); 1977 c. 273, 288, 447; 1979 c. 345; 1981 c. 42, 138; 1981 c. 390 s. 252; 1983 a. 243, 534, 535, 538; 1985 a. 65; 1989 a. 87, 105, 359; 1991 a. 32, 39; 1995 a. 113, 269, 347; 1997 a. 237; 2005 a. 412; 2009 a. 103, 276; 2011 a. 113.

Cross-reference: See s. 343.37 for limitations on nonresident operators.

The guidelines for operating a commercial vehicle under this section constitute a fundamental public policy to promote highway safety. The discharge of an at-will employee for refusing to violate this section was a wrongful discharge. Kempfer v. Automated Finishing, Inc. 211 Wis. 2d 100, 564 N.W.2d 692 (1997), 95-0649.

A person has a privilege, but not a right, to drive a motor vehicle upon a public highway. To exercise that privilege, the person must satisfy the licensing requirements of the state. County of Fond du Lac v. Kevin C. Derksen, 2002 WI App 160, 256 Wis. 2d 490, 647 N.W.2d 922, 01-2870.

Summary judgment is inapplicable in ch. 343 hearings. State v. Baratka, 2002 WI App 288, 258 Wis. 2d 342, 654 N.W.2d 875, 02-0770.

Three-wheeled trucks and automobiles, golf carts, and other special purpose vehicles such as street sweepers, industrial fork-lifts, and motorized wheelbarrows are not motorcycles, and operators are not required to have special driver licenses. 58 Atty. Gen. 17.

A driver license authorizing motor-driven cycle operation is not required for the operation of a motor-driven cycle on private property. 64 Atty. Gen. 79.

343.06 Persons not to be licensed. (1) The department shall not issue a license:

(a) To any person whose operator's license or nonresident's operating privilege was withheld, suspended, revoked or canceled under the provisions of the law in effect prior to September 1, 1941, unless such person complies with the requirements of this chapter relative to obtaining a license or restoration of operating privileges after suspension, revocation or cancellation.

(b) To any person whose operating privilege has been suspended or revoked or is subject to immediate mandatory suspension or revocation under this chapter, except as otherwise expressly provided in this chapter.

(c) To any person under age 18 unless the person is enrolled in a school program or high school equivalency program and is not a habitual truant as defined in s. 118.16 (1) (a), has graduated from high school or been granted a declaration of high school graduation equivalency, or is enrolled in a home-based private educational program, as defined in s. 115.001 (3g), and has satisfactorily completed a course in driver education in public schools approved by the department of public instruction, or in technical colleges approved by the technical college system board, or in nonpublic and private schools or tribal schools, as defined in s. 115.001 (15m), that meet the minimum standards set by the department of public instruction, or has satisfactorily completed a substantially equivalent course in driver training approved by the department and given by a school licensed by the department under s. 343.61, or has satisfactorily completed a substantially equivalent course in driver education or training approved by another state and has attained the age of 16, except as provided in s. 343.07 (1g). The department shall not issue a license to any person under the age of 18 authorizing the operation of "Class M" vehicles unless the person has successfully completed a basic rider course approved by the department. The department may, by rule, exempt certain persons from the basic rider course requirement of this paragraph. Applicants for a license under s. 343.08 or 343.135 are exempt from the driver education, basic rider or driver training course requirement. The secretary shall prescribe rules for licensing of schools and instructors to qualify under this paragraph. The driver education course shall be made available to every eligible student in the state. Except as provided under s. 343.16 (1) (bm) and (c) and (2) (cm) to (e), no operator's license may be issued unless a driver's examination has been administered by the department.

Cross-reference: See also ch. Trans 129, Wis. adm. code.

(cm) To operate "Class D" vehicles to any person under 18 years of age, unless the person has accumulated at least 30 hours of behind-the-wheel driving experience, at least 10 hours of which were during hours of darkness. Each hour of behind-the-wheel driving experience while accompanied by a qualified instructor, as defined in s. 343.07 (1c), shall be considered to be 2 hours of behind-the-wheel driving experience, except that no more than 5 hours of behind-the-wheel driving experience while accompanied by a qualified instructor may be counted in this manner. This paragraph does not apply to applicants for a restricted license under s. 343.08 or a special restricted operator's license under s. 343.135. The department may promulgate rules that waive the requirement of accumulating at least 30 hours of behind-the-wheel experience for qualified applicants who are licensed by another jurisdiction to operate "Class D" vehicles.

(d) To any person whose dependence on alcohol has attained such a degree that it interferes with his or her physical or mental health or social or economic functioning, or who is addicted to the use of controlled substances or controlled substance analogs, except that the secretary may issue a license if the person submits to an examination, evaluation or treatment in a treatment facility meeting the standards prescribed in s. 51.45 (8) (a), as directed by the secretary, in accordance with s. 343.16 (5).

(e) To any person who is unable to exercise reasonable control over a motor vehicle, as defined by the department by rule.

(f) To any person who is required by this chapter to take an examination, unless such person takes and successfully passes such examination. Deaf persons otherwise qualified under this chapter to receive a license shall be issued such license in the discretion of the secretary.

(g) To any person who is required under the motor vehicle financial responsibility laws of this state to furnish proof of financial responsibility, and who has not furnished such proof in the manner prescribed by statute and any lawful rules of the department pertaining thereto.

(h) To any person when the secretary has good cause to believe that the operation of a motor vehicle on the highways by such person will be inimical to the public safety or welfare.

(i) To any person who has been convicted of any offense specified under ss. 940.225, 948.02, 948.025, 948.07, or 948.085 or adjudged delinquent under ch. 938 for a like or similar offense, when the sentencing court makes a finding that issuance of a license will be inimical to the public safety and welfare. The prohibition against issuance of a license to the offenders shall apply immediately upon receipt of a record of the conviction and the court finding by the secretary, for a period of one year or until discharge from any jail or prison sentence or any period of probation, extended supervision or parole with respect to the offenses specified, whichever date is the later. Receipt by the offender of a certificate of discharge from the department of corrections or other responsible supervising agency, after one year has elapsed since the prohibition began, entitles the holder to apply for an operator's license. The applicant may be required to present the certificate of discharge to the secretary if the latter deems it necessary.

(k) To any person who is not a resident.

(L) To any person who does not satisfy the requirements under s. 343.165 (1).

(m) To any person who has been declared incompetent under s. 54.25 (2) (c) 1. d. to apply for an operator's license.

(2) The department shall not issue a commercial driver license, including a renewal or reinstated license, to any person, or reinstate a person's authorization to operate a commercial motor vehicle, during any period of disqualification under s. 343.315 or 49 CFR 383.51, under the law of another jurisdiction disqualifying a person from operating a commercial motor vehicle under circumstances similar to those specified in s. 343.315 or 49 CFR 383.51, or under a determination by the federal motor carrier safety administration that the person is no longer qualified to operate a commercial motor vehicle under 49 CFR 391, or to any person whose operating privilege is revoked, suspended, or canceled. Any person who is known to the department to be subject to disqualification as described in s. 343.44 (1) (d) shall be disqualified by the department as provided in s. 343.315.

(3) The department shall not issue a commercial driver license valid for use in interstate commerce to any person who is less than 21 years of age or who does not meet the physical qualifications for drivers contained in 49 CFR 391 or rules of the department concerning qualifications of drivers in interstate commerce.

History: 1971 c. 40 s. 93; 1971 c. 154 s. 79 (3); 1971 c. 219; 1975 c. 184 s. 13; 1975 c. 421; 1977 c. 29 s. 1654 (7) (a), (c); 1977 c. 41, 238, 273, 360, 447; 1983 a. 17, 243; 1985 a. 202; 1987 a. 40, 122; 1987 a. 332 s. 64; 1987 a. 403; 1989 a. 31, 105; 1993 a. 16, 227, 363, 399, 491; 1995 a. 27 s. 9145 (1); 1995 a. 77, 113, 448; 1997 a. 27, 84, 283; 1999 a. 9, 140; 2001 a. 38; 2003 a. 33; 2005 a. 126, 149, 277, 387; 2007 a. 20, 97; 2009 a. 28, 103, 302; 2011 a. 23, 32, 260.

Cross-reference: See also s. PI 21.04, Wis. adm. code.

Performance of the duty to apply sub. (7), 1987 stats. [now sub. (1) (e)], delegated to a state driver license examiner is within the rule of civil immunity. Lifer v. Raymond, 80 Wis. 2d 503, 259 N.W.2d 537 (1977).

The offering of driver education courses by public schools is optional rather than mandatory; but if offered, all qualified students must be allowed to participate. The state superintendent may require private schools to consent to on-site inspections for compliance verification as a condition of approval granted those schools under that section. 59 Atty. Gen. 27.

343.065 Restricted commercial driver license. (1) If an applicant for a commercial driver license is less than 21 years of age or does not meet the physical qualifications for drivers contained in 49 CFR 391 or an alternative federally approved driver qualification program established by the department by rule but is at least 18 years of age and otherwise qualified under this chapter and the rules of the department, the department may issue the applicant a commercial driver license restricted to authorizing the operation of commercial motor vehicles not in interstate commerce.

(2) A commercial driver license issued under this section shall clearly identify that the license does not authorize the operation of commercial motor vehicles in interstate commerce.

(3) (a) If a person issued any commercial driver license under this chapter authorizing operation of commercial motor vehicles in interstate commerce does not have on file with the department a current certification specified in s. 343.14 (2) (i) 1. covering the person's physical qualifications, the department may downgrade the commercial driver license to a restricted commercial driver license under this section and impose a "K" restriction on the license.

(b) The department shall promulgate rules to define "downgrade" in accordance with federal law and regulations or guidance from the applicable federal agency, to establish the process for downgrading a commercial driver license and whether or not a new commercial driver license document will be issued after a commercial driver license is downgraded, and

to establish the process for reinstating a downgraded commercial driver license after the department receives from the licensee a valid medical certification or other appropriate certification of physical qualifications.

History: 1989 a. 105; 1995 a. 113; 2011 a. 32.
Cross-reference: See also ch. Trans 112, Wis. adm. code.

343.07 Instruction permits. (1c) DEFINITION. In this section, "qualified instructor" means a person employed by a public school, private school, or tribal school, as defined in s. 115.001 (15m), holding an operator's license and meeting the teaching certification standards of the department of public instruction or the technical college system board to teach driver education; or an instructor of a school licensed under s. 343.61; or a teacher or student teacher in a driver education course for teachers conducted by an institution of higher education.

(1g) REGULAR PERMIT; ISSUANCE, RESTRICTIONS. Upon application therefor by a person at least 15 years and 6 months of age who, except for age or lack of training in the operation of a motor vehicle, is qualified to obtain an operator's license and has passed such knowledge test as the department may require, the department may issue a regular instruction permit. If the application is made by a male who is at least 18 years of age but less than 26 years of age, the application shall include the information required under s. 343.14 (2) (em). The permit entitles the permittee to operate a motor vehicle, except a commercial motor vehicle, school bus, or Type 1 motorcycle, a motor bicycle, or a moped, upon the highways, subject to the following restrictions:

(a) Except as provided in this subsection, no permittee may operate a motor vehicle unless accompanied by a person who has at least 2 years of licensed driving experience, who presently holds a valid regular license, as defined in s. 343.03 (3) (a), who occupies the seat beside the permittee and who is one of the following:

1. A qualified instructor who is 19 years of age or older. If the motor vehicle is equipped with dual controls, up to 3 other persons, in addition to the qualified instructor, may occupy seats in the motor vehicle other than the front seat.

2. The permittee's parent, guardian or spouse who is 19 years of age or older. In addition to the parent, guardian or spouse, the permittee's immediate family members may occupy seats in the motor vehicle other than the front seat.

3. A person who is 21 years of age or older. If the permittee is under 18 years of age, this subdivision applies only if the licensed person has been designated in writing to accompany the permittee by the permittee's parent or guardian prior to operation of the vehicle by the permittee.

(bm) Except as provided in par. (a), no permittee may operate a motor vehicle upon a highway in this state whenever any person is in the motor vehicle.

(cm) If the permittee is at least 16 years of age, in addition to the licensed accompanying operator, one other licensed person 25 years of age or more with at least 2 years' driving experience may occupy a seat in the motor vehicle other than the front seat.

(d) The permittee shall not operate a motor vehicle during the hours of darkness unless accompanied by:

1. A licensed person 25 years of age or more, with at least 2 years' licensed driving experience, occupying the seat beside the permittee; or

2. A qualified instructor.

(e) The permittee may operate a motor vehicle when accompanied by an authorized license examiner for the purpose of examining the permittee's ability to operate a motor vehicle.

(1m) COMMERCIAL MOTOR VEHICLE AND SCHOOL BUS INSTRUCTION PERMITS; ISSUANCE, RESTRICTIONS. Upon application therefor by a person at least 18 years of age who holds a valid operator's license issued under this chapter and who, except for lack of training in the operation of a commercial motor vehicle or school bus, is qualified to obtain authorization for the operation of such vehicle including having passed the applicable knowledge tests, the department may issue an instruction permit for commercial motor vehicle or school bus operation. A permit limited to commercial motor vehicle instructional operation entitles the permittee to operate only a commercial motor vehicle upon the highways. A permit limited to school bus instructional operation entitles the permittee to operate only a school bus upon the highways. Both permits are subject to the following restrictions:

(a) Except as provided in par. (am), the permittee may not operate a commercial motor vehicle or school bus unless accompanied by a qualified instructor or a licensed person 21 years of age or older with a valid license authorizing the person to operate such vehicle, occupying the seating position nearest to the driver. No passengers are allowed in the vehicle, except that when the accompanying operator is a qualified instructor up to 3 other permittees also being trained may occupy seats in the vehicle. The permittee may operate a commercial motor vehicle carrying property under this paragraph.

(am) 1. A permittee may operate a commercial motor vehicle or school bus, other than a vehicle type specified in s. 343.04 (2) (a), (c) or (f), within this state unaccompanied by a qualified instructor or a licensed person 25 years of age or older with at least 2 years of licensed driving experience in a representative vehicle and a valid license authorizing the person to operate such vehicle if the permittee has taken and passed the applicable knowledge tests and all of the following requirements are met:

a. The permittee is operating the vehicle in connection with a driver training course or program approved by the department.

b. The vehicle is being used by the permittee exclusively for driver training purposes and not for the purposes of carrying property or passengers.

c. Direct, uninterrupted audio or audiovisual electronic communication between a qualified instructor and the permittee is maintained at all times the permittee is operating the vehicle.

2. This paragraph shall apply to the extent permitted under federal law.

(b) Unless the permittee is at least 21 years of age, the instruction permit is not valid authorization for operation in interstate commerce and that lack of authorization shall be clearly indicated on the permit.

(c) The permittee may operate a commercial motor vehicle or school bus when accompanied by an authorized license examiner for the purpose of examining his or her ability to operate a commercial motor vehicle or school bus.

(d) No person holding an instruction permit issued under this subsection may operate a vehicle transporting hazardous

materials requiring placarding or any quantity of a material listed as a select agent or toxin under 42 CFR 73.

(2) TRAINING CERTIFICATE REQUIRED. Except for persons who qualify for a license under s. 343.08, the department shall not issue an instruction permit to anyone under 18 years of age, unless it has a certificate from the applicant's qualified instructor to the effect that the applicant is enrolled in an approved driver education and training course for the purpose of the practice driving phase.

(3) DURATION; CANCELLATION. An instruction permit to operate vehicles other than commercial motor vehicles or school buses is valid for 12 months except that it may be canceled upon receipt of information, by the secretary, of noncompletion or unsatisfactory completion of a driver education and training course by a permittee under the age of 18. An instruction permit to operate commercial motor vehicles or school buses is valid for 6 months.

(4) INSTRUCTION PERMITS; TYPE 1 MOTORCYCLE, MOTOR BICYCLE AND MOPED. (a) Subject to s. 343.16 (1) (a), upon application by a person who qualifies for issuance of a license under s. 343.06 (1) (c) and who wishes to qualify for the operation of a Type 1 motorcycle, the department may issue an instruction permit for the operation of "Class M" vehicles.

(b) The permit for Type 1 motorcycle operation shall be valid for 6 months. The department shall issue no more than 3 permits for Type 1 motorcycle operation to a person unless the person has successfully completed a rider course approved by the department. The department may, by rule, exempt certain persons from the rider course requirement of this paragraph. The permit for Type 1 motorcycle operation entitles the permittee to operate a Type 1 motorcycle subject to the following restrictions:

1. No passenger may accompany the permittee except that a person with at least 2 years of licensed driving experience and whose license is endorsed for Type 1 motorcycle operation may ride as a passenger-instructor.

2. The permittee may not operate a Type 1 motorcycle during hours of darkness unless accompanied by a licensed person 25 years of age or more and meeting the requirements of subd. 1.

(c) The permit for moped and motor bicycle operation shall be valid for 6 months and entitles the permittee to operate a moped or motor bicycle subject to restrictions specified by the department by rule.

Cross-reference: See also ch. Trans 129, Wis. adm. code.

(6) SPECIAL INSTRUCTIONAL PERMITS. This section does not apply to instructional permits issued under s. 343.075.

(7) PENALTY FOR RESTRICTION VIOLATIONS. (a) Notwithstanding s. 343.43 (1) (d) and (3m), any person who violates sub. (1g) (a), (bm), or (d) or (4) (b) 1. or 2. shall be required to forfeit $50 for the first offense and not less than $50 nor more than $100 for each subsequent offense.

(b) Upon receiving notice of a person's conviction for a violation of sub. (1g) (a), (bm), or (d) or (4) (b) 1. or 2., the department shall notify any adult sponsor who has signed for the person under s. 343.15 (1) of the conviction.

History: 1971 c. 164; 1973 c. 199; 1977 c. 29 s. 1654 (7) (a), (c); 1977 c. 128, 273; 1979 c. 345; 1983 a. 243; 1985 a. 65, 202; 1987 a. 122; 1989 a. 87, 105, 359; 1991 a. 12, 269, 316; 1993 a. 16, 24, 399; 1995 a. 27 s. 9145 (1); 1997 a. 27; 1999 a. 9; 2001 a. 93; 2003 a. 33; 2005 a. 149, 294, 466; 2007 a. 97; 2009 a. 302.

Although the liability of a passenger-teacher for the negligence of his student driver has generally been based on principles of agency, the passenger's liability may also arise from violation of an independent duty to supervise and control the automobile based upon his agreement, as an experienced driver, to instruct and supervise an inexperienced driver. Hoeft v. Friedel, 70 Wis. 2d 1022, 235 N.W.2d 918 (1975).

343.075 Instructional permits for applicants for special restricted operators' licenses. The department may require an applicant for a special restricted operator's license under s. 343.135 to first obtain an instructional permit if the department deems it advisable. The department shall determine the requirements for issuance of an instructional permit under this section and the restrictions, if any, on such permits.

History: 1979 c. 345.

343.08 Restricted licenses for persons under 18 years of age. (1) Upon application therefor, the department may issue a restricted license to a person who is at least 14 and less than 18 years of age if the following conditions, in addition to any others specified in this chapter, are fulfilled:

(a) The department must be satisfied that it is necessary for the applicant to operate an automobile, farm truck, dual purpose farm truck, Type 1 motorcycle powered with an engine of not more than 125 cubic centimeters displacement, Type 2 motorcycle, moped or motor bicycle owned and registered by the applicant's parent or guardian or a farm truck leased to the applicant's parent or guardian.

(b) The applicant, accompanied by a parent or guardian, must have appeared in person before an examining officer with a certificate of birth to show that the applicant is at least 14 years of age.

(c) The applicant must have passed an examination as specified in s. 343.16, including a test of the applicant's ability to safely operate the type of vehicle which the applicant is making application for license to operate.

(2) (a) A restricted license issued pursuant to this section is valid only until the licensee secures an operator's license issued

pursuant to s. 343.03 or reaches 18 years of age and, except as provided in par. (b), entitles the licensee to operate an automobile, farm truck, dual purpose farm truck, Type 1 motorcycle powered with an engine of not more than 125 cubic centimeters displacement, Type 2 motorcycle, moped or motor bicycle owned and registered by the licensee's parent or guardian or a farm truck leased to the licensee's parent or guardian or any combination of these vehicles, depending on the restrictions placed by the department on the particular license.

(b) A license issued pursuant to this section does not authorize the licensee to operate any such vehicle during hours of darkness or to operate a vehicle for hire or in a city having a population of 500,000 or more or to operate a school bus or a commercial motor vehicle, including a farm truck or dual purpose farm truck defined as a commercial motor vehicle, or taxicab.

History: 1977 c. 29 s. 1654 (7) (a); 1977 c. 273; 1983 a. 223, 227, 243, 270, 538; 1985 a. 65; 1989 a. 105; 1991 a. 316.

343.085 Probationary licenses to new drivers. (1) (a) Except as provided in par. (b) and sub. (2), the department shall issue a probationary license to all applicants for an original license. The probationary license shall remain in effect as provided in s. 343.20 (1) (a).

(b) The department may not issue a probationary license to operate "Class D" vehicles under this section to an applicant who is under 18 years of age unless the applicant has held an instruction permit issued under s. 343.07 for not less than 6 months and, during the 6-month period immediately preceding application, has not committed a moving violation, specified by the department by rule, resulting in a conviction. The department may promulgate rules to waive the requirement of holding an instruction permit for not less than 6 months for qualified applicants who are licensed by another jurisdiction to operate "Class D" vehicles.

(2) (a) Any person moving to this state who has been licensed in another jurisdiction for at least 3 years, who presently holds a license, other than an instruction permit, from another jurisdiction which has not expired for more than 6 months and who has passed the person's 21st birthday is exempt from this section.

(b) Applicants issued a commercial driver license are exempt from this section.

(c) Any person entitled to a regular license under an agreement entered into under s. 343.16 (1) (d) is exempt from this section.

(2m) (a) Except as provided in this subsection, during the 9-month period after issuance of a probationary license under this section, no licensee under 18 years of age may operate a "Class D" vehicle upon a highway in this state:

1. If, in addition to the licensee, the vehicle is occupied by any person other than the following:

a. Any number of members of the licensee's immediate family.

b. A person who meets the requirements under s. 343.07 (1g) (a).

c. Not more than one other person not described in subd. 1. a. and b.

2. Between the hours of 12 midnight and 5 a.m., unless the licensee's parent or guardian, or a person who meets the requirements under s. 343.07 (1g) (a), occupies the seat beside the licensee, or unless the licensee is traveling between his or her place of residence, school, and place of employment.

(am) 1. Paragraph (a) does not apply to any licensee to whom all of the following apply:

a. The licensee is operating the motor vehicle in the service of an organized program that, without compensation, transports teenagers to their homes.

b. The licensee possesses documentation that identifies the program and the licensee and that authorizes the licensee to operate a motor vehicle in service of the program on the date and time of the operation. The documentation is valid only if signed by a person who is at least 25 years of age and associated with the program.

c. The licensee is accompanied by another licensee, other than a teenager who is being transported, who is in the motor vehicle in the service of the program described in subd. 1. a. and who possesses the documentation described in subd. 1. b.

d. The licensee is accompanied by not more than 3 passengers in the vehicle. The licensee described in subd. 1. c. shall not be counted under this subd. 1. d.

2. Paragraph (a) does not apply to any licensee operating the motor vehicle to or from a program described in subd. 1. a., if the licensee possesses documentation described in subd. 1. b. A licensee described in this subdivision may be accompanied by any number of persons also traveling to or from a program described in subd. 1. a.

(ar) Paragraph (a) does not apply to any licensee operating a motor vehicle for emergency purposes.

(b) 1. The department shall extend the restrictions under par. (a) for an additional 6-month period or until the licensee's 18th birthday, whichever occurs earlier, if any of the following occurs while the licensee is subject to the restrictions under par. (a):

a. The licensee commits a moving violation specified by the department by rule, resulting in a conviction of the licensee.

b. The licensee violates par. (a).

c. A court or the department suspends or revokes the licensee's operating privilege for any reason other than a mental or physical disability.

2. If the department extends a restriction period under subd. 1., the department shall immediately provide notice of the extension by 1st class mail to the person's last-known residence address.

(c) A period of restriction under this subsection does not run while a person's operating privilege is suspended or revoked.

(d) The restrictions under this subsection apply until the period of restriction expires or until the licensee reaches 18 years of age, whichever occurs first.

(e) Nothing in this subsection may be construed to create a separate cause of action against the parent or guardian of a probationary licensee under this subsection or against the owner of any vehicle operated by a probationary licensee under this section.

(3) The secretary may suspend a person's operating privilege under this section when such person has been assigned

sufficient demerit points after conviction for traffic violations to require suspension under the rule adopted under sub. (5) and either holds a license issued under this section or by age comes under this section. This subsection applies only to a person holding a probationary license issued before September 1, 2000. This subsection does not apply on or after October 1, 2003.

(4) The secretary may require that a person be continued on probationary status beyond the period of first issuance if such person appears by the records of the department to have repeatedly violated any of the state traffic laws or any local ordinance in conformity therewith or any law of a federally recognized American Indian tribe or band in this state in conformity with any of the state traffic laws. A person may not be continued on probationary status due to a suspension under s. 343.30 (6).

(5) For the purpose of determining when to suspend or to continue a person on probationary status, the secretary may determine and adopt by rule a method of weighing traffic convictions by their seriousness and may change such weighted scale from time to time as experience or the accident frequency in the state makes necessary or desirable. Such scale may be weighted differently for this licensee than the scale used to determine suspensions under s. 343.32. This subsection applies only to a person holding a probationary license issued before September 1, 2000. This subsection does not apply on or after October 1, 2003.

(6) (a) Notwithstanding s. 343.43 (1) (d) and (3m), any person who violates sub. (2m) (a) shall be required to forfeit $50 for the first offense and not less than $50 nor more than $100 for each subsequent offense.

(b) Upon receiving notice of a person's conviction for a violation of sub. (2m) (a), the department shall notify any adult sponsor who has signed for the person under s. 343.15 (1) of the conviction.

History: 1971 c. 204; 1977 c. 29 s. 1654 (7) (a), (c); 1979 c. 306; 1979 c. 331 ss. 59, 72; 1981 c. 314; 1989 a. 105, 359; 1991 a. 39; 1997 a. 84, 237; 1999 a. 9, 185; 2005 a. 149, 294.

343.14 Application for license. (1) Every application to the department for a license or identification card or for renewal thereof shall be made upon the appropriate form furnished by the department and shall be accompanied by all required fees. Names, addresses, license numbers, and social security numbers obtained by the department under this subsection shall be provided to the department of revenue for the purpose of administering ss. 71.93 and 71.935 and state taxes.

(2) The forms for application shall be determined by the department and shall include:

(a) The full legal name and principal residence address of the applicant;

(b) The applicant's date of birth, color of eyes, color of hair, sex, height, weight and race;

(bm) Except as provided in par. (br), the applicant's social security number.

(br) If the applicant does not have a social security number, a statement made or subscribed under oath or affirmation that the applicant does not have a social security number and is not eligible for a social security number. The statement shall provide the basis or reason that the applicant is not eligible for a social security number, as well as any information requested by the department that may be needed by the department for purposes of verification under s. 343.165 (1) (c). The form of the statement shall be prescribed by the department, with the assistance of the department of children and families. A license that is issued or renewed under s. 343.17 in reliance on a statement submitted under this paragraph is invalid if the statement is false.

(c) A statement as to whether the applicant has heretofore been licensed as an operator of any motor vehicle and, if so, when and by what jurisdiction;

(d) Whether any previous license or operating privilege has ever been suspended or revoked or whether application has ever been refused and, if so, the date and place of such suspension, revocation or refusal;

(e) If the application is made by a person under 18 years of age, documentary proof that the applicant is enrolled in a school program or high school equivalency program and is not a habitual truant as defined in s. 118.16 (1) (a), has graduated from high school or been granted a declaration of high school graduation equivalency or is enrolled in a home-based private educational program, as defined in s. 115.001 (3g). For purposes of this paragraph, "documentary proof" means the signature and verification of an adult sponsor as provided in s. 343.15 (1) or the applicant as provided in s. 343.15 (4) (b);

(em) If the application is made by a male who is at least 18 years of age but less than 26 years of age, the form shall notify the applicant that, by submitting the application to the department, the applicant gives his consent to be registered, if required by federal law, with the selective service system and that he authorizes the department to forward information to the selective service system under s. 343.234.

(es) Subject to sub. (2g) (a) 2. d. and s. 343.125 (2) (a) and (b), valid documentary proof that the individual is a citizen or national of the United States or an alien lawfully admitted for permanent or temporary residence in the United States or has any of the following:

1. Conditional permanent resident status in the United States.

2. A valid, unexpired nonimmigrant visa or nonimmigrant visa status for entry into the United States.

3. An approved application for asylum in the United States or has entered into the United States in refugee status.

4. A pending application for asylum in the United States.

5. A pending or approved application for temporary protected status in the United States.

6. Approved deferred action status.

7. A pending application for adjustment of status to that of an alien lawfully admitted for permanent residence in the United States or conditional permanent resident status in the United States.

(f) Subject to s. 343.165 (1), such further information as the department considers appropriate to identify the applicant, including biometric data, and such information as the department may reasonably require to enable it to determine whether the applicant is by law entitled to the license applied for;

(g) A question as to whether the applicant wishes to include his or her name as a donor of an anatomical gift in the record of potential donors maintained by the department. The form shall indicate the following:

1. The applicant is not required to respond to the question under this paragraph in order to obtain a license.

2. The purpose of maintaining the record of potential donors is to facilitate the determination of whether a person is a potential donor in the event of his or her death.

3. An affirmative response to the question under this paragraph does not in itself authorize an anatomical gift. To authorize an anatomical gift, an applicant shall comply with s. 157.06 or 343.175 (2);

(h) A certification by the applicant that the motor vehicle in which the person takes the driving skills test is a representative vehicle of the vehicle group that the person operates or expects to operate; and

(i) A certification by the applicant for a commercial driver license that he or she either:

1. Meets all of the driver qualifications contained in either 49 CFR 391 or in an alternative federally approved driver qualification program established by the department by rule. The department may require the applicant to show the medical certificate of physical examination required by 49 CFR 391.43; or

2. Meets all of the driver qualifications for drivers in intrastate commerce as established by the department by rule and is applying for a commercial driver license valid only in this state for noninterstate operation.

(2g) (a) Notwithstanding ss. 111.321, 111.322, and 111.335 and any other provision of law, in addition to the information required under sub. (2), the application form for an "H" endorsement specified in s. 343.17 (3) (d) 1m. shall include all of the information and statements required under 49 CFR 1572.5 (e), including all of the following:

1. The list of disqualifying felony criminal offenses specified in 49 CFR 1572.103 (b).

2. A statement that the individual signing the application meets all of the following requirements:

a. The individual has not been convicted, or found not guilty by reason of insanity, of any disqualifying felony criminal offense described in subd. 1. in any jurisdiction during the 7-year period preceding the date of the application.

b. The individual has not been released from incarceration in any jurisdiction for committing any disqualifying felony criminal offense described in subd. 1. within the 5-year period preceding the date of the application.

c. The individual is not wanted or under indictment for any disqualifying felony criminal offense described in subd. 1.

d. The individual is a U.S. citizen who has not renounced that citizenship, or is lawfully admitted for permanent residence to the United States. If the applicant is lawfully admitted for permanent residence to the United States, the applicant shall provide the applicant's alien registration number issued by the federal department of homeland security.

3. A statement that the individual signing the application has been informed that s. 343.245 (2) (a) 1. and federal regulations under 49 CFR 1572.5 impose an ongoing obligation to disclose to the department within 24 hours if the individual is convicted, or found not guilty by reason of insanity, of any disqualifying felony criminal offense described in subd. 1., or adjudicated as a mental defective or committed to a mental institution, while he or she holds an "H" endorsement specified in s. 343.17 (3) (d) 1m.

4. Notwithstanding sub. (2) (br) and the provisions of any memorandum of understanding entered into under s. 49.857 (2), the applicant's social security number.

(b) Upon receiving a completed application form for an "H" endorsement specified in s. 343.17 (3) (d) 1m., the department of transportation shall immediately forward the application to the federal transportation security administration of the federal department of homeland security. The department of transportation shall also inform the applicant that the applicant has a right to obtain a copy of the applicant's criminal history record by submitting a written request for that record to the federal transportation security administration.

(2j) Except as otherwise required to administer and enforce this chapter, the department of transportation may not disclose a social security number obtained from an applicant for a license under sub. (2) (bm) to any person except to the department of children and families for the sole purpose of administering s. 49.22, to the department of revenue for the purposes of administering state taxes and collecting debt, or to the driver licensing agency of another jurisdiction.

(2m) The forms for application for a license or identification card or for renewal thereof shall include the information required under s. 85.103 (2).

(2r) Notwithstanding sub. (2j), the department may, upon request, provide to the department of health services any applicant information maintained by the department of transportation and identified in sub. (2), including providing electronic access to the information, for the sole purpose of verification by the department of health services of birth certificate information.

(3) Except as provided in sub. (3m), the department shall, as part of the application process, take a digital photograph including facial image capture of the applicant to comply with s. 343.17 (3) (a) 2. Except as provided in sub. (3m), no application may be processed without the photograph being taken. Except as provided in sub. (3m) and s. 343.165 (4) (d), in the case of renewal licenses, the photograph shall be taken once every 8 years, and shall coincide with the appearance for examination which is required under s. 343.16 (3).

(3m) If the application for a license is processed under the exception specified in s. 343.165 (7), the application may be processed and the license issued or renewed without a photograph being taken of the applicant if the applicant provides to the department an affidavit stating that the applicant has a sincerely held religious belief against being photographed; identifying the religion to which he or she belongs or the tenets of which he or she adheres to; and stating that the tenets of the religion prohibit him or her from being photographed.

(4m) Subject to s. 343.17 (2), the department shall develop designs for licenses and identification cards which are resistant to tampering and forgery and licenses and identification cards issued on or after January 1, 1989, shall incorporate the designs required under this subsection.

(5) No person may use a false or fictitious name or knowingly make a false statement or knowingly conceal a material fact or otherwise commit a fraud in an application for any of the following:

(a) A license.

(b) An identification card.

(6) The department shall disseminate information to applicants for a license relating to the anatomical donation opportunity available under s. 343.175. The department shall maintain a record of applicants who respond in the affirmative to the question under sub. (2) (g). In the event of the death of a person, at the request of a law enforcement officer or other appropriate person, as determined by the department, the department shall examine its record of potential donors and shall advise the law enforcement officer or other person as to whether a decedent is recorded as a potential donor.

(7) A person may notify the department in writing at any time if he or she wishes to include his or her name in the record of potential donors maintained by the department. A donor who revokes his or her gift and who has requested that his or her name be included in the record shall request the department in writing to remove his or her name from the record.

(9) Any person who violates sub. (5) may be fined not more than $1,000 or imprisoned for not more than 6 months or both.

History: 1977 c. 29 s. 1654 (7) (a), (e); 1977 c. 124, 360, 447; 1979 c. 306; 1981 c. 20 s. 1848r; 1985 a. 227; 1987 a. 27; 1987 a. 403 s. 256; 1989 a. 105, 294, 298, 359; 1991 a. 269; 1993 a. 363; 1995 a. 113; 1997 a. 27, 119, 191; 1999 a. 9, 80, 88; 2001 a. 93; 2003 a. 33; 2005 a. 25, 59, 126; 2007 a. 20 ss. 3242 to 3254, 9121 (6) (a); 2009 a. 180; 2011 a. 23, 32.

343.17 Contents and issuance of operator's license.

(1) LICENSE ISSUANCE. Subject to s. 343.165, the department shall issue an operator's license and endorsements, as applied for, to every qualifying applicant who has paid the required fees.

(2) LICENSE DOCUMENT. The license shall be a single document, in one part, consisting of 2 sides, except as otherwise provided in sub. (4) and s. 343.10 (7) (d). The document shall be, to the maximum extent practicable, tamper proof and shall contain physical security features consistent with any requirement under federal law.

(3) CONTENTS. (a) The front side of the license document shall include, without limitation, all of the following:

1. The full legal name, date of birth, and principal residence address of the person.

2. A photograph of the person, unless the exception under s. 343.14 (3m) applies.

NOTE: Subd. 2. is shown below as affected by 2011 Wis. Acts 23, 32, and 241 and as merged by the legislative reference bureau under s. 13.92 (2) (i).

3. A physical description of the person, including sex, height, weight and hair and eye color, but excluding any mention of race.

4. A unique identifying driver number assigned by the department.

5. The person's signature.

6. The classes of vehicles that the person is authorized to operate under par. (c), together with any endorsements or restrictions.

7. The name of this state.

8. The date of issuance of the license.

9. The date of expiration of the license.

10. A space for the sticker under s. 343.175 (3).

11. If the license authorizes the operation of certain commercial motor vehicles, the legend "Commercial Driver License", a readily recognizable abbreviation thereof or "CDL".

12. If the person is not the legal drinking age, as defined in s. 125.02 (8m), at the time of issuance of the license, a distinctive appearance specified by the department that clearly identifies to the public that the person was not the legal drinking age at the time of issuance of the license.

13. If the person is under 18 years of age at the time of issuance of the license, a distinctive appearance specified by the department that clearly identifies to the public that the person was under 18 years of age at the time of issuance of the license.

14. If the license contains the marking specified in s. 343.03 (3r), a distinctive appearance specified by the department that clearly distinguishes the license from other operator's licenses or identification cards issued by the department and that alerts federal agency and other law enforcement personnel that the license may not be accepted for federal identification or any other official purpose.

(b) The reverse side of the license shall contain an explanation of any restriction codes or endorsement abbreviations used on the front of the license, in sufficient detail to identify the nature of the restrictions or endorsements to a law enforcement officer of this state or another jurisdiction. Except for a commercial driver license, a part of the reverse side of each license shall be printed to serve as a record of gift under s. 157.06 (2) (t) or a record of refusal under s. 157.06 (2) (u).

(c) The classifications on operator's licenses shall be as follows:

1. Classification "A", which authorizes the operation of "Class A" vehicles as described in s. 343.04 (1) (a). A driver who has passed the knowledge and driving skills tests for operating "Class A" vehicles shall receive a license authorizing the operation of "Class A", "Class B" and "Class C" vehicles if the person possesses any requisite endorsement.

2. Classification "B", which authorizes the operation of "Class B" vehicles as described in s. 343.04 (1) (b). A driver who has passed the knowledge and driving skills tests for operating "Class B" vehicles shall receive a license authorizing the operation of "Class B" and "Class C" vehicles if the person possesses any requisite endorsement.

3. Classification "C", which authorizes the operation of "Class C" vehicles as described in s. 343.04 (1) (c) if the person possesses any requisite endorsement.

4. Classification "D", which authorizes the operation of "Class D" vehicles as described in s. 343.04 (1) (d) if the person possesses any requisite endorsement.

5. Classification "M", which authorizes the operation of Type 1 motorcycles.

(d) The endorsements on operator's licenses shall be as follows:

1g. "F" endorsement, which authorizes a seasonal employee of a farm service industry employer who is eligible for a restricted commercial driver license under applicable federal law or regulation to operate "Class B" and "Class C" vehicles as described in s. 343.04 (1) (b) and (c) for a seasonal period not to exceed 180 days in any calendar year. This endorsement permits the transporting of liquid fertilizers in vehicles or implements of husbandry with total capacities of 3,000 gallons or less, solid fertilizers that are not transported with any organic substance or 1,000 gallons or less of diesel fuel, but no combination of these materials. The endorsement does not permit operation of a commercial motor vehicle beyond 150 miles of the farm service industry employer's place

of business or, in the case of custom harvesters, the farm currently being served.

1m. "H" endorsement, which authorizes the driver to operate vehicles transporting hazardous materials requiring placarding or any quantity of a material listed as a select agent or toxin under 42 CFR 73.

2. "N" endorsement, which authorizes operating tank vehicles.

3. "P" endorsement, which authorizes operating vehicles designed to carry, or actually carrying, 16 or more passengers including the driver, except this endorsement does not authorize the operation of school buses unless the licensee also holds an "S" endorsement.

4. "S" endorsement, which authorizes operating school buses.

5. "T" endorsement, which authorizes operating commercial motor vehicles with double or triple trailers where the operation of such combination vehicles is permitted.

6. "X" endorsement, which is an optional endorsement that may be used to indicate that the licensee holds both "H" and "N" endorsements. The department may not issue or renew an endorsement under this subdivision after November 1, 2003.

(e) The standard restriction codes used on commercial driver licenses include:

1. "K" restriction, which restricts a person issued a license under s. 343.065 from operating commercial motor vehicles in interstate commerce.

2. "L" restriction, which prohibits a person from operating commercial motor vehicles equipped with air brakes, as required in s. 343.13 (2).

(4) SPECIAL RESTRICTIONS CARDS. (a) When an operator's license is subject to lengthy special restrictions or other restrictions not described in the standard codes on the front side of the license, the department shall indicate on the license document that the license is subject to restrictions contained on one or more separate special restrictions cards.

(b) A separate special restrictions card shall describe the restrictions, bear the issuance date of the card, specify the identifying driver number of the license to which it applies, and indicate the number and order of special restrictions cards currently issued by the department to the person, in the manner "1 of 2".

(5) NO PHOTOS ON TEMPORARY LICENSES. The temporary licenses issued under ss. 343.10, 343.11 (1) and (3), 343.16 (6) (b), and 343.305 (8) (a) shall be on forms provided by the department and shall contain the information required by sub. (3), except that temporary licenses under ss. 343.16 (6) (b) and 343.305 (8) (a) are not required to include a photograph of the licensee. This subsection does not apply to a noncitizen temporary license, as described in s. 343.03 (3m).

(6) RULES. Subject to subs. (2) and (3), the department shall promulgate rules setting the design and specifications for the license document and subsequent changes thereto.

History: 1971 c. 140; 1977 c. 29 s. 1654 (7) (a); 1977 c. 124, 272; 1979 c. 89, 306, 355; 1981 c. 20; 1985 a. 316 s. 25; 1989 a. 105, 298; 1991 a. 269; 1993 a. 19; 1995 a. 113; 1997 a. 27; 1999 a. 9, 140; 2003 a. 33; 2005 a. 126; 2007 a. 20, 106; 2011 a. 23, 32, 241; s. 13.92 (2) (i).

343.18 License to be carried; verification of signature. (1) Every licensee shall have his or her license document, including any special restrictions cards issued under s. 343.10 (7) (d) or 343.17 (4), in his or her immediate possession at all times when operating a motor vehicle and shall display the same upon demand from any judge, justice or traffic officer.

(1m) A person charged with violating sub. (1) may not be convicted if he or she produces in court or in the office of the arresting officer a license theretofore issued to the licensee and valid at the time of his or her arrest.

(2) For the purpose of verifying the signature on a license, any judge, justice or traffic officer may require the licensee to write the licensee's signature in the presence of such officer.

(3) (a) Except as provided in par. (c), any person who violates sub. (1) shall forfeit not more than $200.

(c) If the person is operating a commercial motor vehicle at the time of the violation, any person who violates sub. (1) shall forfeit not less than $250 nor more than $2,500.

History: 1989 a. 105; 1991 a. 316; 1997 a. 84.

There is a public interest in permitting police to request a motorist's license and to run a status check on the license. State v. Ellenbecker, 159 Wis. 2d 91, 464 N.W.2d 427 (Ct. App. 1990).

Under *Ellenbecker*, it was reasonable for an officer who stopped a motorist whose vehicle and general appearance matched that of a criminal suspect to make a report of the incident, even if the officer had already decided that the driver was not the suspect. For that purpose, it was reasonable to ask for the motorist's name and identification. Once the motorist stated that he had no identification, there was a reasonable grounds for further detention. State v. Williams, 2002 WI App 306, 258 Wis. 2d 395, 655 N.W.2d 462, 02-0384.

343.20 Expiration of licenses. (1) (a) Except as otherwise expressly provided in this chapter, probationary licenses issued under s. 343.085, licenses issued after cancellation under s. 343.26 (1), and original licenses other than instruction permits shall expire 2 years from the date of the applicant's next birthday. Subject to s. 343.125 (3), all other licenses and license endorsements shall expire 8 years after the date of issuance. The department may institute any system of initial license issuance which it deems advisable for the purpose of gaining a uniform rate of renewals. In order to put such a system into operation, the department may issue licenses which are valid for any period less than the ordinary effective period of such license. If the department issues a license that is valid for less than the ordinary effective period as authorized by this paragraph, the fees due under s. 343.21 (1) (b) and (d) shall be prorated accordingly.

(c) The department may, by rule, require any person who is issued an operator's license that is valid for a period of more than 2 years to demonstrate continuing qualifications to hold a license under this chapter at 2-year intervals. The rules may include, without limitation, requiring examination under s. 343.16 (6) or requiring current medical certification under s. 343.16 (5). The department rules shall require cancellation or suspension of the license for noncompliance and shall permit surrender of the operator's license under s. 343.265.

(d) 1. The department shall cancel an operator's license that is endorsed for the operation of school buses under s. 343.12 (3), regardless of the license expiration date, if the licensee fails to provide proof to the department of an annual physical examination determining that the person meets the physical standards established under s. 343.12 (2) (g). The licensee may elect to surrender the license under s. 343.265 (1m).

2. The department shall cancel an operator's license that is endorsed for the operation of school buses under s. 343.12, regardless of the license expiration date, upon receiving a record of conviction or of adjudication of delinquency or results of a criminal history search showing that the person has been convicted of, or adjudicated delinquent for, a crime or other offense specified under s. 343.12 (7) or rules of the department promulgated under s. 343.12 (7) and (8) after issuance or renewal of the endorsement or at a time when, if known by the department, the conviction or adjudication would have prevented issuance or renewal of the endorsement.

(e) Upon payment in full of the fees required by s. 343.21, the department shall issue to a qualified person an original operator's license that expires 3 years after the person's next birthday, but only if the person meets one of the following requirements:

1. The person is moving to this state, surrenders his or her valid commercial driver license issued by another state and makes application for a commercial driver license in this state.

2. The person is 21 years of age or older and moving to this state, has been licensed in another jurisdiction for at least 3 years and presently holds a valid license, other than an instruction permit, from another jurisdiction which has not expired for more than 6 months.

3. The person is entitled to a regular license under an agreement entered into under s. 343.16 (1) (d).

(f) The department shall cancel an operator's license, regardless of the license expiration date, if the department receives information from a local, state, or federal government agency that the licensee no longer satisfies the requirements for issuance of a license under ss. 343.14 (2) (es) and 343.165 (1) (e).

(1m) Notwithstanding sub. (1) (a) and (e), and except as provided in s. 343.165 (4) (c) and as otherwise provided in this subsection, a license that is issued to a person who is not a United States citizen or permanent resident and who provides documentary proof of legal status as provided under s. 343.14 (2) (es) 2., 4., 5., 6., or 7. shall expire on the date that the person's legal presence in the United States is no longer authorized or on the expiration date determined under sub. (1), whichever date is earlier. If the documentary proof as provided under s. 343.14 (2) (es) does not state the date that the person's legal presence in the United States is no longer authorized, sub. (1) shall apply except that, if the license was issued or renewed based upon the person's presenting of any documentary proof specified in s. 343.14 (2) (es) 4. to 7., the license shall, subject to s. 343.165 (4) (c), expire one year after the date of issuance or renewal.

(2) (a) At least 30 days prior to the expiration of an operator's license, the department shall provide to the licensee notice of renewal of the license either by mail at the licensee's last-known address or, if desired by the licensee, by any electronic means offered by the department. If the license was issued or last renewed based upon the person's presenting of any documentary proof specified in s. 343.14 (2) (es) 4. to 7., the notice shall inform the licensee of the requirement under s. 343.165 (4) (c).

(b) Notwithstanding par. (a), at least 60 days prior to the expiration of an "H" endorsement specified in s. 343.17 (3) (d) 1m., the department of transportation shall provide a notice to the licensee either by mail at the licensee's last-known address or, if desired by the licensee, by any electronic means offered by the department of transportation that the licensee is required to pass a security threat assessment screening by the federal transportation security administration of the federal department of homeland security as part of the application to renew the endorsement. The notice shall inform the licensee that the licensee may commence the federal security threat assessment screening at any time, but no later than 30 days before expiration of the endorsement.

(c) Failure to receive notice to renew a license or endorsement shall not be a defense to a charge of operating a motor vehicle without a valid operator's license or endorsement.

(2m) The department shall include with the notice that it mails under sub. (2) information regarding the requirements of s. 347.48 (4) and information, as developed by all organ procurement organizations in cooperation with the department, that promotes anatomical donations and which relates to the anatomical donation opportunity available under s. 343.175.

(3) Any person who holds a valid license and who is unable to make a renewal application within the period declared by the department, due to serving with any branch of the armed services, may apply for a renewal of the license at any time during such service or within 6 months after the date of discharge from such services.

(4) Any license issued under this chapter does not expire on the expiration date on the license if, on that expiration date, the licensee is on active duty in the U.S. armed forces and is absent from this state. Any license extended under this subsection expires 30 days after the licensee returns to this state or 90 days after the licensee is discharged from active duty, whichever is earlier. If a license is renewed after an extension under this subsection, the renewal period shall begin on the day after the expiration date on the license.

History: 1977 c. 29 s. 1654 (7) (a); 1977 c. 273; 1979 c. 306; 1981 c. 20, 42, 71; 1989 a. 31, 105, 294; 1991 a. 13; 1995 a. 255, 446; 1997 a. 27, 237; 2001 a. 105; 2003 a. 33, 280; 2005 a. 126; 2007 a. 20; 2009 a. 28, 103; 2011 a. 32.

343.23 Records to be kept by the department. (1) The department shall maintain a record of every application for license, permit, or endorsement received by it and of every suspension, revocation, cancellation, and disqualification by the department and shall maintain suitable indexes containing:

(a) All applications denied and on each thereof note the reason for such denial;

(b) All applications granted; and

(c) The name of every person whose license or operating privilege has been suspended, revoked, or canceled, or who is disqualified, by the department and note thereon the reason for such action.

(2) (a) The department shall maintain a file for each licensee or other person containing the application for license, permit or endorsement, a record of reports or abstract of convictions, any demerit points assessed under authority of s. 343.32 (2), the information in all data fields printed on any license issued to the person, any notice received from the federal transportation security administration concerning the person's eligibility for an "H" endorsement specified in s. 343.17 (3) (d) 1m., the status of the person's authorization to operate different vehicle groups, a record of any out-of-service orders issued under s. 343.305 (7) (b) or (9) (am), a record of

the date on which any background investigation specified in s. 343.12 (6) (a) or (d) was completed, a record of the date on which any verification specified in s. 343.165 (1) and (3) was completed, all documents required to be maintained under s. 343.165 (2) (a), and a record of any reportable accident in which the person has been involved, including specification of any type of license and endorsements issued under this chapter under which the person was operating at the time of the accident and an indication whether or not the accident occurred in the course of any of the following:

1. The person's employment as a law enforcement officer as defined in s. 165.85 (2) (c), fire fighter as defined in s. 102.475 (8) (b), or emergency medical technician as defined in s. 256.01 (5).

2. The licensee's employment as a person engaged, by an authority in charge of the maintenance of the highway, in highway winter maintenance snow and ice removal during either a storm or cleanup following a storm. For purposes of this subdivision, "highway winter maintenance snow and ice removal" includes plowing, sanding, salting and the operation of vehicles in the delivery of those services.

3. The licensee's performance of duties as a first responder, as defined in s. 256.01 (9).

(am) 1. The file specified in par. (a) shall include the following:

a. For a person holding a commercial driver license issued by the department, a record of any disqualification by another jurisdiction of the person from operating a commercial motor vehicle for at least 60 days or of the revocation, suspension, or cancellation by another jurisdiction of the person's commercial driver license for at least 60 days, and the violation that resulted in the disqualification, revocation, suspension, or cancellation, as specified in any notice received from the other jurisdiction.

b. For a person holding a commercial driver license issued by the department, a record of any violation in another jurisdiction of any law of that jurisdiction, including any local law of that jurisdiction, or of any law of a federally recognized American Indian tribe or band in that jurisdiction, in conformity with any law of this state relating to motor vehicle traffic control, other than a parking violation, as specified in any notice received from that jurisdiction. The department shall record this information within 10 days after receipt of the notice.

c. For a person holding a commercial driver license issued by this state or another jurisdiction, a record of each violation, while operating any motor vehicle, of any state law or local ordinance of this state or any law of a federally recognized American Indian tribe or band in this state in conformity with any law of this state relating to motor vehicle traffic control, other than a parking violation. The department shall record the information under this subdivision within 10 days after the date of conviction.

2. In maintaining the department's file specified in subd. 1. and par. (a), the department may not conceal, withhold, or mask from the department's file, or otherwise allow in any way a person to avoid the department's recording in the department's file of, any information required to be recorded in the department's file under 49 CFR 384.225 and 384.226, regardless of whether the person has obtained deferral of imposition of judgment, been allowed to enter a diversion program, or otherwise obtained delayed or suspended judgment or alternative sentencing from a court.

(b) The information specified in pars. (a) and (am) must be filed by the department so that the complete operator's record is available for the use of the secretary in determining whether operating privileges of such person shall be suspended, revoked, canceled, or withheld, or the person disqualified, in the interest of public safety. The record of suspensions, revocations, and convictions that would be counted under s. 343.307 (2) shall be maintained permanently. The record of convictions for disqualifying offenses under s. 343.315 (2) (h) shall be maintained for at least 10 years. The record of convictions for disqualifying offenses under s. 343.315 (2) (f), (j), and (L), and all records specified in par. (am), shall be maintained for at least 3 years. The record of convictions for disqualifying offenses under s. 343.315 (2) (a) to (e) shall be maintained permanently, except that 5 years after a licensee transfers residency to another state such record may be transferred to another state of licensure of the licensee if that state accepts responsibility for maintaining a permanent record of convictions for disqualifying offenses. Such reports and records may be cumulative beyond the period for which a license is granted, but the secretary, in exercising the power of suspension granted under s. 343.32 (2) may consider only those reports and records entered during the 4-year period immediately preceding the exercise of such power of suspension. The department shall maintain the digital images of documents specified in s. 343.165 (2) (a) for at least 10 years.

Cross-reference: See also ch. Trans 100, Wis. adm. code.

(3) (a) The department shall maintain a file, for each person convicted of a violation as defined by s. 343.30 (6) (a), containing a record of reports of convictions of violations as defined by s. 343.30 (6) (a) and suspensions and revocations under s. 343.30 (6). The department may purge the record of any such conviction 24 months after it is reported.

(b) The department record of a person's conviction for exceeding a posted speed limit shall include the number of miles per hour in excess of the posted speed limit, as reported to the department.

(4) The department shall purge all of the following from the file of a person:

(a) Notwithstanding subs. (1) and (2) (b), any record of an administrative suspension upon receipt of a report from the court hearing the action arising out of the same incident or occurrence that the action has been dismissed or the person has been found innocent of the charge arising out of that incident or occurrence, except that the record of an administrative suspension for a person holding a commercial driver license may be purged only upon receipt of a court order.

(b) Any record of issuance of an out-of-service order under s. 343.305 (7) (b) or (9) (am) upon receipt of a report from the court hearing the action arising out of the same incident or occurrence that the action has been dismissed or the person has been found innocent of the charge of violating s. 346.63 (7) arising out of that incident or occurrence. In the case of a nonresident, the department shall also inform the state of licensure of the dismissal or finding of innocence.

(5) The department shall maintain the files specified in this section in a form that is appropriate to the form of the records constituting those files. Records under sub. (1) and files under

sub. (2) shall be maintained in an electronic and transferable format accessible for the purpose specified in s. 343.03 (6) (a).

History: 1977 c. 29 s. 1654 (7) (a), (c); 1977 c. 273; 1979 c. 331; 1981 c. 178; 1983 a. 74; 1987 a. 3; 1989 a. 31, 105, 133, 359; 1991 a. 277; 1993 a. 65; 1995 a. 113, 184, 338; 1997 a. 35, 84, 237; 1999 a. 32, 109; 2001 a. 38, 109; 2003 a. 30, 33, 280, 320; 2007 a. 20, 130; 2009 a. 28, 100; 2011 a. 258.

343.235 Access to license and identification card records. (1) In this section:

(a) "Agent" means an authorized person who acts on behalf of or at the direction of another person.

(b) "Insurer" has the meaning given in s. 600.03 (27).

(c) "Personal identifier" has the meaning given in s. 85.103 (1).

(d) "State authority" has the meaning given in s. 19.62 (8).

(2) In providing copies under s. 19.35 (1) (a) of any written information collected or prepared under this chapter which consists in whole or in part of the personal identifiers of 10 or more persons, the department may not disclose a personal identifier of any person who has made a designation under s. 85.103 (2) or (3).

(3) Subsection (2) does not apply to any of the following:

(a) A law enforcement agency, a state authority, a district attorney, a driver licensing agency of another jurisdiction, a federal governmental agency, or the commission to perform a legally authorized function.

(b) An insurer authorized to write property and casualty or life, disability or long-term care insurance in this state or an agent of the insurer, if the insurer or agent uses the personal identifiers for purposes of issuing or renewing a policy and related underwriting, billing or processing or paying a claim. Notwithstanding sub. (5), no insurer, or agent of an insurer, may disclose to another person for marketing purposes any personal identifier received under this paragraph.

(5) Any person who has received under sub. (3) a personal identifier of any person who has made a designation under s. 85.103 (2) or (3) shall keep the personal identifier confidential and may not disclose it except for a purpose applicable to that person under sub. (3).

(6) (a) Any person who discloses a personal identifier in violation of this section may be required to forfeit not more than $500 for each violation.

(b) Any person who requests or obtains a personal identifier from the department under this section under false pretenses may be required to forfeit not more than $500 for each violation.

(c) Paragraphs (a) and (b) do not apply to a legal custodian under s. 19.33 of the department.

History: 1991 a. 269; 1999 a. 88; 2007 a. 20, 27; 2009 a. 180.

343.237 Access to license and identification card photographs and fingerprints. (1) In this section:

(ag) "Federal law enforcement agency" means a governmental unit of one or more persons employed by the federal government for the purpose of preventing and detecting crime and enforcing federal laws, employees of which unit are authorized to make arrests for crimes while acting within the scope of their authority.

(ar) "Law enforcement agency of another state" means a governmental unit of one or more persons employed by a state other than this state or by a political subdivision of a state other than this state for the purpose of preventing and detecting crime and enforcing laws or ordinances of that state or a political subdivision of that state, employees of which unit are authorized to make arrests for crimes while acting within the scope of their authority.

(b) "Wisconsin law enforcement agency" has the meaning given in s. 175.46 (1) (f).

(2) Any photograph taken of an applicant under s. 343.14 (3) or 343.50 (4), and any fingerprint taken of an applicant under s. 343.12 (6) (b), may be maintained by the department and, except as provided in this section and s. 165.8287, shall be kept confidential. Except as provided in this section and s. 165.8287, the department may release a photograph or fingerprint only to the person whose photograph or fingerprint was taken or to the driver licensing agency of another jurisdiction.

(3) The department shall provide a Wisconsin law enforcement agency or a federal law enforcement agency with a print or electronic copy of a photograph taken on or after September 1, 1997, of an applicant under s. 343.14 (3) or 343.50 (4), or a printed or electronic copy of a fingerprint taken of an applicant under s. 343.12 (6) (b), if the department receives a written request on the law enforcement agency's letterhead that contains all of the following:

(a) The name of the person whose photograph or fingerprint is requested.

(b) The name of the person making the request and the law enforcement agency that employs the requester.

(c) A statement signed by a division commander or higher authority within the law enforcement agency that the photograph or fingerprint is requested for any of the following purposes:

1. An investigation of unlawful activity.
2. A missing person investigation.
3. The identification of an accident victim.
4. The identification of a deceased person.

(d) For requests for photographs only, a statement that the request is not made solely to obtain a photograph for use as part of a photo lineup or photo array.

(e) If the requester is a federal law enforcement agency, a statement that the agency agrees to comply with all of the requirements under this section.

(4) If a law enforcement agency of another state or the commission makes a request meeting all the requirements specified for a request by a Wisconsin law enforcement agency or a federal law enforcement agency under sub. (3), the department shall comply with the request if all of the following apply:

(a) The law enforcement agency of the other state or the commission agrees to comply with all of the requirements under this section.

(b) The other state or the commission allows Wisconsin law enforcement agencies similar or greater access to similar information from that state or the commission.

(4m) The department shall attach to each copy of a photograph or fingerprint provided under this section the notation: "This photograph is subject to the requirements and restrictions of section 343.237 of the Wisconsin Statutes." or

"This fingerprint is subject to the requirements and restrictions of section 343.237 of the Wisconsin Statutes."

(5) Any law enforcement agency that has in its possession a copy of a photograph or fingerprint provided to it under sub. (3) or (4) shall destroy any copies of the photograph or fingerprint in its possession when the photograph or fingerprint is no longer necessary for the investigatory or identification purpose specified in its request for the copy of the photograph or fingerprint.

(6) For each copy of a photograph or fingerprint provided under sub. (3) or (4), the department shall record and maintain the written request for the copy of the photograph or fingerprint and may not disclose any record or other information concerning or relating to the written request to any person other than a court, district attorney, county corporation counsel, city, village, or town attorney, law enforcement agency, the applicant or identification card holder or, if the applicant or identification card holder is under 18 years of age, his or her parent or guardian.

(7) The department may not charge a fee for providing a copy of any photograph or fingerprint to a Wisconsin law enforcement agency under this section.

(8) (a) Any law enforcement agency that receives a photograph or fingerprint provided to a law enforcement agency under this section shall keep the copy of the photograph or fingerprint confidential and may disclose it only if disclosure is necessary to perform a law enforcement function and the person to whom the copy of the photograph or fingerprint is disclosed agrees to comply with par. (c).

(b) If a law enforcement agency discloses a copy of a photograph or fingerprint to another person under par. (a), the copy of the photograph or fingerprint shall have attached to it the notation specified in sub. (4m).

(c) Any person who receives a copy of a photograph or fingerprint from a law enforcement agency under par. (a) shall destroy any copies of the photograph or fingerprint in his or her possession when the photograph or fingerprint is no longer necessary to perform the law enforcement function for which the photograph or fingerprint was disclosed.

(9) Not later than August 1, 1998, and annually thereafter, the department of transportation and the department of justice jointly shall submit a report to the chief clerk of each house of the legislature for distribution to the legislature under s. 13.172 (2) concerning the copies of photographs provided under this section, including the agencies to whom and the purposes for which the copies of the photographs were provided. The department of transportation and the department of justice shall consult with other interested persons when preparing a report under this subsection.

(10) Any person who willfully discloses a copy of a photograph or fingerprint in violation of this section may be required to forfeit not more than $500 for each violation. Each copy disclosed constitutes a separate offense.

History: 1997 a. 119, 237; 2001 a. 41; 2003 a. 36, 280; 2007 a. 20, 27; 2009 a. 167.

343.28 Courts to report convictions and forward licenses to the department. (1) Whenever a person is convicted of a moving traffic violation under chs. 341 to 349 or under a local ordinance enacted under ch. 349, the clerk of the court in which the conviction occurred, or the justice, judge or magistrate of a court not having a clerk, shall, as provided in s. 345.48, forward to the department the record of such conviction. The record of conviction forwarded to the department shall state whether the offender was involved in an accident at the time of the offense, whether the offender was operating a commercial motor vehicle at the time of the offense and, if so, whether the offender was transporting hazardous materials requiring placarding or any quantity of a material listed as a select agent or toxin under 42 CFR 73, or was operating a vehicle designed to carry, or actually carrying, 16 or more passengers, including the driver. Whenever a person is convicted of exceeding a posted speed limit, the record of conviction forwarded to the department shall include the number of miles per hour in excess of the posted speed limit.

(2) Whenever a person is convicted of any offense for which s. 343.31 makes mandatory the revocation by the secretary of such person's operating privilege, the court in which the conviction occurred may require the surrender to it of any license then held by such person. If the court requires surrender of a license, the court shall destroy the license. The clerk of the court, or the justice, judge or magistrate if the court has no clerk, shall, as provided in s. 345.48, forward to the department the record of conviction, which shall state whether the offender was involved in an accident at the time of the offense, whether the offender was operating a commercial motor vehicle at the time of the offense and, if so, whether the offender was transporting hazardous materials requiring placarding or any quantity of a material listed as a select agent or toxin under 42 CFR 73, or was operating a vehicle designed to carry, or actually carrying, 16 or more passengers, including the driver.

(3) If a person is convicted of committing a violation as defined by s. 343.30 (6) (a), the clerk of the court, or the justice, judge or magistrate if the court has no clerk, shall, as provided in s. 345.48, forward to the department the record of conviction.

(4) Any person who fails to comply with any provision of this section relative to forwarding records of convictions to the department may be fined not more than $100 or imprisoned not more than 6 months or both.

History: 1971 c. 278; 1977 c. 29 s. 1654 (7) (a), (c); 1977 c. 273; 1979 c. 331; 1989 a. 105; 1995 a. 113; 1999 a. 140; 2003 a. 33; 2009 a. 103.

343.30 Suspension and revocation by the courts. (1) A court may suspend a person's operating privilege for any period not exceeding one year upon such person's conviction in such court of violating any of the state traffic laws or any local ordinance enacted under ch. 349, other than a violation of s. 346.18 or a local ordinance in conformity with s. 346.18 for which operating privilege suspension is required under s. 343.31 (2t) (a).

(1d) A court shall revoke a person's operating privilege upon the person's conviction for violating s. 343.05 (3) (a) or a local ordinance in conformity therewith if the person, in the course of the violation, causes great bodily harm, as defined in s. 939.22 (14), to another person or the death of another person. Any revocation under this subsection shall be for a period of 6 months, unless the court orders a period of revocation of less than 6 months and places its reasons for ordering the lesser period of revocation on the record.

(1g) (a) Subject to pars. (b) and (c), a court may suspend a person's operating privilege for any period not exceeding 6

months upon the person's conviction for violating s. 343.44 (1) (a), (b), or (d) or a local ordinance in conformity therewith.

(b) Except as provided in par. (c), a court may revoke a person's operating privilege upon the person's conviction for violating s. 343.44 (1) (a), (b), or (d) or a local ordinance in conformity therewith if the person has been convicted of 3 or more prior violations of s. 343.44 (1) (a), (b), or (d), or similar violations under s. 343.44 (1), 1997 stats., or a local ordinance in conformity therewith, within the 5-year period preceding the violation.

(c) A court shall revoke a person's operating privilege upon the person's conviction for violating s. 343.44 (1) (a) or (b), or a local ordinance in conformity with s. 343.44 (1) (a), if the person, in the course of the violation, causes great bodily harm, as defined in s. 939.22 (14), to another person or the death of another person.

(d) Any revocation under this subsection shall be for a period of 6 months, unless the court orders a period of revocation of less than 6 months and places its reasons for ordering the lesser period of revocation on the record.

(1n) A court shall suspend the operating privilege of a person for a period of 15 days upon the person's conviction by the court of exceeding the applicable speed limit as established by s. 346.57 (4) (gm) or (h), by 25 or more miles per hour. If the conviction makes the person subject to suspension under s. 343.085 or 343.32, the court shall order the suspension of the person's operating privilege and notify the secretary of the order. Upon receiving the notice, the secretary shall act as authorized under s. 343.32 or 343.085. Any suspension under this subsection shall date from the day the secretary acts on the order of suspension of the operating privilege.

(1o) Upon conviction of a person for violating s. 346.072, the court shall suspend the violator's operating privilege as follows:

(a) For a period of not less than 90 days nor more than one year, if the offense resulted in damage to the property of another but did not result in bodily harm to another.

(b) For a period of not less than 180 days nor more than 2 years, if the offense resulted in bodily harm to another but did not result in the death of another.

(c) For a period of 2 years, if the offense resulted in the death of another.

(1p) Notwithstanding sub. (1), a court shall suspend the operating privilege of a person for 3 months upon the person's conviction by the court for violation of s. 346.63 (2m) or a local ordinance in conformity with s. 346.63 (2m). If there was a minor passenger under 16 years of age in the motor vehicle at the time of the violation that gave rise to the conviction under s. 346.63 (2m) or a local ordinance in conformity with s. 346.63 (2m), the court shall suspend the operating privilege of the person for 6 months.

(1q) (a) If a person is convicted under s. 346.63 (1) or a local ordinance in conformity therewith, the court shall proceed under this subsection. If a person is convicted under s. 346.63 (2) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, the court shall proceed under pars. (c) and (d). If a person is referred by the department acting under s. 343.16 (5) (a), the department shall proceed under pars. (c) and (d) without the order of the court.

(b) For persons convicted under s. 346.63 (1) or a local ordinance in conformity therewith:

1. Except as provided in subds. 3. and 4., the court shall revoke the person's operating privilege under this paragraph according to the number of previous suspensions, revocations or convictions that would be counted under s. 343.307 (1). Suspensions, revocations and convictions arising out of the same incident shall be counted as one. If a person has a conviction, suspension or revocation for any offense that is counted under s. 343.307 (1), that conviction, suspension or revocation shall count as a prior conviction, suspension or revocation under this subdivision.

2. Except as provided in sub. (1r) or subd. 3., 4. or 4m., for the first conviction, the court shall revoke the person's operating privilege for not less than 6 months nor more than 9 months. The person is eligible for an occupational license under s. 343.10 at any time.

3. Except as provided in sub. (1r) or subd. 4m., if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of other convictions, suspensions, and revocations counted under s. 343.307 (1) within a 10-year period, equals 2, the court shall revoke the person's operating privilege for not less than one year nor more than 18 months. After the first 45 days of the revocation period has elapsed, the person is eligible for an occupational license under s. 343.10 if he or she has completed the assessment and is complying with the driver safety plan ordered under par. (c).

4. Except as provided in sub. (1r) or subd. 4m., if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of other convictions, suspensions, and revocations counted under s. 343.307 (1), equals 3 or more, the court shall revoke the person's operating privilege for not less than 2 years nor more than 3 years. After the first 45 days of the revocation period has elapsed, the person is eligible for an occupational license under s. 343.10 if he or she has completed the assessment and is complying with the driver safety plan ordered under par. (c).

4m. If there was a minor passenger under 16 years of age in the motor vehicle at the time of the violation that gave rise to the conviction under s. 346.63 (1) or a local ordinance in conformity with s. 346.63 (1), the applicable minimum and maximum revocation periods under subd. 2., 3. or 4. for the conviction are doubled.

5. The time period under this paragraph shall be measured from the dates of the refusals or violations which resulted in the suspensions, revocations or convictions.

(c) 1. Except as provided in subd. 1. a. or b., the court shall order the person to submit to and comply with an assessment by an approved public treatment facility as defined in s. 51.45 (2) (c) for examination of the person's use of alcohol, controlled substances or controlled substance analogs and development of a driver safety plan for the person. The court shall notify the department of transportation of the assessment order. The court shall notify the person that noncompliance with assessment or the driver safety plan will result in revocation of the person's operating privilege until the person is in compliance. The assessment order shall:

a. If the person is a resident, refer the person to an approved public treatment facility in the county in which the

person resides. The facility named in the order may provide for assessment of the person in another approved public treatment facility. The order shall provide that if the person is temporarily residing in another state, the facility named in the order may refer the person to an appropriate treatment facility in that state for assessment and development of a driver safety plan for the person satisfying the requirements of that state.

b. If the person is a nonresident, refer the person to an approved public treatment facility in this state. The order shall provide that the facility named in the order may refer the person to an appropriate treatment facility in the state in which the person resides for assessment and development of a driver safety plan for the person satisfying the requirements of that state.

c. Require a person who is referred to a treatment facility in another state under subd. 1. a. or b. to furnish the department written verification of his or her compliance from the agency which administers the assessment and driver safety plan program. The person shall provide initial verification of compliance within 60 days after the date of his or her conviction. The requirement to furnish verification of compliance may be satisfied by receipt by the department of such verification from the agency which administers the assessment and driver safety plan program.

1m. The person may voluntarily submit to an assessment by an approved public treatment facility, as defined in s. 51.45 (2) (c), and driver safety plan under this paragraph before the conviction. A prosecutor may not use that voluntary submission to justify a reduction in the charge made against the person. Upon notification of the person's submission to the voluntary assessment and driver safety plan, the court may take that voluntary submission into account when determining the person's sentence, and shall suspend the order to submit to assessment pending the person's completion of the voluntary assessment and driver safety plan.

2. The department of health services shall establish standards for assessment procedures and the driver safety plan programs by rule. The department of health services shall establish by rule conflict of interest guidelines for providers.

3. Prior to developing a plan which specifies treatment, the facility shall make a finding that treatment is necessary and appropriate services are available. The facility shall submit a report of the assessment and the driver safety plan within 14 days to the county department under s. 51.42, the plan provider, the department of transportation and the person, except that upon request by the facility and the person, the county department may extend the period for assessment for not more than 20 additional workdays. The county department shall notify the department of transportation regarding any such extension.

(d) The assessment report shall order compliance with a driver safety plan. The report shall inform the person of the fee provisions under s. 46.03 (18) (f). The driver safety plan may include a component that makes the person aware of the effect of his or her offense on a victim and a victim's family. The driver safety plan may include treatment for the person's misuse, abuse or dependence on alcohol, controlled substances or controlled substance analogs, or attendance at a school under s. 345.60, or both. If the plan requires inpatient treatment, the treatment shall not exceed 30 days. A driver safety plan under this paragraph shall include a termination date consistent with the plan which shall not extend beyond one year. The county department under s. 51.42 shall assure notification of the department of transportation and the person of the person's compliance or noncompliance with assessment and with treatment. The school under s. 345.60 shall notify the department, the county department under s. 51.42 and the person of the person's compliance or noncompliance with the requirements of the school. Nonpayment of the assessment fee or, if the person has the ability to pay, nonpayment of the driver safety plan fee is noncompliance with the court order. If the department is notified of any noncompliance, other than for nonpayment of the assessment fee or driver safety plan fee, it shall revoke the person's operating privilege until the county department under s. 51.42 or the school under s. 345.60 notifies the department that the person is in compliance with assessment or the driver safety plan. If the department is notified that a person has not paid the assessment fee, or that a person with the ability to pay has not paid the driver safety plan fee, the department shall suspend the person's operating privilege for a period of 2 years or until it receives notice that the person has paid the fee, whichever occurs first. The department shall notify the person of the suspension or revocation, the reason for the suspension or revocation and the person's right to a review. A person may request a review of a revocation based upon failure to comply with a driver safety plan within 10 days of notification. The review shall be handled by the subunit of the department of transportation designated by the secretary. The issues at the review are limited to whether the driver safety plan, if challenged, is appropriate and whether the person is in compliance with the assessment order or the driver safety plan. The review shall be conducted within 10 days after a request is received. If the driver safety plan is determined to be inappropriate, the department shall order a reassessment and if the person is otherwise eligible, the department shall reinstate the person's operating privilege. If the person is determined to be in compliance with the assessment or driver safety plan, and if the person is otherwise eligible, the department shall reinstate the person's operating privilege. If there is no decision within the 10-day period, the department shall issue an order reinstating the person's operating privilege until the review is completed, unless the delay is at the request of the person seeking the review.

(e) Notwithstanding par. (c), if the court finds that the person is already covered by an assessment or is participating in a driver safety plan or has had evidence presented to it by a county department under s. 51.42 that the person has recently completed assessment, a driver safety plan or both, the court is not required to make an order under par. (c). This paragraph does not prohibit the court from making an order under par. (c), if it deems such an order advisable.

(f) The department may make any order which the court is authorized or required to make under this subsection if the court fails to do so.

(h) The court or department shall provide that the period of suspension or revocation imposed under this subsection shall be reduced by any period of suspension or revocation previously served under s. 343.305 if the suspension or revocation under s. 343.305 and the conviction for violation of s. 346.63 (1) or (2m) or a local ordinance in conformity therewith arise out of the same incident or occurrence. The court or department shall

order that the period of suspension or revocation imposed under this subsection run concurrently with any period of time remaining on a suspension or revocation imposed under s. 343.305 arising out of the same incident or occurrence. The court may modify an occupational license authorized under s. 343.305 (8) (d) in accordance with this subsection.

(1r) For any revocation the court orders under sub. (1q), the court shall extend the revocation period by the number of days to which the court sentences the person to imprisonment in a jail or prison for an offense related to the revocation.

(1z) If a court imposes a driver improvement surcharge under s. 346.655 and the person fails to pay the surcharge within 60 days after the date by which the court ordered the surcharge to be paid, the court may suspend the person's operating privilege until the person pays the surcharge, except that the suspension period may not exceed 2 years.

(2d) A court may suspend a person's operating privilege upon conviction of any offense specified under ss. 940.225, 948.02, 948.025, 948.07, or 948.085, if the court finds that it is inimical to the public safety and welfare for the offender to have operating privileges. The suspension shall be for one year or until discharge from prison or jail sentence or probation, extended supervision or parole with respect to the offenses specified, whichever date is later. Receipt of a certificate of discharge from the department of corrections or other responsible supervising agency, after one year has elapsed since the suspension, entitles the holder to reinstatement of operating privileges. The holder may be required to present the certificate to the secretary if the secretary deems necessary.

(2g) A court may suspend or revoke a person's operating privilege for any period not exceeding one year upon conviction of that person for violating s. 346.67, 346.68 or 346.69. This subsection does not apply to circumstances that require the department to revoke a person's operating privilege under s. 343.31 (1) (d) or (3) (i) or (j).

(2j) (a) A court may suspend a person's operating privilege upon the person's first conviction for violating s. 346.44 or 346.62 (2m) and shall suspend a person's operating privilege upon the person's 2nd or subsequent conviction within a 5-year period for violating s. 346.44 or 346.62 (2m). The suspension shall be for a period of 6 months. For purposes of determining prior convictions for purposes of this paragraph, the 5-year period shall be measured from the dates of the violations that resulted in the convictions. Each conviction under s. 346.44 or 346.62 (2m) shall be counted, except that convictions under s. 346.44 and 346.62 (2m) arising out of the same incident or occurrence shall be counted as a single conviction.

(3) The court that ordered the issuance of an occupational license under s. 343.10 (4) (b) may withdraw the order to issue the license whenever the court, upon the facts, does not see fit to permit the licensee to retain the occupational license. Upon receiving notice that a court has withdrawn its order to issue an occupational license, the department shall cancel that license.

(4) Whenever a court suspends or revokes an operating privilege under this section, the court may take possession of any suspended or revoked license. If the court takes possession of a license, it shall destroy the license. The court shall forward, as provided in s. 345.48, to the department the record of conviction and notice of suspension or revocation. Whenever a court restricts the operating privilege of a person, the court shall forward notice of the restriction to the department.

(5) No court may suspend or revoke an operating privilege except as authorized by this chapter or ch. 345, 351, or 938 or s. 767.73, 800.095 (1) (a), 943.21 (3m), or 961.50. When a court revokes, suspends, or restricts a juvenile's operating privilege under ch. 938, the department of transportation shall not disclose information concerning or relating to the revocation, suspension, or restriction to any person other than a court, district attorney, county corporation counsel, city, village, or town attorney, law enforcement agency, driver licensing agency of another jurisdiction, or the minor whose operating privilege is revoked, suspended, or restricted, or his or her parent or guardian. Persons entitled to receive this information shall not disclose the information to other persons or agencies.

(6) (a) In this subsection, "violation" means a violation of s. 125.07 (4) (a) or (b), 125.085 (3) (b) or 125.09 (2) or a local ordinance that strictly conforms to one of those statutes or a law of a federally recognized American Indian tribe or band in this state that strictly conforms to one of those statutes.

(b) If a court imposes suspension of a person's operating privilege under s. 125.07 (4) (bs) or (c), 346.93 (2f) or (2g) or 938.344 (2), (2b) or (2d), the suspension imposed shall be one of the following:

1. For a first violation, suspension for 30 to 90 days.

2. For a violation committed within 12 months of a previous violation, suspension for not more than one year.

3. For a violation committed within 12 months of 2 or more previous violations, suspension for not more than 2 years.

(bm) If the court imposes a suspension of a person's operating privilege under s. 125.085 (3) (bd), the suspension shall be for 30 to 90 days.

(c) Except as provided by par. (d), the suspension of the operating privilege under this subsection shall commence on the date of disposition.

(d) If the person subject to suspension under this subsection does not hold a valid license under this chapter other than a license under s. 343.07 or 343.08 on the date of disposition, the suspension under par. (b) shall commence on the date on which the person is first eligible for issuance, renewal, or reinstatement of an operator's license under this chapter.

History: 1971 c. 213 s. 5; 1971 c. 278; 1973 c. 70, 218; 1975 c. 5; 1975 c. 184 s. 13; 1975 c. 199, 297, 421; 1977 c. 29 s. 1654 (7) (a), (c); 1977 c. 30, 64, 193, 203; 1979 c. 221, 300, 331, 333, 355; 1981 c. 20; 1981 c. 79 s. 18; 1983 a. 17; 1983 a. 74 ss. 23m to 26, 32; 1983 a. 192; 1985 a. 80, 176, 337; 1987 a. 3, 17, 285; 1987 a. 332 s. 64; 1989 a. 7, 31, 105, 121, 336; 1991 a. 39, 251, 277, 316; 1993 a. 16, 227, 317; 1995 a. 27, 77, 269, 338, 401, 425, 448; 1997 a. 35, 84, 135, 237, 283; 1999 a. 32, 109, 143; 2001 a. 15, 16, 38; 2003 a. 30, 80; 2005 a. 277; 2005 a. 443 s. 265; 2005 a. 466; 2007 a. 20 ss. 3300, 9121 (6) (a); 2007 a. 134; 2009 a. 100, 102, 103, 402; 2011 a. 113, 173, 262.

Cross-reference: See also ch. DHS 62, Wis. adm. code.

Suspension or revocation of operating privileges applies to both a regular driver license and to a chauffeur's license. 63 Atty. Gen. 240.

343.301 Installation of ignition interlock device. (1g)

A court shall order a person's operating privilege for the operation of "Class D" vehicles be restricted to operating vehicles that are equipped with an ignition interlock device and, except as provided in sub. (1m), shall order that each motor vehicle for which the person's name appears on the vehicle's certificate of title or registration be equipped with an ignition interlock device if either of the following applies:

(a) The person improperly refused to take a test under s. 343.305.

(b) The person violated s. 346.63 (1) or (2), 940.09 (1), or 940.25 and either of the following applies:

1. The person had an alcohol concentration of 0.15 or more at the time of the offense.

2. The person has a total of one or more prior convictions, suspensions, or revocations, counting convictions under ss. 940.09 (1) and 940.25 in the person's lifetime and other convictions, suspensions, and revocations counted under s. 343.307 (1).

(1m) If equipping each motor vehicle with an ignition interlock device under sub. (1g) would cause an undue financial hardship, the court may order that one or more vehicles described sub. (1g) not be equipped with an ignition interlock device.

(2m) The court shall restrict the operating privilege under sub. (1g) for a period of not less than one year nor more than the maximum operating privilege revocation period permitted for the refusal or violation, beginning on the date the department issues any license granted under this chapter, except that if the maximum operating privilege revocation period is less than one year, the court shall restrict the operating privilege under sub. (1g) for one year. The court may order the installation of an ignition interlock device under sub. (1g) immediately upon issuing an order under sub. (1g).

(3) (a) Except as provided in par. (b), if the court enters an order under sub. (1g), the person shall be liable for the reasonable cost of equipping and maintaining any ignition interlock device installed on his or her motor vehicle.

(b) If the court finds that the person who is subject to an order under sub. (1g) has a household income that is at or below 150 percent of the nonfarm federal poverty line for the continental United States, as defined by the federal department of labor under 42 USC 9902 (2), the court shall limit the person's liability under par. (a) to one-half of the cost of equipping each motor vehicle with an ignition interlock device and one-half of the cost per day per vehicle of maintaining the ignition interlock device.

(4) A person to whom an order under sub. (1g) applies violates that order if he or she fails to have an ignition interlock device installed as ordered, removes or disconnects an ignition interlock device, requests or permits another to blow into an ignition interlock device or to start a motor vehicle equipped with an ignition interlock device for the purpose of providing the person an operable motor vehicle without the necessity of first submitting a sample of his or her breath to analysis by the ignition interlock device, or otherwise tampers with or circumvents the operation of the ignition interlock device.

(5) If the court enters an order under sub. (1g), the court shall impose and the person shall pay to the clerk of court an ignition interlock surcharge of $50. The clerk of court shall transmit the amount to the county treasurer.

History: 1999 a. 109; 2001 a. 16 ss. 3417m to 3420t, 4060gj, 4060hw, 4060hy; 2001 a. 104; 2009 a. 100.

Wisconsin's New OWI Law. Mishlove & Stuckert. Wis. Law. June 2010.

343.303 Preliminary breath screening test. If a law enforcement officer has probable cause to believe that the person is violating or has violated s. 346.63 (1) or (2m) or a local ordinance in conformity therewith, or s. 346.63 (2) or (6) or 940.25 or s. 940.09 where the offense involved the use of a vehicle, or if the officer detects any presence of alcohol, a controlled substance, controlled substance analog or other drug, or a combination thereof, on a person driving or operating or on duty time with respect to a commercial motor vehicle or has reason to believe that the person is violating or has violated s. 346.63 (7) or a local ordinance in conformity therewith, the officer, prior to an arrest, may request the person to provide a sample of his or her breath for a preliminary breath screening test using a device approved by the department for this purpose. The result of this preliminary breath screening test may be used by the law enforcement officer for the purpose of deciding whether or not the person shall be arrested for a violation of s. 346.63 (1), (2m), (5) or (7) or a local ordinance in conformity therewith, or s. 346.63 (2) or (6), 940.09 (1) or 940.25 and whether or not to require or request chemical tests as authorized under s. 343.305 (3). The result of the preliminary breath screening test shall not be admissible in any action or proceeding except to show probable cause for an arrest, if the arrest is challenged, or to prove that a chemical test was properly required or requested of a person under s. 343.305 (3). Following the screening test, additional tests may be required or requested of the driver under s. 343.305 (3). The general penalty provision under s. 939.61 (1) does not apply to a refusal to take a preliminary breath screening test.

History: 1981 c. 20; 1985 a. 32 s. 3; 1985 a. 337; 1987 a. 3; 1989 a. 105; 1991 a. 277; 1995 a. 448.

A prosecutor's statement that the defendant failed a preliminary breath test was improper, but evidence that the defendant refused to take a breathalyzer test was relevant and constitutionally admissible. State v. Albright, 98 Wis. 2d 663, 298 N.W.2d 196 (Ct. App. 1980).

A preliminary breath test result is not determinative of probable cause to arrest for driving while intoxicated. A low test result does not void the grounds for arrest. Dane County v. Sharpee, 154 Wis. 2d 515, 453 N.W.2d 508 (Ct. App. 1990).

The bar of preliminary breath tests under this section is limited to proceedings related to arrests for offenses contemplated under this statute including those related to motor vehicles and intoxication. State v. Beaver, 181 Wis. 2d 959, 512 N.W.2d 254 (Ct. App. 1994).

This section bars the evidentiary use of preliminary breath test results in motor vehicle violation cases, but not in other actions. Prosecutors who wish to rely on PBT results are required to present evidence of the device's scientific accuracy as a foundation for admission. State v. Doerr, 229 Wis. 2d 616, 599 N.W.2d 897 (Ct. App. 1999), 98-1047.

"Probable cause to believe" refers to a quantum of evidence greater than reasonable suspicion to make an investigative stop, but less than probable cause to make an arrest. County of Jefferson v. Renz, 231 Wis. 2d 293, 603 N.W.2d 541 (1999), 97-3512.

Blood may be drawn in a search incident to an arrest for a non-drunk-driving offense if the police reasonably suspect that the defendant's blood contains evidence of a crime. This section does not prohibit the consideration of a suspect's refusal to submit to a PBT for purposes of determining whether a warrantless involuntary draw of the suspect's blood was supported by reasonable suspicion. State v. Repenshek, 2004 WI App 229, 277 Wis. 2d 780, 691 N.W.2d 369, 03-3089

Under *State v. St. George*, 2002 WI 50, for a defendant to establish a constitutional right to the admissibility of proffered expert testimony, the defendant must satisfy a two-part inquiry determining whether the evidence is clearly central to the defense and the exclusion of the evidence is arbitrary and disproportionate to the purpose of the rule of exclusion, so that exclusion undermines fundamental elements of the defendant's defense. In an OWI prosecution, even if a defendant establishes a constitutional right to present an expert opinion that is based in part on PBT results, the right to do so is outweighed by the state's compelling interest to exclude that evidence. State v. Fischer, 2010 WI 6, 322 Wis. 2d 265, 778 N.W.2d 629, 07-1898. But see Fischer v. Ozaukee County Circuit Court, 741 F. Supp. 2d 944 (2010).

Probable cause exists to request a preliminary breath test sample when the driver is known to be subject to a .02 prohibited alcohol content standard, the officer knows it would take very little alcohol for the driver to exceed that limit, and the officer smells alcohol on the driver. State v. Goss, 2011 WI 104, 338 Wis. 2d 72, 806 N.W.2d 918, 10-1113.

The Wisconsin Supreme Court's decision in *Fischer* affirming the exclusion of the defendant's expert's testimony using PBT results involved an unreasonable application of federal law as determined by the United States Supreme Court. Fischer v. Ozaukee County Circuit Court, 741 F. Supp. 2d 944 (2010).

343.305 Tests for intoxication; administrative suspension and court-ordered revocation. (1) DEFINITIONS. In this section:

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

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

(2) IMPLIED CONSENT. Any person who is on duty time with respect to a commercial motor vehicle or drives or operates a motor vehicle upon the public highways of this state, or in those areas enumerated in s. 346.61, is deemed to have given consent to one or more tests of his or her breath, blood or urine, for the purpose of determining the presence or quantity in his or her blood or breath, of alcohol, controlled substances, controlled substance analogs or other drugs, or any combination of alcohol, controlled substances, controlled substance analogs and other drugs, when requested to do so by a law enforcement officer under sub. (3) (a) or (am) or when required to do so under sub. (3) (ar) or (b). Any such tests shall be administered upon the request of a law enforcement officer. The law enforcement agency by which the officer is employed shall be prepared to administer, either at its agency or any other agency or facility, 2 of the 3 tests under sub. (3) (a), (am), or (ar), and may designate which of the tests shall be administered first.

(3) REQUESTED OR REQUIRED. (a) Upon arrest of a person for violation of s. 346.63 (1), (2m) or (5) or a local ordinance in conformity therewith, or for a violation of s. 346.63 (2) or (6) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, or upon arrest subsequent to a refusal under par. (ar), a law enforcement officer may request the person to provide one or more samples of his or her breath, blood or urine for the purpose specified under sub. (2). Compliance with a request for one type of sample does not bar a subsequent request for a different type of sample.

(am) Prior to arrest, a law enforcement officer may request the person to provide one or more samples of his or her breath, blood or urine for the purpose specified under sub. (2) whenever a law enforcement officer detects any presence of alcohol, a controlled substance, a controlled substance analog or other drug, or a combination thereof, on a person driving or operating or on duty time with respect to a commercial motor vehicle or has reason to believe the person is violating or has violated s. 346.63 (7). Compliance with a request for one type of sample does not bar a subsequent request for a different type of sample. For the purposes of this paragraph, "law enforcement officer" includes inspectors in the performance of duties under s. 110.07 (3).

(ar) 1. If a person is the operator of a vehicle that is involved in an accident that causes substantial bodily harm, as defined in s. 939.22 (38), to any person, and a law enforcement officer detects any presence of alcohol, a controlled substance, a controlled substance analog or other drug, or a combination thereof, the law enforcement officer may request the operator to provide one or more samples of his or her breath, blood, or urine for the purpose specified under sub. (2). Compliance with a request for one type of sample does not bar a subsequent request for a different type of sample. A person who is unconscious or otherwise not capable of withdrawing consent is presumed not to have withdrawn consent under this subdivision and one or more samples specified in par. (a) or (am) may be administered to the person. If a person refuses to take a test under this subdivision, he or she may be arrested under par. (a).

2. If a person is the operator of a vehicle that is involved in an accident that causes the death of or great bodily harm to any person and the law enforcement officer has reason to believe that the person violated any state or local traffic law, the officer may request the operator to provide one or more samples of his or her breath, blood, or urine for the purpose specified under sub. (2). Compliance with a request for one type of sample does not bar a subsequent request for a different type of sample. A person who is unconscious or otherwise not capable of withdrawing consent is presumed not to have withdrawn consent under this subdivision and one or more samples specified in par. (a) or (am) may be administered to the person. If a person refuses to take a test under this subdivision, he or she may be arrested under par. (a).

(b) A person who is unconscious or otherwise not capable of withdrawing consent is presumed not to have withdrawn consent under this subsection, and if a law enforcement officer has probable cause to believe that the person has violated s. 346.63 (1), (2m) or (5) or a local ordinance in conformity therewith, or s. 346.63 (2) or (6) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, or detects any presence of alcohol, controlled substance, controlled substance analog or other drug, or a combination thereof, on a person driving or operating or on duty time with respect to a commercial motor vehicle or has reason to believe the person has violated s. 346.63 (7), one or more samples specified in par. (a) or (am) may be administered to the person.

(c) This section does not limit the right of a law enforcement officer to obtain evidence by any other lawful means.

(4) INFORMATION. At the time that a chemical test specimen is requested under sub. (3) (a), (am), or (ar), the law enforcement officer shall read the following to the person from whom the test specimen is requested:

"You have either been arrested for an offense that involves driving or operating a motor vehicle while under the influence of alcohol or drugs, or both, or you are the operator of a vehicle that was involved in an accident that caused the death of, great bodily harm to, or substantial bodily harm to a person, or you are suspected of driving or being on duty time with respect to a commercial motor vehicle after consuming an intoxicating beverage.

This law enforcement agency now wants to test one or more samples of your breath, blood or urine to determine the concentration of alcohol or drugs in your system. If any test shows more alcohol in your system than the law permits while driving, your operating privilege will be suspended. If you refuse to take any test that this agency requests, your operating privilege will be revoked and you will be subject to other penalties. The test results or the fact that you refused testing can be used against you in court.

If you take all the requested tests, you may choose to take further tests. You may take the alternative test that this law enforcement agency provides free of charge. You also may

have a test conducted by a qualified person of your choice at your expense. You, however, will have to make your own arrangements for that test.

If you have a commercial driver license or were operating a commercial motor vehicle, other consequences may result from positive test results or from refusing testing, such as being placed out of service or disqualified."

(5) ADMINISTERING THE TEST; ADDITIONAL TESTS. (a) If the person submits to a test under this section, the officer shall direct the administering of the test. A blood test is subject to par. (b). The person who submits to the test is permitted, upon his or her request, the alternative test provided by the agency under sub. (2) or, at his or her own expense, reasonable opportunity to have any qualified person of his or her own choosing administer a chemical test for the purpose specified under sub. (2). If the person has not been requested to provide a sample for a test under sub. (3) (a), (am), or (ar), the person may request a breath test to be administered by the agency or, at his or her own expense, reasonable opportunity to have any qualified person administer any test specified under sub. (3) (a), (am), or (ar). The failure or inability of a person to obtain a test at his or her own expense does not preclude the admission of evidence of the results of any test administered under sub. (3) (a), (am), or (ar). If a person requests the agency to administer a breath test and if the agency is unable to perform that test, the person may request the agency to perform a test under sub. (3) (a), (am), or (ar) that it is able to perform. The agency shall comply with a request made in accordance with this paragraph.

(b) Blood may be withdrawn from the person arrested for violation of s. 346.63 (1), (2), (2m), (5) or (6) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, or a local ordinance in conformity with s. 346.63 (1), (2m) or (5), or as provided in sub. (3) (am) or (b) to determine the presence or quantity of alcohol, a controlled substance, a controlled substance analog or any other drug, or any combination of alcohol, controlled substance, controlled substance analog and any other drug in the blood only by a physician, registered nurse, medical technologist, physician assistant or person acting under the direction of a physician.

(c) A person acting under par. (b), the employer of any such person and any hospital where blood is withdrawn by any such person have immunity from civil or criminal liability under s. 895.53.

(d) At the trial of any civil or criminal action or proceeding arising out of the acts committed by a person alleged to have been driving or operating a motor vehicle while under the influence of an intoxicant, a controlled substance, a controlled substance analog or any other drug, or under the influence of any combination of alcohol, a controlled substance, a controlled substance analog and any other drug, to a degree which renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving, or having a prohibited alcohol concentration, or alleged to have been driving or operating or on duty time with respect to a commercial motor vehicle while having an alcohol concentration above 0.0 or possessing an intoxicating beverage, regardless of its alcohol content, or within 4 hours of having consumed or having been under the influence of an intoxicating beverage, regardless of its alcohol content, or of having an alcohol concentration of 0.04 or more, the results of a test administered in accordance with this section are admissible on the issue of whether the person was under the influence of an intoxicant, a controlled substance, a controlled substance analog or any other drug, or under the influence of any combination of alcohol, a controlled substance, a controlled substance analog and any other drug, to a degree which renders him or her incapable of safely driving or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving or any issue relating to the person's alcohol concentration. Test results shall be given the effect required under s. 885.235.

(e) At the trial of any civil or criminal action or proceeding arising out of the acts committed by a person alleged to have been driving or operating a motor vehicle while having a detectable amount of a restricted controlled substance in his or her blood, the results of a blood test administered in accordance with this section are admissible on any issue relating to the presence of a detectable amount of a restricted controlled substance in the person's blood. Test results shall be given the effect required under s. 885.235.

(6) REQUIREMENTS FOR TESTS. (a) Chemical analyses of blood or urine to be considered valid under this section shall have been performed substantially according to methods approved by the laboratory of hygiene and by an individual possessing a valid permit to perform the analyses issued by the department of health services. The department of health services shall approve laboratories for the purpose of performing chemical analyses of blood or urine for alcohol, controlled substances or controlled substance analogs and shall develop and administer a program for regular monitoring of the laboratories. A list of approved laboratories shall be provided to all law enforcement agencies in the state. Urine specimens are to be collected by methods specified by the laboratory of hygiene. The laboratory of hygiene shall furnish an ample supply of urine and blood specimen containers to permit all law enforcement officers to comply with the requirements of this section.

(b) The department of transportation shall approve techniques or methods of performing chemical analysis of the breath and shall:

1. Approve training manuals and courses throughout the state for the training of law enforcement officers in the chemical analysis of a person's breath;

2. Certify the qualifications and competence of individuals to conduct the analysis;

3. Have trained technicians, approved by the secretary, test and certify the accuracy of the equipment to be used by law enforcement officers for chemical analysis of a person's breath under sub. (3) (a), (am), or (ar) before regular use of the equipment and periodically thereafter at intervals of not more than 120 days; and

4. Issue permits to individuals according to their qualifications.

Cross-reference: See also ch. Trans 311, Wis. adm. code.

(bm) Any relevant instruction, as defined in s. 101.02 (24) (a) 1., that an applicant for an approval, certification, or permit under par. (b) has obtained in connection with any military service, as defined in s. 111.32 (12g), counts toward satisfying any requirement for instruction for an approval, certification, or

permit under par. (b) if the applicant demonstrates to the satisfaction of the department of transportation that the instruction obtained by the applicant is substantially equivalent to the instruction required for the approval, certificate, or permit under par. (b).

(c) For purposes of this section, if a breath test is administered using an infrared breath-testing instrument:

1. The test shall consist of analyses in the following sequence: one adequate breath sample analysis, one calibration standard analysis, and a 2nd, adequate breath sample analysis.

2. A sample is adequate if the instrument analyzes the sample and does not indicate the sample is deficient.

3. Failure of a person to provide 2 separate, adequate breath samples in the proper sequence constitutes a refusal.

(d) The department of transportation may promulgate rules pertaining to the calibration and testing of preliminary breath screening test devices.

(e) 1. In this paragraph, "licensor" means the department of health services or, with respect to permits issued under par. (b) 4., the department of transportation.

2. In addition to any other information required by the licensor, an application for a permit or laboratory approval under this subsection shall include the following:

a. Except as provided in subd. 2. am., in the case of an individual, the individual's social security number.

am. In the case of an individual who does not have a social security number, a statement made or subscribed under oath or affirmation that the applicant does not have a social security number. The form of the statement shall be prescribed by the department of children and families. A permit or approval that is issued or renewed under this section in reliance on a statement submitted under this subd. 2. am. is invalid if the statement is false.

b. In the case of a person who is not an individual, the person's federal employer identification number.

3. a. The licensor shall deny an application for the issuance or, if applicable, renewal of a permit or laboratory approval if the information required under subd. 2. a., am. or b. is not included in the application.

b. The licensor may not disclose any information received under subd. 2. a. or b. except to the department of children and families for purposes of administering s. 49.22 or the department of revenue for the sole purpose of requesting certifications under s. 73.0301.

4. A permit under this subsection shall be denied, restricted, limited or suspended if the applicant or licensee is an individual who is delinquent in making court-ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse, as provided in a memorandum of understanding entered into under s. 49.857.

5. If the licensor is the department of health services, the department of health services shall deny an application for the issuance or renewal of a permit or laboratory approval, or revoke a permit or laboratory approval already issued, if the department of revenue certifies under s. 73.0301 that the applicant or holder of the permit or laboratory approval is liable for delinquent taxes. An applicant for whom a permit or laboratory approval is not issued or renewed, or an individual or laboratory whose permit or laboratory approval is revoked, under this subdivision for delinquent taxes is entitled to a notice under s. 73.0301 (2) (b) 1. b. and a hearing under s. 73.0301 (5) (a) but is not entitled to any other notice or hearing under this subsection.

(7) CHEMICAL TEST; ADMINISTRATIVE SUSPENSION. (a) If a person submits to chemical testing administered in accordance with this section and any test results indicate the presence of a detectable amount of a restricted controlled substance in the person's blood or a prohibited alcohol concentration, the law enforcement officer shall report the results to the department. The person's operating privilege is administratively suspended for 6 months.

(b) If a person who was driving or operating or on duty time with respect to a commercial motor vehicle submits to chemical testing administered in accordance with this section and any test results indicate an alcohol concentration above 0.0, the law enforcement officer shall issue a citation for violation of s. 346.63 (7) (a) 1., issue citations for such other violations as may apply and issue an out-of-service order to the person for the 24 hours after the testing, and report both the out-of-service order and the test results to the department in the manner prescribed by the department. If the person is a nonresident, the department shall report issuance of the out-of-service order to the driver licensing agency in the person's home jurisdiction.

(8) CHEMICAL TEST; ADMINISTRATIVE SUSPENSION; ADMINISTRATIVE AND JUDICIAL REVIEW. (a) The law enforcement officer shall notify the person of the administrative suspension under sub. (7) (a). The notice shall advise the person that his or her operating privilege will be administratively suspended and that he or she has the right to obtain administrative and judicial review under this subsection. This notice of administrative suspension serves as a 30-day temporary license. An administrative suspension under sub. (7) (a) becomes effective at the time the 30-day temporary license expires. The officer shall submit or mail a copy of the notice to the department.

(am) The law enforcement officer shall provide the person with a separate form for the person to use to request the administrative review under this subsection. The form shall clearly indicate how to request an administrative review and shall clearly notify the person that this form must be submitted within 10 days from the notice date indicated on the form or the person's hearing rights will be deemed waived. The form shall, in no less than 16-point boldface type, be titled: IMPORTANT NOTICE — RESPOND WITHIN TEN (10) DAYS.

(b) 1. Within 10 days after the notification under par. (a), or, if the notification is by mail, within 13 days, excluding Saturdays, Sundays and holidays, after the date of the mailing, the person may request, in writing, that the department review the administrative suspension. The review procedure is not subject to ch. 227. Unless the hearing is by remote communication mechanism or record review, the department shall hold the hearing on the matter in the county in which the offense allegedly occurred or at the nearest office of the department if the offense allegedly occurred in a county in which the department does not maintain an office. The department, upon request of the person, may conduct a hearing under this paragraph by telephone, video conference, or other remote communication mechanism or by review of only the

record submitted by the arresting officer and written arguments. The department shall hold a hearing regarding the administrative suspension within 30 days after the date of notification under par. (a). The person may present evidence and may be represented by counsel. The arresting officer need not appear at the administrative hearing unless subpoenaed under s. 805.07 and need not appear in person at a hearing conducted by remote communication mechanism or record review, but he or she must submit a copy of his or her report and the results of the chemical test to the hearing examiner.

2. The administrative hearing under this paragraph is limited to the following issues:

a. The correct identity of the person.

b. Whether the person was informed of the options regarding tests under this section as required under sub. (4).

bm. Whether the person had a prohibited alcohol concentration or a detectable amount of a restricted controlled substance in his or her blood at the time the offense allegedly occurred.

c. Whether one or more tests were administered in accordance with this section.

d. If one or more tests were administered in accordance with this section, whether each of the test results for those tests indicate the person had a prohibited alcohol concentration or a detectable amount of a restricted controlled substance in his or her blood.

e. If a test was requested under sub. (3) (a), whether probable cause existed for the arrest.

f. Whether the person was driving or operating a commercial motor vehicle when the offense allegedly occurred.

g. Whether the person had a valid prescription for methamphetamine or one of its metabolic precursors or gamma-hydroxybutyric acid or delta-9-tetrahydrocannabinol in a case in which subd. 4m. a. and b. apply.

3. The hearing examiner shall conduct the administrative hearing in an informal manner. No testimony given by any witness may be used in any subsequent action or proceeding. The hearing examiner may permit testimony by telephone if the site of the administrative hearing is equipped with telephone facilities to allow multiple party conversations.

4. The hearing examiner shall consider and determine the reliability of all of the evidence presented at the administrative hearing. Statements and reports of law enforcement officers are subject to the same standards of credibility applied to all other evidence presented.

4m. If, at the time the offense allegedly occurred, all of the following apply, the hearing officer shall determine whether the person had a valid prescription for methamphetamine or one of its metabolic precursors, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol:

a. A blood test administered in accordance with this section indicated that the person had a detectable amount of methamphetamine, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol but did not have a detectable amount of any other restricted controlled substance in his or her blood.

b. No test administered in accordance with this section indicated that the person had a prohibited alcohol concentration.

5. If the hearing examiner finds that any of the following applies, the examiner shall order that the administrative suspension of the person's operating privilege be rescinded without payment of any fee under s. 343.21 (1) (j), (jr), or (n):

a. The criteria for administrative suspension have not been satisfied.

b. The person did not have a prohibited alcohol concentration or a detectable amount of a restricted controlled substance in his or her blood at the time the offense allegedly occurred.

c. In a case in which subd. 4m. a. and b. apply, the person had a valid prescription for methamphetamine or one of its metabolic precursors, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol.

6. If the hearing examiner finds that all of the following apply, the administrative suspension shall continue regardless of the type of vehicle driven or operated at the time of the violation:

a. The criteria for administrative suspension have been satisfied.

b. The person had a prohibited alcohol concentration or a detectable amount of a restricted controlled substance in his or her blood at the time the offense allegedly occurred.

c. In a case in which subd. 4m. a. and b. apply, the person did not have a valid prescription for methamphetamine or one of its metabolic precursors, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol.

7. The hearing examiner shall notify the person in writing of the hearing decision, of the right to judicial review and of the court's authority to issue a stay of the suspension under par. (c). The administrative suspension is vacated and the person's operating privilege shall be automatically reinstated under s. 343.39 if the hearing examiner fails to mail this notice to the person within 30 days after the date of the notification under par. (a).

(c) 1. An individual aggrieved by the determination of the hearing examiner may have the determination reviewed by the court hearing the action relating to the applicable violation listed under sub. (3) (a), (am), or (ar). If the individual seeks judicial review, he or she must file the request for judicial review with the court within 20 days of the issuance of the hearing examiner's decision. The court shall send a copy of that request to the department. The judicial review shall be conducted at the time of the trial of the underlying offense under s. 346.63. The prosecutor of the underlying offense shall represent the interests of the department.

2. The court shall order that the administrative suspension be either rescinded or sustained and forward its order to the department. The department shall vacate the administrative suspension under sub. (7) unless, within 60 days of the date of the request for judicial review of the administrative hearing decision, the department has been notified of the result of the judicial review or of an order of the court entering a stay of the hearing examiner's order continuing the suspension.

3. Any party aggrieved by the order of a circuit court under subd. 2. may appeal to the court of appeals. Any party aggrieved by the order of a municipal court under subd. 2 may appeal to the circuit court for the county where the offense allegedly occurred.

4. A request for judicial review under this subsection does not stay any administrative suspension order.

5. If any court orders under this subsection that the administrative suspension of the person's operating privilege be rescinded, the person need not pay any fee under s. 343.21 (1) (j), (jr), or (n).

(d) A person who has his or her operating privilege administratively suspended under this subsection and sub. (7) (a) is eligible for an occupational license under s. 343.10 at any time.

(9) REFUSALS; NOTICE AND COURT HEARING. (a) If a person refuses to take a test under sub. (3) (a), the law enforcement officer shall immediately prepare a notice of intent to revoke, by court order under sub. (10), the person's operating privilege. If the person was driving or operating a commercial motor vehicle, the officer shall issue an out-of-service order to the person for the 24 hours after the refusal and notify the department in the manner prescribed by the department. The officer shall issue a copy of the notice of intent to revoke the privilege to the person and submit or mail a copy to the circuit court for the county in which the arrest under sub. (3) (a) was made or to the municipal court in the municipality in which the arrest was made if the arrest was for a violation of a municipal ordinance under sub. (3) (a) and the municipality has a municipal court. The officer shall also mail a copy of the notice of intent to revoke to the attorney for that municipality or to the district attorney for that county, as appropriate, and to the department. Neither party is entitled to pretrial discovery in any refusal hearing, except that, if the defendant moves within 30 days after the initial appearance in person or by an attorney and shows cause therefor, the court may order that the defendant be allowed to inspect documents, including lists of names and addresses of witnesses, if available, and to test under s. 804.09, under such conditions as the court prescribes, any devices used by the plaintiff to determine whether a violation has been committed. The notice of intent to revoke the person's operating privilege shall contain substantially all of the following information:

1. That prior to a request under sub. (3) (a), the officer had placed the person under arrest for a violation of s. 346.63 (1), (2m) or (5) or a local ordinance in conformity therewith or s. 346.63 (2) or (6), 940.09 (1) or 940.25 or had requested the person to take a test under sub. (3) (ar).

2. That the officer complied with sub. (4).

3. That the person refused a request under sub. (3) (a).

4. That the person may request a hearing on the revocation within 10 days by mailing or delivering a written request to the court whose address is specified in the notice. If no request for a hearing is received within the 10-day period, the revocation period commences 30 days after the notice is issued.

5. That the issues of the hearing are limited to:

a. Whether the officer had probable cause to believe the person was driving or operating a motor vehicle while under the influence of alcohol, a controlled substance or a controlled substance analog or any combination of alcohol, a controlled substance and a controlled substance analog, under the influence of any other drug to a degree which renders the person incapable of safely driving, or under the combined influence of alcohol and any other drug to a degree which renders the person incapable of safely driving, having a restricted controlled substance in his or her blood, or having a prohibited alcohol concentration or, if the person was driving or operating a commercial motor vehicle, an alcohol concentration of 0.04 or more and whether the person was lawfully placed under arrest for violation of s. 346.63 (1), (2m) or (5) or a local ordinance in conformity therewith or s. 346.63 (2) or (6), 940.09 (1) or 940.25.

b. Whether the officer complied with sub. (4).

c. Whether the person refused to permit the test. The person shall not be considered to have refused the test if it is shown by a preponderance of evidence that the refusal was due to a physical inability to submit to the test due to a physical disability or disease unrelated to the use of alcohol, controlled substances, controlled substance analogs or other drugs.

6. That, if it is determined that the person refused the test, there will be an order for the person to comply with assessment and a driver safety plan.

(am) If a person driving or operating or on duty time with respect to a commercial motor vehicle refuses a test under sub. (3) (am), the law enforcement officer shall immediately issue an out-of-service order to the person for the 24 hours after the refusal and notify the department in the manner prescribed by the department, and prepare a notice of intent to revoke, by court order under sub. (10), the person's operating privilege. The officer shall issue a copy of the notice of intent to revoke the privilege to the person and submit or mail a copy to the circuit court for the county in which the refusal is made or to the municipal court in the municipality in which the refusal is made if the person's refusal was in violation of a municipal ordinance and the municipality has a municipal court. The officer shall also mail a copy of the notice of intent to revoke to the attorney for that municipality or to the district attorney for that county, as appropriate, and to the department. Neither party is entitled to pretrial discovery in any refusal hearing, except that, if the defendant moves within 30 days after the initial appearance in person or by an attorney and shows cause therefor, the court may order that the defendant be allowed to inspect documents, including lists of names and addresses of witnesses, if available, and to test under s. 804.09, under such conditions as the court prescribes, any devices used by the plaintiff to determine whether a violation has been committed. The notice of intent to revoke the person's operating privilege shall contain substantially all of the following information:

1. That the officer has issued an out-of-service order to the person for the 24 hours after the refusal, specifying the date and time of issuance.

2. That the officer complied with sub. (4).

3. That the person refused a request under sub. (3) (am).

4. That the person may request a hearing on the revocation within 10 days by mailing or delivering a written request to the court whose address is specified in the notice. If no request for a hearing is received within the 10-day period, the revocation period commences 30 days after the notice is issued.

5. That the issues of the hearing are limited to:

a. Whether the officer detected any presence of alcohol, controlled substance, controlled substance analog or other drug, or a combination thereof, on the person or had reason to believe that the person was violating or had violated s. 346.63 (7).

b. Whether the officer complied with sub. (4).

c. Whether the person refused to permit the test. The person shall not be considered to have refused the test if it is shown by a preponderance of evidence that the refusal was due to a physical inability to submit to the test due to a physical disability or disease unrelated to the use of alcohol, controlled substances, controlled substance analogs or other drugs.

6. That if it is determined that the person refused the test there will be an order for the person to comply with assessment and a driver safety plan.

(b) The use of the notice under par. (a) or (am) by a law enforcement officer in connection with the enforcement of this section is adequate process to give the appropriate court jurisdiction over the person.

(c) If a law enforcement officer informs the circuit or municipal court that a person has refused to submit to a test under sub. (3) (a), (am), or (ar), the court shall be prepared to hold any requested hearing to determine if the refusal was proper. The scope of the hearing shall be limited to the issues outlined in par. (a) 5. or (am) 5. Section 967.055 applies to any hearing under this subsection.

(d) At the close of the hearing, or within 5 days thereafter, the court shall determine the issues under par. (a) 5. or (am) 5. If all issues are determined adversely to the person, the court shall proceed under sub. (10). If one or more of the issues is determined favorably to the person, the court shall order that no action be taken on the operating privilege on account of the person's refusal to take the test in question. This section does not preclude the prosecution of the person for violation of s. 346.63 (1), (2m), (5) or (7) or a local ordinance in conformity therewith, or s. 346.63 (2) or (6), 940.09 (1) or 940.25.

(10) REFUSALS; COURT-ORDERED REVOCATION. (a) If the court determines under sub. (9) (d) that a person improperly refused to take a test or if the person does not request a hearing within 10 days after the person has been served with the notice of intent to revoke the person's operating privilege, the court shall proceed under this subsection. If no hearing was requested, the revocation period shall begin 30 days after the date of the refusal. If a hearing was requested, the revocation period shall commence 30 days after the date of refusal or immediately upon a final determination that the refusal was improper, whichever is later.

(b) 1. Except as provided in subds. 3. and 4., the court shall revoke the person's operating privilege under this paragraph according to the number of previous suspensions, revocations or convictions that would be counted under s. 343.307 (2). Suspensions, revocations and convictions arising out of the same incident shall be counted as one. If a person has a conviction, suspension or revocation for any offense that is counted under s. 343.307 (2), that conviction, suspension or revocation shall count as a prior conviction, suspension or revocation under this subdivision.

2. Except as provided in subd. 3., 4. or 4m., for the first improper refusal, the court shall revoke the person's operating privilege for one year. After the first 30 days of the revocation period, the person is eligible for an occupational license under s. 343.10.

3. Except as provided in subd. 4m., if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of other convictions, suspensions, and revocations counted under s. 343.307 (2) within a 10-year period, equals 2, the court shall revoke the person's operating privilege for 2 years. After the first 90 days of the revocation period or, if the total number of convictions, suspensions, and revocations counted under this subdivision within any 5-year period equals 2 or more, after one year of the revocation period has elapsed, the person is eligible for an occupational license under s. 343.10 if he or she has completed the assessment and is complying with the driver safety plan.

4. Except as provided in subd. 4m., if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of other convictions, suspensions, and revocations counted under s. 343.307 (2), equals 3 or more, the court shall revoke the person's operating privilege for 3 years. After the first 120 days of the revocation period or, if the total number of convictions, suspensions, and revocations counted under this subdivision within any 5-year period equals 2 or more, after one year of the revocation period has elapsed, the person is eligible for an occupational license under s. 343.10 if he or she has completed the assessment and is complying with the driver safety plan.

4m. If there was a minor passenger under 16 years of age in the motor vehicle at the time of the incident that gave rise to the improper refusal, the applicable minimum and maximum revocation periods under subd. 2., 3. or 4. for the improper refusal are doubled.

5. The time period under this paragraph shall be measured from the dates of the refusals or violations which resulted in revocations or convictions.

(c) 1. Except as provided in subd. 1. a. or b., the court shall order the person to submit to and comply with an assessment by an approved public treatment facility as defined in s. 51.45 (2) (c) for examination of the person's use of alcohol, controlled substances or controlled substance analogs and development of a driver safety plan for the person. The court shall notify the person and the department of transportation of the assessment order. The court shall also notify the person that noncompliance with assessment or the driver safety plan will result in license suspension until the person is in compliance. The assessment order shall:

a. If the person is a resident, refer the person to an approved public treatment facility in the county in which the person resides. The facility named in the order may provide for assessment of the person in another approved public treatment facility. The order shall provide that if the person is temporarily residing in another state, the facility named in the order may refer the person to an appropriate treatment facility in that state for assessment and development of a driver safety plan for the person satisfying the requirements of that state.

b. If the person is a nonresident, refer the person to an approved public treatment facility in this state. The order shall provide that the facility named in the order may refer the person to an appropriate treatment facility in the state in which the person resides for assessment and development of a driver safety plan for the person satisfying the requirements of that state.

c. Require a person who is referred to a treatment facility in another state under subd. 1. a. or b. to furnish the department written verification of his or her compliance from the agency which administers the assessment and driver safety plan program. The person shall provide initial verification of

compliance within 60 days after the date of his or her conviction. The requirement to furnish verification of compliance may be satisfied by receipt by the department of such verification from the agency which administers the assessment and driver safety plan program.

2. The department of health services shall establish standards for assessment procedures and the driver safety plan programs by rule. The department of health services shall establish by rule conflict of interest guidelines for providers.

3. Prior to developing a plan which specifies treatment, the facility shall make a finding that treatment is necessary and appropriate services are available. The facility shall submit a report of the assessment and the driver safety plan within 14 days to the county department under s. 51.42, the plan provider, the department of transportation and the person, except that upon request by the facility and the person, the county department may extend the period for assessment for not more than 20 additional workdays. The county department shall notify the department of transportation regarding any such extension.

(d) The assessment report shall order compliance with a driver safety plan. The report shall inform the person of the fee provisions under s. 46.03 (18) (f). The driver safety plan may include a component that makes the person aware of the effect of his or her offense on a victim and a victim's family. The driver safety plan may include treatment for the person's misuse, abuse or dependence on alcohol, controlled substances or controlled substance analogs, attendance at a school under s. 345.60, or both. If the plan requires inpatient treatment, the treatment shall not exceed 30 days. A driver safety plan under this paragraph shall include a termination date consistent with the plan which shall not extend beyond one year. The county department under s. 51.42 shall assure notification of the department of transportation and the person of the person's compliance or noncompliance with assessment and treatment. The school under s. 345.60 shall notify the department, the county department under s. 51.42 and the person of the person's compliance or noncompliance with the requirements of the school. Nonpayment of the assessment fee or, if the person has the ability to pay, nonpayment of the driver safety plan fee is noncompliance with the court order. If the department is notified of noncompliance, other than for nonpayment of the assessment fee or driver safety plan fee, it shall revoke the person's operating privilege until the county department under s. 51.42 or the school under s. 345.60 notifies the department that the person is in compliance with assessment or the driver safety plan. If the department is notified that a person has not paid the assessment fee, or that a person with the ability to pay has not paid the driver safety plan fee, the department shall suspend the person's operating privilege for a period of 2 years or until it receives notice that the person has paid the fee, whichever occurs first. The department shall notify the person of the suspension or revocation, the reason for the suspension or revocation and the person's right to a review. A person may request a review of a revocation based upon failure to comply with a driver safety plan within 10 days of notification. The review shall be handled by the subunit of the department of transportation designated by the secretary. The issues at the review are limited to whether the driver safety plan, if challenged, is appropriate and whether the person is in compliance with the assessment order or the driver safety plan. The review shall be conducted within 10 days after a request is received. If the driver safety plan is determined to be inappropriate, the department shall order a reassessment and if the person is otherwise eligible, the department shall reinstate the person's operating privilege. If the person is determined to be in compliance with the assessment or driver safety plan, and if the person is otherwise eligible, the department shall reinstate the person's operating privilege. If there is no decision within the 10-day period, the department shall issue an order reinstating the person's operating privilege until the review is completed, unless the delay is at the request of the person seeking the review.

(e) Notwithstanding par. (c), if the court finds that the person is already covered by an assessment or is participating in a driver safety plan or has had evidence presented to it by a county department under s. 51.42 that the person has recently completed assessment, a driver safety plan or both, the court is not required to make an order under par. (c). This paragraph does not prohibit the court from making an order under par. (c), if it deems such an order advisable.

(em) One penalty for improperly refusing to submit to a test for intoxication regarding a person arrested for a violation of s. 346.63 (2m) or (7) or a local ordinance in conformity therewith is revocation of the person's operating privilege for 6 months. If there was a minor passenger under 16 years of age in the motor vehicle at the time of the incident that gave rise to the improper refusal, the revocation period is 12 months. After the first 15 days of the revocation period, the person is eligible for an occupational license under s. 343.10. Any such improper refusal or revocation for the refusal does not count as a prior refusal or a prior revocation under this section or ss. 343.30 (1q), 343.307 and 346.65 (2). The person shall not be required to submit to and comply with any assessment or driver safety plan under pars. (c) and (d).

(f) The department may make any order which the court is authorized or required to make under this subsection if the court fails to do so.

(g) The court or department shall provide that the period of suspension or revocation imposed under this subsection or under sub. (7) shall be reduced by any period of suspension or revocation previously served under s. 343.30 (1p) or (1q) if both suspensions or revocations arose out of the same incident or occurrence. The court or department shall order that the period of suspension or revocation imposed under this subsection or sub. (7) run concurrently with any time remaining on a suspension or revocation imposed under s. 343.30 (1p) or (1q) arising out of the same incident or occurrence.

(10g) SUSPENSIONS AND REVOCATIONS; EXTENSIONS. For any suspension or revocation the court orders under sub. (10), the court shall extend the suspension or revocation period by the number of days to which the court sentences the person to imprisonment in a jail or prison.

(10m) REFUSALS; IGNITION INTERLOCK OF A MOTOR VEHICLE. The requirements and procedures for installation of an ignition interlock device under s. 343.301 apply when an operating privilege is revoked under sub. (10).

(11) RULES. The department shall promulgate rules under ch. 227 necessary to administer this section. The rules shall include provisions relating to the expeditious exchange of information under this section between the department and law

enforcement agencies, circuit courts, municipal courts, attorneys who represent municipalities, district attorneys, and driver licensing agencies of other jurisdictions. The rules may not affect any provisions relating to court procedure.

History: 1987 a. 3, 27, 399; 1989 a. 7, 31, 56, 105, 359; 1991 a. 39, 251, 277; 1993 a. 16, 105, 315, 317, 491; 1995 a. 27 ss. 6412cnL, 9126 (19); 1995 a. 113, 269, 425, 426, 436, 448; 1997 a. 35, 84, 107, 191, 237, 290; 1999 a. 9, 32, 109; 2001 a. 16 ss. 3421m to 3423j, 4060gk, 4060hw, 4060hy; 2001 a. 104; 2003 a. 97, 199; 2005 a. 332, 413; 2007 a. 20 ss. 3303 to 3315, 9121 (6) (a); 2007 a. 136; 2009 a. 100, 103, 163; 2011 a. 120, 242.

Cross-reference: See also chs. DHS 62 and Trans 107 and 113, Wis. adm. code.

Administration of a blood or breathalyzer test does not violate a defendant's privilege against self-incrimination. State v. Driver, 59 Wis. 2d 35, 207 N.W.2d 850 (1973).

The implied consent law must be liberally construed to effectuate its policies since it was intended to facilitate the taking of tests for intoxication and not to inhibit the ability of the state to remove drunken drivers from the highway. Scales v. State, 64 Wis. 2d 485, 219 N.W.2d 286 (1974).

Miranda warnings are not required when an arrested driver is asked to submit to a test for intoxication under the implied consent statute. State v. Bunders, 68 Wis. 2d 129, 227 N.W.2d 727 (1975).

There is no right to counsel prior to submitting to an intoxication test. A driver is obliged to promptly take or refuse the test. State v. Neitzel, 95 Wis. 2d 191, 289 N.W.2d 828 (1980).

The state need not prove that notices were sent to state officers under sub. (3) (b), 1985 stats. [now sub. (9) (a)]. State v. Polinski, 96 Wis. 2d 43, 291 N.W.2d 465 (1980).

When an officer initially requested a breath test, it was not an irrevocable election preventing the officer from requesting a urine test instead. The driver's refusal to submit urine justified revocation of his driver's license. State v. Pawlow, 98 Wis. 2d 703, 298 N.W.2d 220 (Ct. App. 1980).

The state need not affirmatively prove compliance with administrative code procedures as a foundation for admission of a breathalyzer test. City of New Berlin v. Wertz, 105 Wis. 2d 670, 314 N.W.2d 911 (Ct. App. 1981).

When a driver pled guilty to the underlying OWI charge, a charge of refusing a test under s. 343.305, 1979 stats., was properly dismissed as unnecessary. State v. Brooks, 113 Wis. 2d 347, 335 N.W.2d 354 (1983).

A breathalyzer approved in the administrative code has a prima facie presumption of accuracy. State v. Dwinell, 119 Wis. 2d 305, 349 N.W.2d 739 (Ct. App. 1984).

When blood alcohol content is tested under statutory procedures, the results of the test are mandatorily admissible. The physical sample tested is not evidence intended, required, or even susceptible of being produced by state under s. 971.23 (4) and (5). State v. Ehlen, 119 Wis. 2d 451, 351 N.W.2d 503 (1984).

A judge's erroneous exclusion of a defendant's explanation for a refusal to take a blood test was not harmless error. State v. Bolstad, 124 Wis. 2d 576, 370 N.W.2d 257 (1985).

At a revocation hearing under sub. (3) (b) 5., 1985 stats. [now sub. (9) (a) 5.], the state need not establish to a reasonable certainty that the defendant was the actual driver of the vehicle stopped by the police. The probable cause standard satisfies due process. State v. Nordness, 128 Wis. 2d 15, 381 N.W.2d 300 (1986).

In sub. (2) (c), 1985 stats. [now sub. (3) (b)], "not capable of withdrawing consent," must be construed narrowly and applied infrequently. State v. Disch, 129 Wis. 2d 225, 385 N.W.2d 140 (1986).

Under the facts of the case, the state's refusal to provide an alternative blood alcohol test did not violate due process. State v. McCrossen, 129 Wis. 2d 277, 385 N.W.2d 161 (1986).

An arresting officer need not inform an accused that a test refusal can be used against the accused at trial. State v. Crandall, 133 Wis. 2d 251, 394 N.W.2d 905 (1986).

A mental disorder cannot justify a test refusal unless it is severe enough that the driver is deemed under sub. (3) (b) not to have refused at all. State v. Hagaman, 133 Wis. 2d 381, 395 N.W.2d 617 (Ct. App. 1986).

The implied consent law does not prevent the state from obtaining chemical test evidence by alternative constitutional means. State v. Zielke, 137 Wis. 2d 39, 403 N.W.2d 427 (1987).

Appeal of an oral revocation order under sub. (10) may not be taken under s. 808.03 (1). State v. Borowski, 164 Wis. 2d 730, 476 N.W.2d 316 (Ct. App. 1991).

Evidence of refusal was not admissible when the defendant was not fully informed of the consequences in accordance with (former) sub. (4). State v. Algaier, 165 Wis. 2d 515, 478 N.W.2d 292 (Ct. App. 1991).

Substantial compliance with the requirements of (former) sub. (4) when the defendant was actually informed of all rights and penalties relating to him was sufficient. State v. Piskula, 168 Wis. 2d 135, 483 N.W.2d 250 (Ct. App. 1992). See also Village of Oregon v. Bryant, 188 Wis. 2d 680, 524 N.W.2d 635 (1994).

The sub. (9) (a) requirement that a notice of intent to revoke be prepared and served immediately is directory and not mandatory. State v. Moline, 170 Wis. 2d 531, 489 N.W.2d 667 (Ct. App. 1992).

An accused's request under sub. (5) (a) for his or her own test only requires the arresting agency to make the accused available to obtain the test, not to take an active part in obtaining the test. State v. Vincent, 171 Wis. 2d 124, 490 N.W.2d 761 (Ct. App. 1992).

When an officer knew the defendant was licensed as a commercial operator and the ensuing revocation revoked all operating privileges, the commercial operator warnings, under (former) sub. (4) were required. State v. Geraldson, 176 Wis. 2d 487, 500 N.W.2d 415 (Ct. App. 1993).

Overstatement of the potential penalties for refusal to submit to a chemical test was substantial compliance with (former) sub. (4) and not grounds for reversing a revocation for refusal. State v. Sutton, 177 Wis. 2d 709, 503 N.W.2d 326 (Ct. App. 1993).

There was no error in informing a driver of all warnings under (former) sub. (4), including those applying to only commercial operators and those applying to only noncommercial operators, regardless of the driver's status. Village of Elm Grove v. Landowski, 181 Wis. 2d 137, 510 N.W.2d 752 (Ct. App. 1993).

Sub. (5) (b) requires a person drawing blood "under the direction of a physician" to have general authorization from the physician rather than a specific order in each case. State v. Penzkofer, 184 Wis. 2d 262, 516 N.W.2d 774 (Ct. App. 1994).

The state's burden of persuasion at a suppression hearing is significantly greater than at a refusal hearing. Consequently a defendant is not precluded from relitigating the issue of probable cause at a suppression hearing. State v. Wille, 185 Wis. 2d 673 518 N.W.2d 325 (Ct. App. 1994).

Once a suspect has refused a second alternate blood alcohol test, there is no continuing obligation to accommodate future requests for an alternate test. State v. Stary, 187 Wis. 2d 266, 522 N.W.2d 32 (Ct. App. 1994).

Refusal to submit to a field sobriety test was properly admitted as evidence to determine probable cause for arrest for intoxicated operation of a motor vehicle. State v. Babbit, 188 Wis. 2d 349, 525 N.W.2d 102 (Ct. App. 1994).

A suspect must be properly informed under the implied consent law before evidence of a refusal may be admitted at a subsequent trial, but the state is not prevented from using the evidence if a revocation hearing is not held. State v. Donner, 192 Wis. 2d 305, 531 N.W.2d 369 (Ct. App. 1995).

A driver's "subjective confusion" over the right not to take the chemical test is not grounds for challenging the propriety of the warnings given prior to administering the test. There is a 3-part standard to be applied in determining the adequacy of the warnings. County of Ozaukee v. Quelle, 198 Wis. 2d 269, 542 N.W.2d 196 (Ct. App. 1995), 95-1074. But see Washburn County v. Smith, 2008 WI 23, 308 Wis. 2d 65, 746 N.W.2d 243, 06-3163.

The implied consent law does not expressly require a suspect's written consent to the blood alcohol test. A consent form will be liberally construed to determine whether it misinforms the suspect of the law. State v. Spring, 204 Wis. 2d 343, 555 N.W.2d 384 (Ct. App. 1996), 96-3565.

Criminal prosecution for operating a motor vehicle with a prohibited blood alcohol content subsequent to an administrative suspension of a driver's operating privileges in the same case does not constitute multiple punishment and does not constitute double jeopardy. State v. McMaster, 206 Wis. 2d 30, 556 N.W.2d 673 (1996), 95-1159.

A finding in an administrative review under sub. (8) that there was no probable cause for an arrest does not preclude the consideration of the same issue in a criminal proceeding. State v. Kasian, 207 Wis. 2d 611, 558 N.W.2d 687 (Ct. App. 1996), 96-1603.

When an officer exceeds the duty to give warnings prior to administering the test and gives erroneous information, it is the defendant's burden to prove by a preponderance of the evidence that the erroneous information caused the defendant's refusal. State v. Ludwigson, 212 Wis. 2d 871, 569 N.W.2d 762 (Ct. App. 1997), 97-0417.

Willingness to submit to a blood alcohol test, subsequent to an earlier refusal, does not cure the refusal. State v. Rydeski, 214 Wis. 2d 101, 571 N.W.2d 417 (Ct. App. 1997), 97-0169.

A verbal refusal to submit to a blood alcohol test is not required to find a refusal. Conduct may serve as the basis for finding a refusal. State v. Rydeski, 214 Wis. 2d 101, 571 N.W.2d 417 (Ct. App. 1997), 97-0169.

The chief of the DOT chemical test section is given authority to determine the procedures for evaluation of breath testing instruments. The consideration of modifications made to a new model of a previously tested machine and determination that the 2 models were analytically the same was sufficient testing. State v. Busch, 217 Wis. 2d 429, 576 N.W.2d 904 (1998), 96-2822.

When a defendant submitted to a blood test prior to being placed under arrest, the test was not made pursuant to this section. As such, there was no right to an alternative test under sub. (5). State v. Thurk, 224 Wis. 2d 662, 592 N.W.2d 1 (Ct. App. 1999), 98-0251.

There is no constitutional duty to inform suspected drunk drivers that the right to counsel does not attach to the implied consent statute. State v. Reitter, 227 Wis. 2d 213, 595 N.W.2d 646 (1999), 98-0915.

A warrantless blood draw is permissible when: 1) the blood is taken to obtain evidence of intoxication from a person lawfully arrested; 2) there is a clear indication that evidence of intoxication will be produced; 3) the method used is reasonable and performed in a reasonable manner; and 4) the arrestee presents no reasonable objection. State v. Thorstad, 2000 WI App 199, 238 Wis. 2d 666, 618 N.W.2d 240, 99-1765.

Although a notice of intent to revoke operating privileges under sub. (9) (a) did not contain "substantially all" of the statutorily required information, it provided meaningful notice and opportunity to be heard. As such the error was technical and required a finding of prejudice for dismissal of the action. State v. Gautschi, 2000 WI App 274, 240 Wis. 2d 83, 622 N.W.2d 24, 99-3065.

The notice under sub. (4) regarding the consequences for failing to submit to a blood alcohol does not violate due process. It does not mislead accused persons regarding taking or refusing the blood alcohol test. State v. Nord, 2001 WI App 48, 241 Wis. 2d 387, 625 N.W.2d 302, 00-1529.

In giving the warnings required under sub (4), an officer is required to utilize methods that, according to the circumstances at the time, are reasonable and will convey the warnings. Whether the accused driver comprehends the warnings is not part of the inquiry. A driver's hearing impairment must be taken into account and accommodated as is reasonably possible under the circumstances. State v. Piddington, 2001 WI 24, 241 Wis. 2d 754, 623 N.W.2d 528, 99-1250.

Drivers have no right to refuse a chemical test and need not consent to a test. When there is a refusal, the implied consent law does not preclude police from pursuing other constitutional avenues for collecting evidence. State v. Gibson, 2001 WI App 71, 242 Wis. 2d 267, 626 N.W.2d 73, 00-2399.

That a person agreed to a breath test but not a blood test, did not render police insistence on a blood test unreasonable. State v. Wodenjak, 247 Wis. 2d 554, 634 N.W.2d 867.

By consenting to the taking of a blood sample, the defendant also consented to the chemical analysis of the sample. These are not separate events for warrant requirement purposes. State v. VanLaarhoven, 2001 WI App 275, 248 Wis. 2d 881, 637 N.W.2d 411, 01-0222.

A warrantless blood draw by a physician in a jail setting may be unreasonable if it invites an unjustified element of personal risk of pain and infection. Absent evidence of those risks, a blood draw under those circumstances was reasonable. State v. Daggett, 2002 WI App 32, 250 Wis. 2d 112, 640 N.W.2d 546, 01-1417.

The circuits court's improper denial of a hearing requested under sub. (8) as the result of its miscalculation of time that resulted in a suspension without a hearing was not a fundamental error entitling the defendant to dismissal of the conviction against him when the court, on realizing the error, conducted a hearing and found that the defendant's refusal was improper and a license suspension was in order. State v. Carlson, 2002 WI App 44, 250 Wis. 2d 562, 641 N.W.2d 451, 01-1088.

Sub. (9) (a) does not provide the exclusive option when faced with an arrestee who refuses to submit to s chemical test. An officer may acknowledge the refusal, complete the sub. (9) (a) intent to revoke form, and then proceed with an involuntary blood test, using reasonable force to withdraw blood from a noncompliant suspect. The officer may necessarily inform a suspect that such a procedure is a possibility upon his or her refusal. State v. Marshall, 2002 WI App 73, 251 Wis. 2d 408, 642 N.W.2d 571, 01-1403.

When the arresting officer makes no specific threats beyond what arises under this section, the threat of lost driving privileges does not constitute a coercive measure that invalidates a defendant's consent for 4th amendment purposes. An arresting officer, by reading the informing the accused form, simply states the truth: refusal to submit to a chemical test will result in driving privileges being revoked. Officers are entitled to make true statements. Village of Little Chute v. Walitalo, 2002 WI App 211, 256 Wis. 2d 1032, 650 N.W.2d 891, 01-3060. See also, State v. Wintlend, 2002 WI App 314, 258 Wis. 2d 875, 655 N.W.2d 745, 02-0965.

Repeated requests for an attorney can amount to a refusal as long as the officer informs the driver that there is no right to an attorney at that point. State v. Baratka, 2002 WI App 288, 258 Wis. 2d 342, 654 N.W.2d 875, 02-0770.

If an officer explicitly assures or implicitly suggests that a custodial defendant has a right to consult counsel before deciding whether to submit to the test, the defendant relied on the offering, and the officer nonetheless marked a refusal despite the defendant's reliance, then the refusal was reasonably made. State v. Verkler, 2003 WI App 37, 260 Wis. 2d 391, 659 N.W.2d 137, 02-1545.

This section does not require that test results must be suppressed when there is a failure to reasonably convey the implied consent warnings to an apprehended driver. Under the circumstances of this case on remand the defendant was entitled to pursue an order prohibiting the automatic admissibility of the blood test result pursuant to s. 885.235, which if granted would require the state to establish the admissibility of the blood test, including establishing a foundation. State v. Begicevic, 2004 WI App 57, 270 Wis. 2d 675, 678 N.W.2d 293, 03-1223.

The approval of an instrument under sub. (6) (b) without promulgation of an administrative rule under ch. 227 did not constitute creation of an invalid administrative rule. County of Dane v. Winsand, 2004 WI App 86, 271 Wis. 2d 786, 679 N.W.2d 885, 03-2004.

Sub. (5) (a) does not impose a requirement that the request for an additional blood test be made after the first test is completed. State v. Schmidt, 2004 WI App 235, 277 Wis. 2d 561, 691 N.W.2d 379, 04-0904.

When police have informed a suspect of his or her right to an alternative test at agency expense, the suspect has ample opportunity to make a request, the suspect makes no request, and the suspect is released from custody and leaves the presence of custodial police, a subsequent request for an alternative test at agency expense is not a request within the meaning of sub. (5) (a). State v. Fahey, 2005 WI App 171, 285 Wis. 2d 679, 702 N.W.2d 400, 04-0102.

There is no right to counsel at the refusal hearing because such a hearing is civil, not criminal, in nature and therefore there is no constitutional right to effective assistance of counsel. State v. Krause, 2006 WI App 43, 289 Wis. 2d 573, 712 N.W.2d 67, 05-0472.

Giving *Miranda* warnings prior to reading Informing the Accused warnings under this section does not lead to a conclusion that the officer explicitly assured or implicitly suggested that a defendant has a right to consult counsel or to stand silent in the face of the implied consent warnings. Such a conclusion requires that the accused must be told he or she has the right to consult with counsel before deciding to submit to chemical testing and that the accused relied on the assurance or suggestion when responding to the request for a chemical test. State v. Kliss, 2007 WI App 13, 298 Wis. 2d 275, 728 N.W.2d 9, 06-0113.

There cannot be substantial compliance with sub. (4) when the law enforcement officer fails to give the defendant the statutorily required information about penalties. If the circuit court determines that the officer failed to inform the accused in compliance with the statute, the court shall order that no action be taken on the operating privilege on account of the person's refusal to take the test in question. This does not apply misstatements of information beyond the required information, which are governed by *Ludwigson.* Washburn County v. Smith, 2008 WI 23, 308 Wis. 2d 65, 746 N.W.2d 243, 06-3163.

When law enforcement invokes this section to obtain a primary test for intoxication, it must: 1) provide the primary test of its choice at its own expense; 2) provide an opportunity for a second test of its choice at agency expense; and 3) if the second test is refused by the suspect in favor of one at his or her own expense, it must provide a reasonable opportunity for a test of the suspect's choice at the suspect's expense. State v. Batt, 2010 WI App 155, 330 Wis. 2d 159, 793 N.W.2d 104, 09-3069.

Sub. (9) (a) 5. a. does not limit the circuit court to considering whether, based on all the evidence gathered up until the moment of the arrest, the officer had probable cause to believe the defendant was operating while under the influence of an intoxicant. A defendant may also contest whether he or she was lawfully placed under arrest. As part of this inquiry, the circuit court may entertain an argument that the arrest was unlawful because the traffic stop that preceded it was not justified by either probable cause or reasonable suspicion. State v. Anagnos, 2012 WI 64, 341 Wis. 2d 576, 815 N.W.2d 675, 10-1812.

When a law enforcement officer has reasonable grounds to believe that an unconscious person is guilty of driving while intoxicated, a blood sample may be taken, and the test results are admissible in evidence and may not be excluded by the trial court. 59 Atty. Gen. 183.

Implied consent is discussed. 62 Atty. Gen. 174.

The method by which a law enforcement agency may provide 2 tests for blood alcohol content under sub. (1), 1985 stats. [now sub. (2)] is discussed. The agency is not required to actually own or physically possess the testing devices. 63 Atty. Gen. 119.

Under s. 343.305 (1) and (4), 1985 stats., hospital personnel must administer tests and report results at the request of officers, subject to penalty under 946.40. 68 Atty. Gen. 209.

Federal law requiring confidentiality of patient records has no application to the taking of a blood sample under this section. 73 Atty. Gen. 45.

A law enforcement officer may use physical restraint, subject to constitutional limitations, in order to draw a legally justified blood sample. Refusal by a health professional to comply with a law enforcement officer's authorized request to take a blood sample from a person whom the officer has legally restrained by force constitutes refusal to aid an officer under s. 946.40. 74 Atty. Gen. 123.

Refusal hearings under this section are discussed. 77 Atty. Gen. 4.

A Massachusetts implied consent law that mandates suspension of a license for refusal to take a breath-analysis test did not violate the due process clause. Mackey v. Montrym, 443 U.S. 1 (1979).

The admission into evidence of a defendant's refusal to submit to a blood-alcohol test did not deny the right against self-incrimination. South Dakota v. Neville, 459 U.S. 553 (1983).

Wisconsin's new administrative suspension statute. 72 MLR 120 (1988).

The new OMVWI law: Wisconsin changes its approach to the problem of drinking and driving. Hammer, WBB April, May 1982.

Technical problems corrected: Operating while intoxicated. Hancock and Maassen. WBB Apr. 1987.

Wisconsin's breath testing program. Booker. WBB Oct. 1988.

Rethinking Refusal: Wisconsin's Implied Consent Law. Lotke. Wis. Law. July 1993.

343.307 Prior convictions, suspensions or revocations to be counted as offenses. (1) The court shall count the following to determine the length of a revocation under s. 343.30 (1q) (b) and to determine the penalty under ss. 114.09 (2) and 346.65 (2):

(a) Convictions for violations under s. 346.63 (1), or a local ordinance in conformity with that section.

(b) Convictions for violations of a law of a federally recognized American Indian tribe or band in this state in conformity with s. 346.63 (1).

(c) Convictions for violations under s. 346.63 (2) or 940.25, or s. 940.09 where the offense involved the use of a vehicle.

(d) Convictions under the law of another jurisdiction that prohibits a person from refusing chemical testing or using a motor vehicle while intoxicated or under the influence of a controlled substance or controlled substance analog, or a combination thereof; with an excess or specified range of alcohol concentration; while under the influence of any drug to a degree that renders the person incapable of safely driving; or while having a detectable amount of a restricted controlled substance in his or her blood, as those or substantially similar terms are used in that jurisdiction's laws.

(e) Operating privilege suspensions or revocations under the law of another jurisdiction arising out of a refusal to submit to chemical testing.

(f) Revocations under s. 343.305 (10).

(g) Convictions for violations under s. 114.09 (1) (b) 1. or 1m.

(2) The court shall count the following to determine the length of a revocation under s. 343.305 (10) and to determine the penalty under s. 346.65 (2j) and to determine the prohibited alcohol concentration under s. 340.01 (46m):

(a) Convictions for violations under s. 346.63 (1) or (5), or a local ordinance in conformity with either section.

(b) Convictions for violations of a law of a federally recognized American Indian tribe or band in this state in conformity with s. 346.63 (1) or (5).

(c) Convictions for violations under s. 346.63 (2) or (6).

(d) Convictions under the law of another jurisdiction that is in substantial conformity with 49 CFR 383.51 (b) Table 1, items (1) to (4).

(e) Convictions under the law of another jurisdiction that prohibits a person from refusing chemical testing or using a motor vehicle while intoxicated or under the influence of a controlled substance or controlled substance analog, or a combination thereof; with an excess or specified range of alcohol concentration; while under the influence of any drug to a degree that renders the person incapable of safely driving; or while having a detectable amount of a restricted controlled substance in his or her blood, as those or substantially similar terms are used in that jurisdiction's laws.

(f) Operating privilege suspensions or revocations under the law of another jurisdiction arising out of a refusal to submit to chemical testing.

(g) Revocations under s. 343.305 (10).

(h) Convictions for violations under s. 940.09 (1) or 940.25.

(3) If the same elements of the offense must be proven under a local ordinance or under a law of a federally recognized American Indian tribe or band in this state as under s. 346.63 (1) (a), (am), or (b), any combination of s. 346.63 (1) (a), (am), or (b), or s. 346.63 (5), the local ordinance or the law of a federally recognized American Indian tribe or band in this state shall be considered to be in conformity with s. 346.63 (1) (a), (am), or (b), any combination of s. 346.63 (1) (a), (am), or (b), or s. 346.63 (5), for purposes of ss. 343.30 (1q) (b) 1., 343.305 (10) (b) 1. and 346.65 (2) and (2j).

History: 1977 c. 193; 1981 c. 20, 184; 1985 a. 80, 337; 1987 a. 3; 1989 a. 105, 271, 359; 1991 a. 39, 277; 1995 a. 448; 1997 a. 84; 2003 a. 33, 97; 2007 a. 20; 2009 a. 276.

An Illinois court's placement of an OWI offender under court supervision is a conviction that is counted as a prior offense under sub. (1) (d) when charging an OWI suspect in Wisconsin. Placement under court supervision as a result of a determination that the defendant violated or failed to comply with the law in a court of original jurisdiction meets the definition of conviction under s. 340.01 (9r). State v. List, 2004 WI App 230, 277 Wis. 2d 836, 691 N.W.2d 366, 03-3149.

The final phrase of sub. (1) (d), "as those or substantially similar terms are used in that jurisdiction's laws," indicates the broad scope of that provision. When determining a penalty, Wisconsin counts prior offenses committed in states with OWI statutes that differ significantly from Wisconsin's. "Substantially similar" simply emphasizes that the out-of-state statute need only prohibit conduct similar to the list of prohibited conduct in sub. (1) (d). State v. Puchacz, 2010 WI App 30, 323 Wis. 2d 741, 780 N.W.2d 536, 09-0840.

The definition of "conviction" in s. 340.01 (9r) applies to "convictions" in sub. (1) (d). Under sub. (1) (d), the other jurisdiction need only have a law that prohibits conduct specified in sub. (1) (d). The Illinois "zero tolerance" law punishes a person who is less than 21 years of age for refusing to submit to a chemical test, or for using a motor vehicle with an alcohol concentration above 0.00 and thus, in the context of sub. (1) (d), was a conviction under a law of another jurisdiction that prohibits refusal of chemical testing or prohibits using a motor vehicle with an excess or specified range of alcohol concentration. State v. Carter, 2010 WI 132, 330 Wis. 2d 1, 794 N.W.2d 213, 08-3144

In sub. (1) (d), the phrase "with an excess or specified range of alcohol concentration" modifies the phrase "using a motor vehicle," not the phrase "using a motor vehicle while intoxicated or under the influence of a controlled substance or controlled substance analog, or a combination thereof." Thus, the statute should be read as follows: convictions under the law of another jurisdiction that prohibits a person from using a motor vehicle with an excess or specified range of alcohol concentration. State v. Carter, 2010 WI 132, 330 Wis. 2d 1, 794 N.W.2d 213, 08-3144.

Section 340.01 (9r) defines "conviction" as including having "violated or failed to comply with the law in a court of original jurisdiction." By not appearing in court on the specified date, as directed, the defendant did not "comply with the law." State v. Marilee Devries, 2011 WI App 78, 334 Wis. 2d 430, 801 N.W.2d 336, 09-3166.

343.31 Revocation or suspension of licenses after certain convictions or declarations. (1) The department shall revoke a person's operating privilege upon receiving a record of conviction showing that the person has been convicted of any of the following offenses under a state law or under a local ordinance which is in conformity therewith or under a law of a federally recognized American Indian tribe or band in this state which is in conformity with state law:

(a) Homicide or great bodily harm resulting from the operation of a motor vehicle and which is criminal under s. 346.62 (4), 940.06, 940.09, 940.10 or 940.25.

(am) Injury by the operation of a vehicle while under the influence of an intoxicant, a controlled substance or a controlled substance analog, or any combination of an intoxicant, a

controlled substance and a controlled substance analog, under the influence of any other drug to a degree which renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving or while the person has a detectable amount of a restricted controlled substance in his or her blood or has a prohibited alcohol concentration and which is criminal under s. 346.63 (2).

(ar) Injury by the operation of a commercial motor vehicle while the person has an alcohol concentration of 0.04 or more but less than 0.08 and which is criminal under s. 346.63 (6).

(b) Upon conviction for operation of a motor vehicle while under the influence of an intoxicant, controlled substance, controlled substance analog or a combination thereof, under the influence of any other drug to a degree which renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving, in accordance with the order of the court.

(c) Any felony in the commission of which a motor vehicle is used.

(d) Failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in death of or personal injury to another or in serious property damage.

(g) Operating a motor vehicle without having furnished proof of financial responsibility when proof of financial responsibility is required.

(i) Knowingly fleeing or attempting to elude a traffic officer under s. 346.04 (3).

(2) The department shall revoke the operating privilege of any resident upon receiving notice of the conviction of such person in another jurisdiction for an offense therein which, if committed in this state, would have been cause for revocation under this section or for revocation under s. 343.30 (1q). Such offenses shall include violation of any law of another jurisdiction that prohibits a person from using a motor vehicle while intoxicated or under the influence of a controlled substance or controlled substance analog, or a combination thereof; with an excess or specified range of alcohol concentration; while under the influence of any drug to a degree that renders the person incapable of safely driving; or while having a detectable amount of a restricted controlled substance in his or her blood, as those or substantially similar terms are used in that jurisdiction's laws. Upon receiving similar notice with respect to a nonresident, the department shall revoke the privilege of the nonresident to operate a motor vehicle in this state. Such revocation shall not apply to the operation of a commercial motor vehicle by a nonresident who holds a valid commercial driver license issued by another state.

(2m) The department may suspend or revoke, respectively, the operating privilege of any resident upon receiving notice of the conviction of that person under a law of another jurisdiction or a federally recognized American Indian tribe or band in this state for an offense which, if the person had committed the offense in this state and been convicted of the offense under the laws of this state, would have permitted suspension or revocation of the person's operating privilege under s. 343.30 (1d) or (1g). Upon receiving similar notice with respect to a nonresident, the department may suspend or revoke the privilege of the nonresident to operate a motor vehicle in this state. The suspension or revocation shall not apply to the operation of a commercial motor vehicle by a nonresident who holds a valid commercial driver license issued by another state. A suspension or revocation under this subsection shall be for any period not exceeding 6 months.

(2r) The department shall suspend a person's operating privilege upon receiving a record of conviction showing that the person has been convicted of perjury or the making of a false affidavit or the making of a false statement or certification to the department under this chapter or any other law relating to the ownership or operation of motor vehicles.

(2s) The department may suspend a person's operating privilege for 2 years upon receiving a record of conviction under s. 973.137. If the department receives a record of conviction under s. 973.137 or a notice of suspension under s. 938.34 (14q) for a person whose license or operating privilege is currently suspended or revoked or for a person who does not currently possess a valid operator's license, the suspension is first effective on the date on which the person is first eligible for issuance, renewal, or reinstatement of an operator's license.

(2t) (a) The department shall suspend a person's operating privilege upon receiving a record of conviction for a violation of s. 346.18, or a local ordinance in conformity with s. 346.18, resulting in bodily harm, as defined in s. 939.22 (4), great bodily harm, as defined in s. 939.22 (14), or death, as follows:

1. For a period of 2 months, if the offense resulted in bodily harm to another but did not result in great bodily harm or the death of another.

2. For a period of 3 months, if the offense resulted in great bodily harm to another but did not result in the death of another.

3. For a period of 9 months, if the offense resulted in the death of another.

(b) If a person is convicted of violating s. 346.18 or a local ordinance in conformity with s. 346.18, in addition to any other penalty provided by law, the department shall order the person to attend a vehicle right-of-way course whose mode of instruction is approved by the secretary and which is conducted by any regularly established safety organization, by the provider of driver education courses approved under s. 38.04 (4) or 115.28 (11), or by a driver school licensed under s. 343.61. The course of instruction shall acquaint the person with vehicle right-of-way rules and provide instruction on motorcycle, pedestrian, and bicycle awareness. If the course is conducted by the provider of approved driver education courses or a driver school, the provider or driver school shall issue to the person a certificate upon successful completion of the course. If a person's operating privilege has been suspended under par. (a), the department may not reinstate the person's operating privilege unless the person has successfully completed the course required under this paragraph.

(2u) The department shall suspend the operating privilege of a person who has been issued an occupational license upon receiving a record of conviction showing that the person has been convicted of any of the following offenses.

(a) Any offense that may be counted under s. 351.02 (1) (a), other than s. 351.02 (1) (a) 5.

(b) Exceeding by 20 or more miles per hour any lawful or posted maximum speed limit.

(c) Participating in any race or speed or endurance contest.

(2x) The department shall suspend a person's operating privilege upon receiving a record of a declaration under s. 54.25 (2) (c) 1. d. that the person is incompetent to apply for an operator's license. The department may reinstate the person's operator's license upon receiving a record of a declaration that the person is no longer incompetent to apply for an operator's license under s. 54.25 (2) (c) 1. d., if the person is otherwise qualified under this chapter to obtain an operator's license.

(3) (a) Except as otherwise provided in this subsection or sub. (2m), (2s), (2t), or (2x), all revocations or suspensions under this section shall be for a period of one year.

(b) If the revocation results from a first conviction of operation of a motor vehicle while under the influence of an intoxicant, controlled substance, controlled substance analog or a combination thereof, under the influence of any other drug to a degree which renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving and the conviction occurs in another jurisdiction, the period of revocation shall be 6 months.

(bm) For any person convicted under a law of a federally recognized American Indian tribe or band in this state in conformity with s. 346.63 (1):

1. Except as provided in subds. 3. and 4., the department shall revoke the person's operating privilege under this paragraph according to the number of previous suspensions, revocations or convictions that would be counted under s. 343.307 (1). Suspensions, revocations and convictions arising out of the same incident shall be counted as one. If a person has a conviction, suspension or revocation for any offense that is counted under s. 343.307 (1), that conviction, suspension or revocation shall count as a prior conviction, suspension or revocation under this subdivision.

2. Except as provided in subd. 3., 4. or 4m., for the first conviction, the department shall revoke the person's operating privilege for not less than 6 months nor more than 9 months. If an Indian tribal court in this state revokes the person's privilege to operate a motor vehicle on tribal lands for not less than 6 months nor more than 9 months for the conviction specified in par. (bm) (intro.), the department shall impose the same period of revocation. The person is eligible for an occupational license under s. 343.10 at any time.

3. Except as provided in subd. 4m., if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions, revocations, and other convictions counted under s. 343.307 (1) within a 10-year period, equals 2, the department shall revoke the person's operating privilege for not less than one year nor more than 18 months. If an Indian tribal court in this state revokes the person's privilege to operate a motor vehicle on tribal lands for not less than one year nor more than 18 months for the conviction specified in par. (bm) (intro.), the department shall impose the same period of revocation. After the first 60 days of the revocation period or, if the total number of convictions, suspensions, and revocations counted under this subdivision within any 5-year period equals 2 or more, after one year of the revocation period has elapsed, the person is eligible for an occupational license under s. 343.10.

4. Except as provided in subd. 4m., if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of other suspensions, revocations and convictions counted under s. 343.307 (1), equals 3 or more, the department shall revoke the person's operating privilege for not less than 2 years nor more than 3 years. If an Indian tribal court in this state revokes the person's privilege to operate a motor vehicle on tribal lands for not less than 2 years nor more than 3 years for the conviction specified in par. (bm) (intro.), the department shall impose the same period of revocation. After one year of the revocation period has elapsed, the person is eligible for an occupational license under s. 343.10.

4m. If the Indian tribal court that convicted the person determined that there was a minor passenger under 16 years of age in the motor vehicle at the time of the incident that gave rise to the conviction, the applicable minimum and maximum revocation periods under subd. 2., 3. or 4. for the conviction are doubled.

5. The time period under this paragraph shall be measured from the dates of the refusals or violations which resulted in the suspensions, revocations or convictions.

(c) Any person convicted under s. 940.09 of causing the death of another or of an unborn child by the operation or handling of a motor vehicle shall have his or her operating privilege revoked for 5 years. If there was a minor passenger under 16 years of age or an unborn child, as defined in s. 939.75 (1), in the motor vehicle at the time of the violation that gave rise to the conviction under s. 940.09, the revocation period is 10 years.

(d) Any person convicted of knowingly fleeing or attempting to elude a traffic officer under s. 346.04 (3) shall have his or her operating privilege revoked as follows:

1. If the offense did not result in bodily harm to another or damage to the property of another, for 6 months.

2. If the offense results in bodily harm to another or causes damage to the property of another, as provided in par. (a).

3. If the offense results in great bodily harm to another, for 2 years.

4. If the offense results in the death of another, for 5 years.

(e) Any person convicted under s. 346.63 (2) shall have his or her operating privilege revoked for not less than one year nor more than 2 years. If there was a minor passenger under 16 years of age in the motor vehicle at the time of the violation that gave rise to the conviction under s. 346.63 (2), the minimum and maximum revocation periods are doubled.

(f) Any person convicted under s. 940.25 shall have his or her operating privilege revoked for 2 years. If there was a minor passenger under 16 years of age or an unborn child, as defined in s. 939.75 (1), in the motor vehicle at the time of the violation that gave rise to the conviction under s. 940.25, the revocation period is 4 years.

(i) If a person is convicted for a violation of s. 346.67 (1) where the accident involved great bodily harm, the period of revocation is 2 years.

(j) If a person is convicted for a violation of s. 346.67 (1) where the accident involved death, the period of revocation is 5 years.

(3m) (a) Any person who has his or her operating privilege revoked under sub. (3) (c) or (f) is eligible for an occupational license under s. 343.10 after the first 120 days of the revocation period, except that if the total number of convictions, suspensions, or revocations for any offense that is counted

under s. 343.307 (1) within any 5-year period equals 2 or more, the person is eligible for an occupational license under s. 343.10 after one year of the revocation period has elapsed.

(b) Any person who has his or her operating privilege revoked under sub. (3) (e) is eligible for an occupational license under s. 343.10 after the first 60 days of the revocation period, except that if the total number of convictions, suspensions, or revocations for any offense that is counted under s. 343.307 (1) within any 5-year period equals 2 or more, the person is eligible for an occupational license under s. 343.10 after one year of the revocation period has elapsed.

(4) For any revocation the department orders under sub. (1) (a), (am), (ar), or (b), if the offense is criminal under s. 940.09 and involved the use of a motor vehicle, or if the offense is criminal under s. 940.25, or under sub. (3), the department shall extend the revocation period by the number of days to which a court sentences the person to imprisonment in a jail or prison.

History: 1971 c. 219; 1975 c. 297; 1977 c. 29 s. 1654 (7) (a), (e); 1977 c. 193, 447; 1979 c. 221; 1981 c. 20, 70; 1983 a. 192 s. 304; 1983 a. 459; 1985 a. 80, 82; 1985 a. 293 s. 3; 1987 a. 3, 399; 1989 a. 31, 105; 1991 a. 39, 277, 316; 1993 a. 317; 1995 a. 269, 425, 448; 1997 a. 84, 237, 258, 295; 1999 a. 109, 143; 2001 a. 16, 38, 109; 2003 a. 30, 97, 200; 2005 a. 387; 2009 a. 100, 102, 121; 2011 a. 113, 173 ss. 2, 3, 6.

The court cannot waive the revocation ordered by the division of motor vehicles. 62 Atty. Gen. 31.

When a person is charged under with a second offense OWI, the charge may not be reduced to or punished as a first. The department must treat this as a second offense for purposes of revocation. 69 Atty. Gen. 47.

343.315 Commercial motor vehicle disqualifications; effects. (1g) DEFINITION. In this section, "engaged in commercial motor vehicle-related activities" means all of the following:

(a) Operating or using a commercial motor vehicle.

(b) Operating or using any motor vehicle on or after September 30, 2005, if the person operating or using the vehicle has ever held a commercial driver license, has ever operated a commercial motor vehicle on a highway, or has ever been convicted of a violation related to, or been disqualified from, operating a commercial motor vehicle.

(1m) EMPLOYER RESPONSIBILITY. An employer may not allow, permit or authorize a driver who is disqualified to operate a commercial motor vehicle during a period of disqualification after March 31, 1992. An employer who knowingly violates this subsection shall be fined not more than $5,000 or imprisoned for not more than 90 days or both. An employer who negligently violates this subsection shall forfeit not more than $2,500.

(2) DISQUALIFYING OFFENSES. (a) Except as provided in pars. (b) and (bm), a person shall be disqualified from operating a commercial motor vehicle for a one-year period upon a first conviction of any of the following offenses while engaged in commercial motor-vehicle related activities:

1. Section 346.63 (1) (a) or a local ordinance in conformity therewith or a law of a federally recognized American Indian tribe or band in this state in conformity with s. 346.63 (1) (a) or the law of another jurisdiction prohibiting driving or operating a motor vehicle while intoxicated or under the influence of alcohol, a controlled substance, a controlled substance analog or a combination thereof, or under the influence of any drug which renders the person incapable of safely driving, as those or substantially similar terms are used in that jurisdiction's laws.

1m. Section 346.63 (1) (am) or a local ordinance in conformity therewith or a law of a federally recognized American Indian tribe or band in this state in conformity with s. 346.63 (1) (am) or the law of another jurisdiction that prohibits a person from driving or operating a commercial motor vehicle while having a detectable amount of a restricted controlled substance in his or her blood, as those or substantially similar terms are used in that jurisdiction's laws.

2. Section 346.63 (1) (b) or (5) (a) or a local ordinance in conformity therewith or a law of a federally recognized American Indian tribe or band in this state in conformity with s. 346.63 (1) (b) or (5) (a) or the law of another jurisdiction prohibiting driving or operating a commercial motor vehicle while the person's alcohol concentration is 0.04 or more or with an excess or specified range of alcohol concentration, as those or substantially similar terms are used in that jurisdiction's laws.

3. Section 346.67 (1), 346.68 or 346.69 or a local ordinance in conformity therewith or a law of a federally recognized American Indian tribe or band in this state in conformity with s. 346.67 (1), 346.68 or 346.69 or the law of another jurisdiction prohibiting leaving the scene of an accident involving a motor vehicle driven or operated by the person, as those or substantially similar terms are used in that jurisdiction's laws.

4. Using a motor vehicle in the commission of a felony in this state, including a violation of a law of a federally recognized American Indian tribe or band in this state for an offense therein which, if the person had been convicted of the offense under the laws of this state, would have constituted a felony, or in another jurisdiction.

5. Section 343.305 (7) or (9) or a local ordinance in conformity therewith or a law of a federally recognized American Indian tribe or band in this state in conformity with s. 343.305 (7) or (9) or the law of another jurisdiction prohibiting refusal of a person driving or operating a motor vehicle to submit to chemical testing to determine the person's alcohol concentration or intoxication or the amount of a restricted controlled substance in the person's blood, or prohibiting positive results from such chemical testing, as those or substantially similar terms are used in that jurisdiction's laws.

6. Section 346.63 (2) or (6), 940.09 (1) or 940.25 or a law of a federally recognized American Indian tribe or band in this state in conformity with s. 346.63 (2) or (6), 940.09 (1) or 940.25, or the law of another jurisdiction prohibiting causing or inflicting injury, great bodily harm or death through use of a motor vehicle while intoxicated or under the influence of alcohol, a controlled substance, a controlled substance analog or a combination thereof, or with an alcohol concentration of 0.04 or more or with an excess or specified range of alcohol concentration, while under the influence of any drug to a degree that renders the person incapable of safely driving, or while having a detectable amount of a restricted controlled substance in the person's blood, as those or substantially similar terms are used in that jurisdiction's laws.

7. Operating a commercial motor vehicle when the person's commercial driver license is revoked, suspended, or canceled based on the person's operation of a commercial motor vehicle or when the person is disqualified from operating a commercial motor vehicle.

8. Causing a fatality through negligent or criminal operation of a motor vehicle.

(am) Except as provided in par. (b), a person shall be disqualified from operating a commercial motor vehicle for a one-year period upon a first conviction of causing a fatality through negligent or criminal operation of a motor vehicle, committed on or after July 1, 1987, and before September 30, 2005, while driving or operating any motor vehicle.

(b) If any of the violations listed in par. (a) or (am) occurred in the course of transporting hazardous materials requiring placarding or any quantity of a material listed as a select agent or toxin under 42 CFR 73 on or after July 1, 1987, the person shall be disqualified from operating a commercial motor vehicle for a 3-year period.

(bm) The period of disqualification under par. (a) for a disqualification imposed under par. (a) 5. shall be reduced by any period of suspension, revocation, or disqualification under this chapter previously served for an offense if all of the following apply:

1. The offense arises out of the same incident or occurrence giving rise to the disqualification.

2. The offense relates to a vehicle operator's alcohol concentration or intoxication or the amount of a restricted controlled substance in the operator's blood.

(c) A person shall be disqualified for life from operating a commercial motor vehicle if convicted of 2 or more violations of any of the offenses listed in par. (a) or (am), or any combination of those offenses, arising from 2 or more separate incidents. The department shall consider only offenses committed on or after July 1, 1987, in applying this paragraph.

(d) The department may, by rule, establish guidelines and conditions under which a disqualification for life under par. (c) may be reduced to a period of not less than 10 years. The rules shall include standards for a rehabilitation program to be successfully completed by the applicant for reinstatement. If a person is reinstated after successful completion of the rehabilitation program and is subsequently convicted of any offense listed in par. (a), the person shall be permanently disqualified for life and ineligible to apply for a reduction of the lifetime disqualification under this paragraph.

(e) A person is disqualified for life from operating a commercial motor vehicle if, in the commission of a felony involving the manufacture, distribution, delivery, or dispensing of a controlled substance or controlled substance analog, or possession with intent to manufacture, distribute, deliver, or dispense a controlled substance or controlled substance analog, the person is engaged in commercial motor vehicle-related activities. No person who is disqualified under this paragraph is eligible for reinstatement under par. (d).

(f) A person is disqualified for a period of 60 days from operating a commercial motor vehicle if convicted of 2 serious traffic violations, and 120 days if convicted of 3 serious traffic violations, arising from separate occurrences committed within a 3-year period while driving or operating a commercial motor vehicle or while driving or operating any motor vehicle if the person holds a commercial driver license. The 120-day period of disqualification under this paragraph shall be in addition to any other period of disqualification imposed under this paragraph. In this paragraph, "serious traffic violations" means any of the following offenses committed while engaged in commercial motor vehicle-related activities specified in sub. (1g) (a), or any of the following offenses committed while engaged in commercial motor vehicle-related activities specified in sub. (1g) (b) if the offense results in the revocation, cancellation, or suspension of the person's operating privilege:

1. Violating s. 346.57 (4) or a local ordinance in conformity therewith or a law of a federally recognized American Indian tribe or band in this state in conformity with s. 346.57 (4) by excessive speeding, or the law of another jurisdiction prohibiting excessive speeding by exceeding the posted speed limit by 15 or more miles per hour as those or substantially similar terms are used in that jurisdiction's law.

2. Violating any state or local law of this state or any law of a federally recognized American Indian tribe or band in this state in conformity with any state law or any law of another jurisdiction relating to motor vehicle traffic control, arising in connection with a fatal accident, other than parking, vehicle weight or vehicle defect violations, or violations described in par. (a) 8. or (am).

3. Violating s. 346.62 or a local ordinance in conformity therewith or a law of a federally recognized American Indian tribe or band in this state in conformity with s. 346.62 or the law of another jurisdiction prohibiting reckless or careless driving of a motor vehicle or driving or operating a motor vehicle with willful or wanton disregard for the safety of persons or property, as those or substantially similar terms are used in that jurisdiction's law.

4. Violating s. 346.07 (2), 346.08, 346.09, 346.10, 346.13, 346.24 (3) or 346.34 (1) (a) 3. or a local ordinance in conformity therewith or a law of a federally recognized American Indian tribe or band in this state in conformity with s. 346.07 (2), 346.08, 346.09, 346.10, 346.13, 346.24 (3) or 346.34 (1) (a) 3. or the law of another jurisdiction prohibiting improper or erratic lane changes or improper passing, or otherwise prohibiting the conduct described in sections 11-304 to 306 and 11-309 of the uniform vehicle code and model traffic ordinance (1987), as those or substantially similar terms are used in that jurisdiction's law.

5. Violating s. 346.14 or a local ordinance in conformity therewith or a law of a federally recognized American Indian tribe or band in this state in conformity with s. 346.14 or the law of another jurisdiction prohibiting following a vehicle too closely, or otherwise prohibiting the conduct described in section 11-310 of the uniform vehicle code and model traffic ordinance (1987), as those or substantially similar terms are used in that jurisdiction's law.

6. Operating a commercial motor vehicle when the person has not obtained a commercial driver license.

7. Operating a commercial motor vehicle when the person does not have in his or her immediate possession the person's commercial driver license document, including any special restrictions cards issued under s. 343.10 (7) (d) or 343.17 (4), unless the person produces in court or in the office of the law enforcement officer that issued the citation, by the date that the person must appear in court or pay any fine or forfeiture with respect to the citation, a commercial driver license document issued to the person prior to the date of the citation and valid at the time of the citation.

8. Operating a commercial motor vehicle without the proper class of commercial driver license or endorsements for

the specific vehicle group being operated or for the passengers or type of cargo being transported.

(fm) A person is disqualified for a period of 60 days from operating a commercial motor vehicle if the person is convicted of violating s. 343.14 (5) or 345.17 and the violation of s. 343.14 (5) or 345.17 relates to an application for a commercial driver license or if the person's commercial driver license is cancelled by the secretary under s. 343.25 (1) or (5).

(g) A person is disqualified from operating a commercial motor vehicle for the 24-hour period following issuance of a citation for violation of s. 346.63 (7) or a local ordinance in conformity therewith or a law of a federally recognized American Indian tribe or band in this state in conformity with s. 346.63 (7) or issuance of an out-of-service order for violating 49 CFR 392.5 or the law of another jurisdiction in substantial conformity therewith.

(h) Except as provided in par. (i), a person shall be disqualified for a period of 90 days from operating a commercial motor vehicle if convicted of an out-of-service violation, or 2 years if convicted of 2 out-of-service violations, or 3 years if convicted of 3 or more out-of-service violations, arising from separate occurrences committed within a 10-year period while operating a commercial motor vehicle. A disqualification under this paragraph shall be in addition to any penalty imposed under s. 343.44. In this paragraph, "out-of-service violation" means violating s. 343.44 (1) (c) or a law of another jurisdiction for an offense therein which, if committed in this state, would have been a violation of s. 343.44 (1) (c), if the operator holds a commercial driver license or is required to hold a commercial driver license to operate the commercial motor vehicle.

(i) If the violation listed in par. (h) occurred in the course of transporting hazardous materials requiring placarding or any quantity of a material listed as a select agent or toxin under 42 CFR 73, or while operating a vehicle designed to carry, or actually carrying, 16 or more passengers, including the driver, the person shall be disqualified from operating a commercial motor vehicle for 180 days upon a first conviction, or for 3 years for a 2nd or subsequent conviction, arising from separate occurrences committed within a 10-year period while operating a commercial motor vehicle. A disqualification under this paragraph shall be in addition to any penalty imposed under s. 343.44.

(j) A person is disqualified for a period of 60 days from operating a commercial motor vehicle if convicted of a railroad crossing violation, or 120 days if convicted of 2 railroad crossing violations or one year if convicted of 3 or more railroad crossing violations, arising from separate occurrences committed within a 3-year period while driving or operating a commercial motor vehicle. In this paragraph, "railroad crossing violation" means a violation of a federal, state, or local law, rule, or regulation, or the law of another jurisdiction, relating to any of the following offenses at a railroad crossing:

1. If the operator is not always required to stop the vehicle, failing to reduce speed and determine that the tracks are clear of any approaching railroad train or railroad track equipment.

2. If the operator is not always required to stop the vehicle, failing to stop before reaching the crossing if the tracks are not clear.

3. If the operator is always required to stop the vehicle, failing to do so before proceeding onto the crossing.

4. Failing to have sufficient space to proceed completely through the crossing without stopping the vehicle.

5. Failing to obey any official traffic control device or the directions of any traffic officer, railroad employee, or other enforcement official.

6. Failing to successfully proceed through the crossing because of insufficient undercarriage clearance.

(k) A person disqualified by federal authorities under 49 USC 31310 (f) and 49 CFR 383.52 on the basis that the person's continued operation of a commercial motor vehicle would create an imminent hazard, as defined in 49 USC 5102 and 49 CFR 383.5, is disqualified from operating a commercial motor vehicle for the period of disqualification determined by the federal authority upon receipt by the department of the notice of disqualification provided for in 49 CFR 383.52 (d).

(L) If the department receives notice from another jurisdiction of a failure to comply violation by a person issued a commercial driver license by the department arising from the person's failure to appear to contest a citation issued in that jurisdiction or failure to pay a judgment entered against the person in that jurisdiction, the person is disqualified from operating a commercial motor vehicle until the department receives notice from the other jurisdiction terminating the failure to comply violation except that the disqualification may not be less than 30 days nor more than 2 years.

(3) EFFECT OF DISQUALIFICATION. (a) If a person's license or operating privilege is revoked or suspended as the result of an offense committed after March 31, 1992, which results in disqualification under sub. (2), the department shall immediately disqualify the person from operating a commercial motor vehicle for the period required under sub. (2). Notwithstanding s. 343.38 (3r), the person's authorization to operate a commercial motor vehicle shall not be reinstated upon expiration of the period of revocation or suspension unless the period of disqualification has also expired. During any period of disqualification in which the person's license or operating privilege is not revoked or suspended, the department may issue an operator's license to the person for the operation of vehicles other than commercial motor vehicles.

(b) If a person's license or operating privilege is not otherwise revoked or suspended as the result of an offense committed after March 31, 1992, which results in disqualification under sub. (2) (a) to (f), (h) to (j), or (L), the department shall immediately disqualify the person from operating a commercial motor vehicle for the period required under sub. (2) (a) to (f), (h) to (j), or (L). Upon proper application by the person and payment of the fees specified in s. 343.21 (1) (L) and (n), the department may issue a separate license authorizing only the operation of vehicles other than commercial motor vehicles.

(bm) Notwithstanding pars. (a) and (b) and the time periods for disqualification specified in sub. (2), if a person is convicted in another jurisdiction of a disqualifying offense specified in sub. (2) while the person is not licensed in or a resident of this state, that other jurisdiction disqualified the person from operating a commercial motor vehicle as a result of the conviction, and the period of disqualification in that other jurisdiction has expired, the department may not disqualify the

person from operating a commercial motor vehicle as a result of the conviction.

(c) Nothing in this subsection exempts a person from reinstatement fees under s. 343.21 or complying with applicable provisions of s. 343.38.

(d) Disqualifications shall be effective from the date of conviction of the disqualifying offense.

(4) NOTIFICATION AND COMMENCEMENT. The department shall send the notice of disqualification by 1st class mail to a person's last-known residence address. A period of disqualification ordered under this section commences on the date on which the notice is sent under this subsection. This subsection does not apply to disqualifications under sub. (2) (g).

History: 1989 a. 105; 1991 a. 39, 277; 1995 a. 113, 448; 1997 a. 84, 258; 1999 a. 85, 140; 2001 a. 38, 109; 2003 a. 33, 97; 2007 a. 20; 2009 a. 28, 103; 2011 a. 32, 101, 244, 258; 2011 a. 260 s. 81.

343.32 Other grounds for revocation or suspension of licenses; demerit points. (1) The secretary shall revoke a person's operating privilege whenever one or more of the following conditions exist:

(c) Notice has been received of the conviction of such person in another jurisdiction for an offense therein which, if committed in this state, would have required revocation of such person's operating privilege under this subsection.

(1m) (a) In this subsection, "another jurisdiction" means any state other than Wisconsin and includes the District of Columbia, the commonwealth of Puerto Rico and any territory or possession of the United States and any province of the Dominion of Canada.

(b) The secretary may suspend a person's operating privilege for not less than 6 months nor more than 5 years whenever notice has been received of the conviction of such person under federal law or the law of a federally recognized American Indian tribe or band in this state or the law of another jurisdiction for any offense therein which, if the person had committed the offense in this state and been convicted of the offense under the laws of this state, would have permitted suspension of such person's operating privilege under s. 961.50. The person is eligible for an occupational license under s. 343.10 as follows:

1. For the first such conviction, at any time.

2. For a 2nd conviction within a 5-year period, after the first 60 days of the suspension period.

3. For a 3rd or subsequent conviction within a 5-year period, after the first 90 days of the suspension period.

(c) For purposes of counting the number of convictions under par. (b), convictions of any violation of ch. 961 shall be counted and given the effect specified under par. (b). The 5-year period under this subsection shall be measured from the dates of the violations which resulted in the convictions.

(d) If the person's license or operating privilege is currently suspended or revoked or the person does not currently possess a valid operator's license issued under this chapter, the suspension or revocation under this subsection is effective on the date on which the person is first eligible for issuance, renewal, or reinstatement of an operator's license under this chapter.

(1s) The secretary shall suspend the operating privilege of any person who has been convicted under state law or under a local ordinance which is in conformity therewith or under a law of a federally recognized American Indian tribe or band in this state which is in conformity with state law of altering the person's license, loaning the person's license to another or unlawfully or fraudulently using or permitting an unlawful or fraudulent use of a license.

(2) (a) The secretary may suspend a person's operating privilege if the person appears by the records of the department to be a habitually reckless or negligent operator of a motor vehicle or to have repeatedly violated any of the state traffic laws, any local ordinance enacted under ch. 349 or any traffic laws enacted by a federally recognized American Indian tribe or band in this state if the tribal traffic laws violated strictly conform to provisions in chs. 341 to 348 or, if the offense occurred on a federal military installation located in this state, any federal law which is in strict conformity with a state traffic law. For the purpose of determining when to suspend an operating privilege under this subsection, the secretary may determine and adopt by rule a method of weighing traffic convictions by their seriousness and may, subject to the limitations in this subsection, change such weighted scale as experience or the accident frequency in the state makes necessary or desirable.

(b) The scale adopted by the secretary shall assign, for each conviction, 3 demerit points for exceeding the lawful speed limit by 10 or less miles per hour, 4 demerit points for exceeding the lawful speed limit by more than 10 but less than 20 miles per hour or 6 demerit points for exceeding the lawful speed limit by 20 or more miles per hour. Except as provided in s. 343.085 (5), the scale adopted by the secretary may not assign more demerit points for a subsequent conviction for exceeding the lawful speed limit than the number of demerit points specified for the conviction in this paragraph.

(bc) 1. Except as provided in subd. 2., the scale adopted by the secretary shall assess, for each conviction, twice the number of demerit points that are assessed for the same offense committed by the holder of a regular license, if the convicted person has been previously convicted of an offense for which demerit points are assessed and the person is one of the following:

a. A person who holds a probationary license.

b. An unlicensed person who would hold a probationary license if licensed.

c. A person who holds an instruction permit under s. 343.07.

2. The secretary may not increase under subd. 1. the number of demerit points that are assessed for a violation of ch. 347.

(bd) The scale adopted by the secretary shall assess, for each conviction, 6 demerit points for a violation of s. 346.44 or 346.62 (2m), except that convictions under s. 346.44 and 346.62 (2m) arising out of the same incident or occurrence shall be counted as a single conviction.

(be) The scale adopted by the secretary shall assess, for each conviction, 2 demerit points for a violation of s. 346.94 (22) (c) or (d), except that convictions arising out of the same incident or occurrence shall be counted as a single conviction.

(bg) The scale adopted by the secretary shall assign, for each conviction, 3 demerit points for operating a motor vehicle while disqualified, revoked, suspended or out-of-service under s. 343.44 or a local ordinance in conformity therewith.

(bj) The scale adopted by the secretary shall assess, for each conviction, 6 demerit points for a violation of s. 346.63 (6), 4 demerit points for a violation of s. 346.63 (2m), and 3 demerit points for a violation of s. 346.63 (7) (a) 3. The scale adopted by the secretary shall not assess any demerit points for conviction of a violation of s. 346.63 (5) or (7) (a) 1. or 2.

(bk) The scale adopted by the secretary shall assess, for each conviction, 6 demerit points for a violation of s. 346.70 (1) by the operator of a vehicle.

(bm) 1. The scale adopted by the secretary may not assess any demerit points for operating a motor vehicle without a valid operator's license in the operator's immediate possession in violation of s. 343.18 (1).

2. The scale adopted by the secretary may not assess more than 2 demerit points for operating a motor vehicle with a defective or improper speedometer in violation of s. 347.41.

(br) The scale adopted by the secretary may not assess any demerit points for modifying the height of a vehicle in violation of s. 347.455.

(bt) The scale adopted by the secretary may not assess any demerit points for a violation of s. 346.922 or 347.48 (2m) (b), (c) or (d) or (4) (am).

(c) 1. Except as provided in subd. 2., in order for the secretary to suspend an operating privilege under this subsection, the operator must have accumulated 12 demerit points in any 12-month period.

2. The secretary shall suspend, for a period of 6 months, the operating privilege of any person who holds a probationary license issued on or after September 1, 2000, and who has accumulated 12 demerit points in any 12-month period.

(d) When an operator accumulates more than 6 demerit points or has been involved in 2 or more accidents in a one-year period where the accident report indicates that the person may have been causally negligent, the secretary may require the operator to report to an examining station for driver improvement counseling, consisting of either group or individual counseling, reexamination or both.

(e) The secretary may require any person who has had his or her operating privilege suspended or revoked, whether the suspension or revocation is the result of action under this section or s. 343.30, or conviction for an offense which requires mandatory revocation under s. 343.31 to participate in driver improvement counseling, consisting of either group or individual counseling, reexamination or both.

(f) A reexamination required under par. (d) or (e) may consist of all or part of the tests specified in s. 343.16 (2) (b), or any other special examination as required under s. 343.16 (5). Upon conclusion of the counseling, interview and examination, the secretary shall take action as authorized at the conclusion of other examinations under s. 343.16 (6) (a).

(3) Except as provided in sub. (1m), a revocation or suspension under this section may be for any period not exceeding one year unless a different period is specifically prescribed by law.

(4) In adopting rules for weighing traffic convictions by their seriousness under sub. (2), the secretary shall provide by rule for a reduction of up to 3 points if a person shows to the department satisfactory evidence of completion of a rider course approved by the secretary. This subsection applies only to demerit points relating to violations committed before completion of the rider course by a person while driving or operating a Type 1 motorcycle.

(5) In adopting rules for weighing traffic convictions by their seriousness under sub. (2), the secretary also may provide by rule for a reduction of points if a person shows to the department satisfactory evidence of completion of a course of instruction in traffic safety, defensive driving or similar course or driver improvement counseling approved by the secretary.

(6) There shall be no minimum waiting period before issuance of an occupational license under s. 343.10 to a person whose operating privilege has been suspended under sub. (2) if the person is otherwise eligible for issuance of an occupational license.

History: 1971 c. 42, 278, 281; 1973 c. 90; 1977 c. 29 s. 1654 (7) (a), (c); 1977 c. 273; 1979 c. 221; 1981 c. 31, 216, 327; 1987 a. 24, 132; 1989 a. 22, 75, 105, 195, 359; 1991 a. 26, 32, 39, 189; 1993 a. 16, 314, 480; 1995 a. 113, 269, 338, 420, 448; 1997 a. 84, 135; 1999 a. 9, 185; 2005 a. 106, 317; 2009 a. 8, 103, 311; 2011 a. 256.

Cross-reference: See also ch. Trans 101, Wis. adm. code.

343.34 Suspension of licenses. The secretary may suspend operating privileges under this section under the following circumstances:

(1) Whenever the secretary is satisfied that a person has violated a restriction on the license and that it is in the interests of public safety to suspend the license, the secretary shall suspend such license for a period not exceeding one year unless the violation is cause for revocation.

(2) When a person has been convicted under s. 343.16 (7) (b).

History: 1971 c. 164 s. 82; 1975 c. 5; 1977 c. 29 s. 1654 (7) (c); 1977 c. 273; 1989 a. 105; 1991 a. 269.

343.38 Reinstatement after revocation, suspension, cancellation, or disqualification. (1) REINSTATEMENT AFTER REVOCATION. Except as provided in ss. 343.10, 343.39, and 351.07, the department shall not reinstate the operating privilege of a person whose operating privilege has been duly revoked unless the period of revocation has expired and the person:

(a) Pays to the department all required fees; and

(b) If the secretary so prescribes, passes an examination including the tests specified in s. 343.16 or such parts thereof as the secretary may require; and

(c) 1. Except as provided in subd. 2., files and maintains with the department proof of financial responsibility in the amount, form and manner specified in ch. 344. This subdivision does not apply after 3 years have elapsed since the expiration of the period of revocation.

2. No proof under subd. 1. shall be required for any of the following:

a. A vehicle subject to the requirements of s. 121.53, 194.41 or 194.42.

b. A vehicle owned by or leased to the United States, this state or any county or municipality of this state.

c. Reinstatement of an operating privilege revoked under s. 343.30 (1q) (b) 2. or (d), 343.305 (10) (d) or 343.31 (3) (b) or (bm) 2.

d. Reinstatement of an operating privilege revoked under s. 343.31 (1) (b) or (2) if, within the 5-year period preceding the violation, the person has not been convicted of a prior offense that may be counted under s. 343.307 (2) and if, within the

10-year period preceding the violation, the person has not been convicted of 2 or more prior offenses that may be counted under s. 343.307 (2).

(2) REINSTATEMENT OF NONRESIDENT'S OPERATING PRIVILEGE. A nonresident's operating privilege revoked or suspended under the laws of this state is reinstated as a matter of law when the period of revocation or suspension has expired and the nonresident pays the fees specified in s. 343.21 (1) (j), (jr), if applicable, and (n).

(3) REINSTATEMENT AFTER SUSPENSION. Except as provided in sub. (2) and s. 343.10, the department shall not reinstate the operating privilege of a person whose operating privilege has been duly suspended while the suspension remains in effect. Subject to s. 343.31 (2t) (b), upon the expiration of the period of suspension, the person's operating privilege is reinstated upon receipt by the department of the fees specified in s. 343.21 (1) (j) and (n) and, for reinstatement of an operating privilege suspended under ch. 344, the filing with the department of proof of financial responsibility, if required, in the amount, form, and manner specified under ch. 344.

(3g) REINSTATEMENT AFTER CERTAIN CANCELLATIONS. (a) The department may reinstate the operator's license of a person whose operator's license has been duly canceled under s. 343.25 (2) or (3) if the person pays the fees specified in s. 343.21 (1) (m) and (n) and either the person is at least 18 years of age or the requirements specified in s. 343.15 are satisfied.

(b) The department may reinstate the operator's license or identification card of a person whose operator's license or identification card has been duly canceled because of the person's nonpayment of a fee if the person pays that fee, pays any fee required by the department under s. 20.905 (2), and pays the fees specified in s. 343.21 (1) (m) and (n).

(3r) REINSTATEMENT OF COMMERCIAL DRIVING PRIVILEGES FOLLOWING DISQUALIFICATION. (a) Except as provided in pars. (b) and (c), upon application for reinstatement after a person's disqualification by the department, the department may issue a commercial driver license to the person if the person has paid the fees required under s. 343.21 (1) (jm) and (n), taken any examination required by the department under s. 343.16, and satisfied any other requirement under this chapter for reinstatement.

(b) Any disqualification under s. 343.315 (2) (g) terminates at the beginning of the 25th hour following issuance of the citation specified in s. 343.315 (2) (g). If a person has been disqualified solely on the basis of s. 343.315 (2) (g), the person's authorization to operate a commercial motor vehicle is automatically reinstated upon termination of the disqualification, as provided in this paragraph, and no application or fee is required for reinstatement.

(c) If a person is authorized to operate a commercial motor vehicle under s. 343.055, the person's authorization to operate a commercial motor vehicle may be reinstated without issuance of a commercial driver license to the person.

(4) FIRST ISSUANCE OF LICENSE IN WISCONSIN AFTER SUSPENSION OR REVOCATION BY ANOTHER STATE. The department may issue an operator's license to a person moving to this state whose operating privileges have been previously suspended or revoked in another state when their operating privilege has been reinstated in that state and the following conditions have been met:

(a) When the period of suspension or revocation required by law for conviction for the same traffic violation in this state has terminated.

(b) Acceptable proof of financial responsibility has been filed.

(c) Application for a Wisconsin operator's license has been made.

(d) Any required examination has been passed.

(e) The fees required for the issuance of an original license have been paid.

(5) RESTRICTIONS ON LICENSE. If a court has ordered that the person's operating privilege be restricted for a period of time after the revocation period is completed to operating vehicles equipped with an ignition interlock device, the license issued under this section shall include that restriction.

History: 1977 c. 29 s. 1654 (7) (a), (c); 1979 c. 306, 316; 1983 a. 525; 1989 a. 72; 1991 a. 277, 316; 1997 a. 27, 84; 1999 a. 143; 2007 a. 20; 2009 a. 100, 103; 2011 a. 173, 258.

SUBCHAPTER IV

UNLAWFUL PRACTICES RELATIVE TO LICENSES

343.43 Unlawful use of license. (1) No person shall:

(a) Represent as valid any canceled, revoked, suspended, fictitious or fraudulently altered license; or

(b) Sell or lend that person's license to any other person or knowingly permit the use thereof by another; or

(c) Represent as one's own any license not issued to that person; or

(d) Violate any of the restrictions placed on that person's license by or pursuant to law; or

(e) Permit any unlawful use of a license issued to that person; or

(f) Reproduce by any means whatever a copy of a license, unless the reproduction is done pursuant to rules promulgated by the department and for a valid business or occupational purpose; or

(g) Deface or alter a license except to endorse a change of address authorized by s. 343.22 (2).

(2) Whenever a license or identification card which appears to be altered is displayed to a law enforcement officer, agent of the secretary or the court, that person shall take possession of the license or identification card and return it to the department for cancellation. A notation of change of address properly endorsed on the license under s. 343.22 shall not of itself be reason to consider the license altered.

(3) Except as provided in sub. (3m), any person who violates sub. (1) shall be:

(a) Fined not less than $200 nor more than $600 and may be imprisoned for not more than 6 months or both for the first such violation.

(b) Fined not less than $300 nor more than $1,000 and imprisoned for not less than 5 days nor more than 6 months for the 2nd offense occurring within 3 years.

(c) Fined not less than $1,000 nor more than $2,000 and imprisoned for not less than 10 days nor more than 6 months for the 3rd or subsequent offense occurring within 3 years.

(3m) Any person who violates sub. (1) (d) while operating a "Class D" or "Class M" vehicle as described in s. 343.04 (1) (d)

and (e), except a school bus, may be required to forfeit not more than $200 for the first offense, may be fined not more than $300 and imprisoned for not more than 30 days for the 2nd offense occurring within 3 years, and may be fined not more than $500 and imprisoned for not more than 6 months for the 3rd or subsequent offense occurring within 3 years. A violation of a local ordinance in conformity with this section shall count as a previous offense.

History: 1975 c. 5, 199; 1977 c. 29 s. 1654 (7) (a), (c); 1977 c. 360, 447; 1979 c. 306; 1981 c. 20 s. 1848r; 1983 a. 36, 534; 1989 a. 105; 1991 a. 189, 230; 1999 a. 9; 2007 a. 20; 2009 a. 28.

Convictions for presenting a fraudulently altered driver license are restricted to situations having a direct bearing on the license, such as the granting of driving privileges. Changing the date of birth did not affect the owner's driving privileges. State v. Scholwin, 57 Wis. 2d 764, 204 N.W.2d 677 (1973).

343.44 Operating while suspended, revoked, ordered out-of-service or disqualified. (1) OPERATING OFFENSES. (a) *Operating while suspended.* No person whose operating privilege has been duly suspended under the laws of this state may operate a motor vehicle upon any highway in this state during the period of suspension or in violation of any restriction on an occupational license issued to the person during the period of suspension. A person's knowledge that his or her operating privilege is suspended is not an element of the offense under this paragraph. In this paragraph, "restriction on an occupational license" means restrictions imposed under s. 343.10 (5) (a) as to hours of the day, area, routes or purpose of travel, vehicles allowed to be operated, use of an ignition interlock device, sobriety or use of alcohol, controlled substances or controlled substance analogs.

(b) *Operating while revoked.* No person whose operating privilege has been duly revoked under the laws of this state may knowingly operate a motor vehicle upon any highway in this state during the period of revocation or in violation of any restriction on an occupational license issued to the person during the period of revocation. In this paragraph, "restriction on an occupational license" means restrictions imposed under s. 343.10 (5) (a) as to hours of the day, area, routes or purpose of travel, vehicles allowed to be operated, use of an ignition interlock device, sobriety or use of alcohol, controlled substances or controlled substance analogs.

(c) *Operating while ordered out-of-service.* No person may operate a commercial motor vehicle while the person or the commercial motor vehicle is ordered out-of-service under the law of this state or another jurisdiction or under federal law. No person may operate a commercial motor vehicle for which the motor carrier identified on the motor vehicle's registration application as the motor carrier responsible for safety of the vehicle has been issued a federal out-of-service order for unsatisfactory safety compliance, while this federal out-of-service order is in effect.

(d) *Operating while disqualified.* No person may operate a commercial motor vehicle while disqualified under s. 343.315 or 49 CFR 383.51, under the law of another jurisdiction or Mexico that provides for disqualification of commercial drivers in a manner similar to 49 CFR 383.51, or under a determination by the federal motor carrier safety administration under the federal rules of practice for motor carrier safety contained in 49 CFR 386 that the person is no longer qualified to operate a vehicle under 49 CFR 391.

(1g) REINSTATEMENT REQUIRED. Notwithstanding any specified term of suspension, revocation, cancellation or disqualification, the period of any suspension, revocation, cancellation or disqualification of an operator's license issued under this chapter or of an operating privilege continues until the operator's license or operating privilege is reinstated.

(2) PENALTIES. (ad) In this subsection, "great bodily harm" has the meaning given in s. 939.22 (14).

(ag) 1. Except as provided in subds. 2. and 3., any person who violates sub. (1) (a) shall be required to forfeit not less than $50 nor more than $200.

2. Any person who violates sub. (1) (a) and, in the course of the violation, causes great bodily harm to another person is required to forfeit not less than $5,000 nor more than $7,500, except that, if the person knows at the time of the violation that his or her operating privilege has been suspended, the person is guilty of a Class I felony.

3. Any person who violates sub. (1) (a) and, in the course of the violation, causes the death of another person is required to forfeit not less than $7,500 nor more than $10,000, except that, if the person knows at the time of the violation that his or her operating privilege has been suspended, the person is guilty of a Class H felony.

(ar) 1. Except as provided in subds. 2. to 4., any person who violates sub. (1) (b) shall forfeit not more than $2,500.

2. Except as provided in subds. 3. and 4., any person who violates sub. (1) (b) shall be fined not more than $2,500 or imprisoned for not more than one year in the county jail or both if the revocation identified under sub. (1) (b) resulted from an offense that may be counted under s. 343.307 (2).

3. Any person who violates sub. (1) (b) and, in the course of the violation, causes great bodily harm to another person shall be fined not less than $5,000 nor more than $7,500 or imprisoned for not more than one year in the county jail or both, except that, if the person knows at the time of the violation that his or her operating privilege has been revoked, the person is guilty of a Class I felony.

4. Any person who violates sub. (1) (b) and, in the course of the violation, causes the death of another person shall be fined not less than $7,500 nor more than $10,000 or imprisoned for not more than one year in the county jail or both, except that, if the person knows at the time of the violation that his or her operating privilege has been revoked, the person is guilty of a Class H felony.

(b) [par.] In imposing a sentence under par. (ar) or (br), the court shall review the record and consider the following:

NOTE: Par. (b) (intro.) is shown as affected by 2011 Wis. Acts 113 and 258 and as merged by the legislative reference bureau under s. 13.92 (2) (i). The language in brackets was inserted by 2011 Wis. Act 258 but rendered surplusage by 2011 Wis. Act 113. Corrective legislation is pending.

1. The aggravating and mitigating circumstances in the matter, using the guidelines described in par. (d).

2. The class of vehicle operated by the person.

3. The number of prior convictions of the person for violations of this section within the 5 years preceding the person's arrest.

4. The reason that the person's operating privilege was revoked, or the person was disqualified or ordered out of service, including whether the person's operating privilege was

revoked for an offense that may be counted under s. 343.307 (2).

5. Any convictions for moving violations arising out of the incident or occurrence giving rise to sentencing under this section.

(bm) Any person who violates sub. (1) (c) shall forfeit $2,500 for the first offense and $5,000 for the 2nd or subsequent offense within 10 years.

(br) Any person who violates sub. (1) (d) shall be fined not more than $2,500 or imprisoned for not more than one year in the county jail or both.

(c) In addition to other penalties for violation of this section, if a person violates this section while his or her operating privilege is revoked as provided in ch. 351, the penalties may be enhanced by imprisonment and additional fines as provided in s. 351.08. For the purpose of enforcing this paragraph, in any case in which the accused is charged with operating a motor vehicle while his or her operator's license, permit or privilege to operate is suspended or revoked or is charged with operating without a valid operator's license, the court, before hearing the charge, shall determine whether the person is a habitual traffic offender or repeat habitual traffic offender and therefore barred from operating a motor vehicle on the highways of this state.

(d) The chief judge of each judicial administrative district shall adopt guidelines, under the chief judge's authority to adopt local rules under SCR 70.34, for the consideration of aggravating and mitigating factors. Such guidelines shall treat operators of commercial motor vehicles at least as stringently as operators of other classes of motor vehicles.

(2p) SENTENCING OPTION. The legislature intends that courts use the sentencing option under s. 973.03 (4) whenever appropriate for persons subject to sub. (2) to provide cost savings for the state and for local governments. This option shall not be used if the suspension or revocation was for one of the following:

(a) Improperly refusing to take a test under s. 343.305.

(b) Violating s. 346.63 (1) or (5) or a local ordinance in conformity therewith.

(c) Violating s. 346.63 (2) or (6), 940.09 (1) or 940.25.

(2r) PRIOR CONVICTIONS. For purposes of determining prior convictions under this section, the 5-year period shall be measured from the dates of the violations that resulted in the convictions and each conviction under sub. (2) shall be counted. Convictions of s. 343.44 (1), 1997 stats., other than for operating a commercial motor vehicle while ordered out-of-service shall be counted under this section as prior convictions.

(2s) CITATIONS. Within 30 days after receipt by the department of a report from a law enforcement officer under s. 343.305 (7) or a court order under s. 343.28 of a violation committed by a person operating a commercial motor vehicle while subject to an out-of-service order under s. 343.305 (7) (b) or (9) (am), a traffic officer employed under s. 110.07 may prepare a uniform traffic citation under s. 345.11 for a violation of sub. (1) (c) or (d) and serve it on the person. The citation may be served anywhere in this state and shall be served by delivering a copy to the person personally or by leaving a copy at the person's usual place of abode with a person of discretion residing therein or by mailing a copy to the person's last-known residence address. The venue for prosecution may be the county where the alleged offense occurred or in the person's county of residence.

(3) FAILURE TO RECEIVE NOTICE. Refusal to accept or failure to receive an order of revocation, suspension or disqualification mailed by 1st class mail to such person's last-known address shall not be a defense to the charge of driving after revocation, suspension or disqualification. If the person has changed his or her address and fails to notify the department as required in s. 343.22 then failure to receive notice of revocation, suspension or disqualification shall not be a defense to the charge of driving after revocation, suspension or disqualification.

(4) IMPOUNDMENT. In addition to other penalties for violation of this section, if a person has violated this section with respect to a motor vehicle which he or she is the owner, the court may order the vehicle impounded. The court may determine the manner and period of impoundment. The cost of keeping the vehicle constitutes a lien on the vehicle.

(4r) VIOLATION OF OUT-OF-SERVICE ORDER. In addition to other penalties for violation of this section, if a person has violated this section after the person or the commercial motor vehicle operated by the person was ordered out-of-service under the law of this state or another jurisdiction or under federal law, the violation shall result in disqualification under s. 343.315 (2) (h) or (i).

(5) VEHICLE IMPOUNDMENT; LESSORS AND SECURED CREDITORS. If a motor vehicle impounded under sub. (4) is subject to a security agreement or lease contract, the vehicle shall be released by the court to the lessor or secured creditor upon the filing of an affidavit by the lessor or secured creditor that the security agreement or lease contract is in default and shall be delivered to the lessor or secured creditor upon payment of the accrued cost of keeping the motor vehicle.

History: 1971 c. 164 s. 83; 1971 c. 280, 307; 1973 c. 90; 1977 c. 29 s. 1654 (7) (a); 1977 c. 165, 272; 1979 c. 221; 1981 c. 20; 1983 a. 535; 1989 a. 12, 105, 336; 1991 a. 39, 64, 189, 277; 1995 a. 113; 1997 a. 84; 1999 a. 9, 32, 143; 2003 a. 33; 2005 a. 25, 254, 412; 2009 a. 28; 2011 a. 32, 113, 258; s. 13.92 (2) (i).

A certified copy of the department order revoking the defendant's driver license was admissible under s. 889.18 (2). State v. Mullis, 81 Wis. 2d 454, 260 N.W.2d 696 (1978).

The time between the violations underlying convictions, not the time between convictions, determines whether penalty enhancers apply. State v. Walczak, 157 Wis. 2d 661, 460 N.W.2d 797 (Ct. App. 1990).

The general requirements for establishing prior criminal offenses in s. 973.12 are not applicable to the penalty enhancement provisions for offenses under sub. (2). The convictions must be established by defendant's admission, copies of prior judgments, or a teletype of the DOT driving record. State v. Spaeth, 206 Wis. 2d 135, 556 N.W.2d 728 (1996), 95-1827.

A circuit court may not determine the validity of a prior conviction during an enhanced sentencing proceeding predicated on the prior conviction unless the offender alleges that a violation of the right to a lawyer occurred in the prior conviction. The offender may use whatever means are available to challenge the other conviction in another forum, and if successful, seek to reopen the enhanced sentence. State v. Hahn, 2000 WI 118, 238 Wis. 2d 889, 618 N.W.2d 528, 99-0554.

A person has a privilege, but not a right, to drive a motor vehicle upon a public highway. To exercise that privilege, the person must satisfy the licensing requirements of the state. Failing that, the person may be properly prosecuted and convicted of operating after suspension of his or her operating privileges. County of Fond du Lac v. Kevin C. Derksen, 2002 WI App 160, 256 Wis. 2d 490, 647 N.W.2d 922, 01-2870.

Section 351.08 authorizes enhancements to penalties under 343.44; it does not create a separate substantive offense. 75 Atty. Gen. 106.

343.45 Permitting unauthorized person to drive. (1) No person shall cause or knowingly permit the person's child or ward under 18 years of age to operate a motor vehicle upon any highway in violation of this chapter or when such minor is not authorized under this chapter to operate a motor vehicle.

(2) No person shall authorize or knowingly permit a motor vehicle owned by the person or under the person's control to be operated upon any highway in violation of this chapter or by a person who is not authorized under this chapter to operate a motor vehicle. No dealer as defined in s. 340.01 (11) (intro.) but including the persons specified in s. 340.01 (11) (a), (b), (c) and (d), shall permit any person to operate any motor vehicle owned by the dealer or in the dealer's possession or control on a trial run unless the dealer has been shown the person's valid operator's license, issued by this state or other jurisdiction, before permitting the trial run.

(3) Except as another penalty is provided by s. 343.245 (4) (b), any person violating this section may be required to forfeit not more than $100.

History: 1971 c. 278; 1989 a. 105, 359.

A parent's unrestricted entrustment of a motorcycle to minor child in violation of this section constituted negligence per se. Kempf v. Boehrig, 95 Wis. 2d 435, 290 N.W.2d 563 (Ct. App. 1980).

CHAPTER 346

RULES OF THE ROAD

SUBCHAPTER I

GENERAL PROVISIONS

346.01 Words and phrases defined. (1) Words and phrases defined in s. 340.01 are used in the same sense in this chapter unless a different definition is specifically provided.

(1m) In this chapter, in addition to the meaning given in s. 340.01 (22), "highway" includes a private road or driveway that is subject to an agreement for traffic regulation enforcement under s. 349.03 (5).

(2) In this chapter, notwithstanding s. 340.01 (42), "owner" means, with respect to a vehicle that is registered, or is required to be registered, by a lessee of the vehicle under ch. 341, the lessee of the vehicle for purposes of vehicle owner liability under ss. 346.175, 346.195, 346.205, 346.452, 346.457, 346.465, 346.485, 346.505 (3), 346.675, and 346.945.

History: 1997 a. 27; 2003 a. 209; 2005 a. 411; 2009 a. 129.

346.02 Applicability of chapter. (1) APPLIES PRIMARILY UPON HIGHWAYS. This chapter applies exclusively upon highways except as otherwise expressly provided in this chapter.

(2) APPLICABILITY TO PERSONS RIDING OR DRIVING ANIMALS OR PROPELLING PUSH CARTS. Every person riding an animal or driving any animal-drawn vehicle or propelling any push cart upon a roadway is granted all the rights and is subject to all the duties which this chapter grants or applies to the operator of a vehicle, except those provisions of this chapter which by their very nature would have no application.

(4) APPLICABILITY TO PERSONS RIDING BICYCLES AND MOTOR BICYCLES. (a) Subject to the special provisions applicable to bicycles, every person riding a bicycle upon a roadway or shoulder of a highway is granted all the rights and is subject to all the duties which this chapter grants or applies to the operator of a vehicle, except those provisions which by their express terms apply only to motor vehicles or which by their very nature would have no application to bicycles. For purposes of this chapter, provisions which apply to bicycles also apply to motor bicycles, except as otherwise expressly provided.

(b) Provisions which apply to the operation of bicycles in crosswalks under ss. 346.23, 346.24, 346.37 (1) (a) 2., (c) 2 and (d) 2. and 346.38 do not apply to motor bicycles.

(5) APPLICABILITY TO PUBLIC OFFICERS AND EMPLOYEES. The provisions of this chapter applicable to operators of vehicles apply also to operators of vehicles owned by or operated by or for any governmental agency, including the United States government, subject to the specific exceptions set forth in this section and ss. 346.03 and 346.215 (2).

(6) APPLICABILITY TO PERSONS WORKING ON HIGHWAYS. This chapter applies to persons, teams, motor vehicles and road machinery while traveling to or from highway construction or maintenance work but the provisions of ss. 346.05 (3), 346.06 to 346.17, 346.28, 346.29 (2), 346.31 to 346.36, 346.52 to

346.56 and 346.59 do not apply to persons, teams, motor vehicles or road machinery when actually engaged in maintenance or construction work upon a highway.

(7) APPLICABILITY OF PROVISIONS REQUIRING SIGNPOSTING. No provision of this chapter for which signs are required shall be enforced against an alleged violator if at the time and place of the alleged violation an official sign is not in proper position and sufficiently legible to be seen by an ordinarily observant person. Whenever a particular section does not state that signs are required, such section is effective even though no signs are erected or in place.

(8) APPLICABILITY TO PEDESTRIAN WAYS. (a) All of the applicable provisions of this chapter pertaining to highways, streets, alleys, roadways and sidewalks also apply to pedestrian ways. A pedestrian way means a walk designated for the use of pedestrian travel.

(b) Public utilities may be installed either above or below a pedestrian way, and assessments may be made therefor as if such pedestrian way were a highway, street, alley, roadway or sidewalk.

(9) APPLICABILITY TO URBAN MASS TRANSIT SYSTEMS. Every person operating an urban mass transportation vehicle or using related facilities is granted all the rights and is subject to all the duties which this chapter grants or applies to such persons, except those provisions of this chapter which by their very nature would have no application.

(10) APPLICABILITY TO SNOWMOBILES. The operator of a snowmobile upon a roadway shall in addition to the provisions of ch. 350 be subject to ss. 346.04, 346.06, 346.11, 346.14 (1), 346.18, 346.19, 346.20, 346.21, 346.215 (3), 346.26, 346.27, 346.33, 346.35, 346.37, 346.39, 346.40, 346.44, 346.46, 346.47, 346.48, 346.50 (1) (b), 346.51, 346.52, 346.53, 346.54, 346.55, 346.87, 346.88, 346.89, 346.90, 346.91, 346.92 (1) and 346.94 (1) and (9).

(11) APPLICABILITY TO ALL-TERRAIN VEHICLES AND UTILITY TERRAIN VEHICLES. The operator of an all-terrain vehicle or a utility terrain vehicle on a roadway is subject to ss. 346.04, 346.06, 346.11, 346.14 (1), 346.18, 346.19, 346.20, 346.21, 346.215 (3), 346.26, 346.27, 346.33, 346.35, 346.37, 346.39, 346.40, 346.44, 346.46, 346.47, 346.48, 346.50 (1) (b), 346.51, 346.52, 346.53, 346.54, 346.55, 346.71, 346.87, 346.88, 346.89, 346.90, 346.91, 346.92 (1) and 346.94 (1) and (9) but is not subject to any other provision of this chapter.

(12) APPLICABILITY TO ELECTRIC PERSONAL ASSISTIVE MOBILITY DEVICES. An electric personal assistive mobility device shall be considered a vehicle for purposes of ss. 346.04 to 346.10, 346.12, 346.13, 346.15, 346.16, 346.18, 346.19, 346.20, 346.215 (3), 346.23 to 346.28, 346.31 to 346.35, 346.37 to 346.40, 346.44, 346.46, 346.47, 346.48, 346.50 to 346.55, 346.57, 346.59, 346.62, 346.65 (5m), 346.67 to 346.70, 346.78, 346.80, 346.87, 346.88, 346.90, 346.91, and 346.94 (4), (5), (9), and (10), except those provisions which by their express terms apply only to motor vehicles or which by their very nature would have no application to electric personal assistive mobility devices.

History: 1971 c. 125, 277; 1981 c. 390 s. 252; 1983 a. 243; 1985 a. 29, 69; 1989 a. 56 s. 259; 1989 a. 335 s. 89; 1995 a. 138; 2001 a. 90; 2009 a. 46; 2011 a. 208.

State, county, and tribal jurisdiction to regulate traffic on streets in housing projects that have been built and are maintained by the Winnebago Tribe on tribal lands is discussed. 78 Atty. Gen. 122.

346.03 Applicability of rules of the road to authorized emergency vehicles. (1) The operator of an authorized emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected violator of the law, when responding to but not upon returning from a fire alarm, when transporting an organ for human transplantation, or when transporting medical personnel for the purpose of performing human organ harvesting or transplantation immediately after the transportation, may exercise the privileges set forth in this section, but subject to the conditions stated in subs. (2) to (5m).

(2) The operator of an authorized emergency vehicle may:

(a) Stop, stand or park, irrespective of the provisions of this chapter;

(b) Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;

(c) Exceed the speed limit;

(d) Disregard regulations governing direction of movement or turning in specified directions.

(2m) Notwithstanding s. 346.94 (20), a law enforcement officer, a fire fighter, or emergency medical personnel may open and leave open any door of an authorized emergency vehicle when the vehicle is stopped, standing, or parked and the person is performing official duties.

(3) The exemption granted the operator of an authorized emergency vehicle by sub. (2) (a) applies only when the operator of the vehicle is giving visual signal by means of at least one flashing, oscillating or rotating red light except that the visual signal given by a police vehicle may be by means of a blue light and a red light which are flashing, oscillating or rotating, except as otherwise provided in sub. (4m). The exemptions granted by sub. (2) (b), (c) and (d) apply only when the operator of the emergency vehicle is giving both such visual signal and also an audible signal by means of a siren or exhaust whistle, except as otherwise provided in sub. (4) or (4m).

(4) Except as provided in sub. (4m), a law enforcement officer operating a police vehicle shall otherwise comply with the requirements of sub. (3) relative to the giving of audible and visual signals but may exceed the speed limit without giving audible and visual signal under the following circumstances:

(a) If the officer is obtaining evidence of a speed violation.

(b) If the officer is responding to a call which the officer reasonably believes involves a felony in progress and the officer reasonably believes any of the following:

1. Knowledge of the officer's presence may endanger the safety of a victim or other person.

2. Knowledge of the officer's presence may cause the suspected violator to evade apprehension.

3. Knowledge of the officer's presence may cause the suspected violator to destroy evidence of a suspected felony or may otherwise result in the loss of evidence of a suspected felony.

4. Knowledge of the officer's presence may cause the suspected violator to cease the commission of a suspected felony before the officer obtains sufficient evidence to establish grounds for arrest.

(4m) A law enforcement officer operating a police vehicle that is a bicycle is not required to comply with the requirements of sub. (3) relative to the giving of audible and visual signals.

(5) The exemptions granted the operator of an authorized emergency vehicle by this section do not relieve such operator from the duty to drive or ride with due regard under the circumstances for the safety of all persons nor do they protect such operator from the consequences of his or her reckless disregard for the safety of others.

(5m) The privileges granted under this section apply to the operator of an authorized emergency vehicle under s. 340.01 (3) (dg) or (dh) only if the operator has successfully completed a safety and training course in emergency vehicle operation that is taken at a technical college under ch. 38 or that is approved by the department and only if the vehicle being operated is plainly marked, in a manner prescribed by the department, to identify it as an authorized emergency vehicle under s. 340.01 (3) (dg) or (dh).

(6) Every law enforcement agency that uses authorized emergency vehicles shall provide written guidelines for its officers and employees regarding exceeding speed limits under the circumstances specified in sub. (4) and when otherwise in pursuit of actual or suspected violators. The guidelines shall consider, among other factors, road conditions, density of population, severity of crime and necessity of pursuit by vehicle. The guidelines are not subject to requirements for rules under ch. 227. Each law enforcement agency shall review its written guidelines by June 30 of each even-numbered year and, if considered appropriate by the law enforcement agency, shall revise those guidelines.

History: 1983 a. 56; 1985 a. 82, 143; 1987 a. 126; 1995 a. 36; 1997 a. 88; 2007 a. 20; 2011 a. 184.

Sub. (5) limits the exercise of privileges granted by sub. (2). City of Madison v. Polenska, 143 Wis. 2d 525, 421 N.W.2d 862 (Ct. App. 1988).

An officer who decides to engage in pursuit is immune from liability for the decision under s. 893.80, but may be subject to liability under sub. (5) for negligently operating a motor vehicle during the chase. A city that has adopted a policy that complies with sub. (6) is immune from liability for injuries resulting from high speed chases. A policy that considered the severity of the crime only in terms of when to strike a vehicle or use road blocks did not comply with sub. (6). Estate of Cavanaugh v. Andrade, 202 Wis. 2d 290, 550 N.W.2d 103 (1996), 94-0192.

The government and its employees may have various forms of liability under this section, which provides exemptions for compliance with certain traffic laws for operators of emergency vehicles, but the statute does not supersede s. 893.80 (4) immunity for discretionary decisions. In this case, a driver's decision to proceed through the intersection against a red light was discretionary and the driver was immune from liability for negligence based on that decision. Brown v. Acuity, A Mutual Insurance Company, 2012 WI App 66, 342 Wis. 2d 236, 815 N.W.2d 719, 11-0583.

A private ambulance that is an authorized emergency vehicle usually kept in a given county pursuant to s. 340.01 (3) (i) may not avail itself of the provisions of sub. (2) when proceeding unsolicited to the scene of an accident or medical emergency in an adjacent county. 77 Atty. Gen. 214.

A claim of excessive force in the course of making a seizure of the person is properly analyzed under the 4th Amendment's objective reasonableness standard. A police officer's attempt to terminate a dangerous high-speed car chase that threatens the lives of innocent bystanders does not violate the 4th Amendment, even when it places the fleeing motorist at risk of serious injury or death. Scott v. Harris, 550 U.S. 372, 127 S. Ct. 1769, 167 L. Ed. 2d 686 (2007).

Police civil liability and the law of high speed pursuit. Zevitz. 70 MLR 237 (1987).

346.04 Obedience to traffic officers, signs and signals; fleeing from officer. (1) No person shall fail or refuse to comply with any lawful order, signal or direction of a traffic officer.

(2) No operator of a vehicle shall disobey the instructions of any official traffic sign or signal unless otherwise directed by a traffic officer.

(2t) No operator of a vehicle, after having received a visible or audible signal to stop his or her vehicle from a traffic officer or marked police vehicle, shall knowingly resist the traffic officer by failing to stop his or her vehicle as promptly as safety reasonably permits.

(3) No operator of a vehicle, after having received a visual or audible signal from a traffic officer, or marked police vehicle, shall knowingly flee or attempt to elude any traffic officer by willful or wanton disregard of such signal so as to interfere with or endanger the operation of the police vehicle, or the traffic officer or other vehicles or pedestrians, nor shall the operator increase the speed of the operator's vehicle or extinguish the lights of the vehicle in an attempt to elude or flee.

(4) Subsection (2t) is not an included offense of sub. (3), but a person may not be convicted of violating both subs. (2t) and (3) for acts arising out of the same incident or occurrence.

History: 1991 a. 316; 2001 a. 109.

That an officer was driving a vehicle equipped with red lights and siren was insufficient to prove that vehicle was "marked" under sub. (3). State v. Oppermann, 156 Wis. 2d 241, 456 N.W.2d 625 (Ct. App. 1990).

The knowledge requirement in sub. (3) applies only to fleeing or attempting to elude an officer. The statute does not require the operator of a fleeing vehicle to actually interfere with or endanger identifiable vehicles or persons; he or she need only drive in a manner that creates a risk or likelihood of that occurring. State v. Sterzinger, 2002 WI App 171, 256 Wis. 2d 925, 649 N.W.2d 677, 01-1440.

In sub. (3), "willful" modifies "disregard." In that context, "willful" requires a subjective understanding by the defendant that a person known by the defendant to be a traffic officer has directed the defendant to take a particular action, and with that understanding, the defendant chose to act in contravention of the officer's direction. Either willful or wanton disregard is sufficient to result in a statutory violation. An act done "willfully" does not require a showing of personal hate or ill will. Sub. (3) does not provide a good faith exception to compliance. State v. Hanson, 2012 WI 4, 338 Wis. 2d 243, 808 N.W.2d 390, 08-2759.

An unmarked police vehicle displaying red and blue lights is not a marked vehicle for purposes of sub. (3). Section 346.19, regarding the requirements on the approach of an emergency vehicle, is the proper statute to invoke when the proof requirements for fleeing under s. 346.04 are not met. 76 Atty. Gen. 214.

SUBCHAPTER II

DRIVING, MEETING, OVERTAKING AND PASSING

346.17 Penalty for violating sections 346.04 to 346.16. (1) Except as provided in sub. (5), any person violating s. 346.04 (1) or (2), 346.06, 346.12 or 346.13 (1) or (3) may be required to forfeit not less than $20 nor more than $40 for the first offense and not less than $50 nor more than $100 for the 2nd or subsequent conviction within a year.

(2) Any person violating ss. 346.05, 346.07 (2) or (3), 346.072, 346.08, 346.09, 346.10 (2) to (4), 346.11, 346.13 (2) or 346.14 to 346.16 may be required to forfeit not less than $30 nor more than $300.

(2m) Any person violating s. 346.10 (1) shall forfeit not less than $60 nor more than $600.

(2t) Any person violating s. 346.04 (2t) may be fined not more than $10,000 or imprisoned for not more than 9 months or both.

(3) (a) Except as provided in par. (b), (c) or (d), any person violating s. 346.04 (3) is guilty of a Class I felony.

(b) If the violation results in bodily harm, as defined in s. 939.22 (4), to another, or causes damage to the property of another, as defined in s. 939.22 (28), the person is guilty of a Class H felony.

(c) If the violation results in great bodily harm, as defined in s. 939.22 (14), to another, the person is guilty of a Class F felony.

(d) If the violation results in the death of another, the person is guilty of a Class E felony.

(4) Any person violating s. 346.075 may be required to forfeit not less than $25 nor more than $200 for the first offense and not less than $50 nor more than $500 for the 2nd or subsequent violation within 4 years.

(5) If an operator of a vehicle violates s. 346.04 (1) or (2) where persons engaged in work in a highway maintenance or construction area or in a utility work area are at risk from traffic, any applicable minimum and maximum forfeiture specified in sub. (1) for the violation shall be doubled.

History: 1971 c. 278; 1973 c. 182; 1977 c. 208; 1981 c. 324; 1983 a. 27; 1985 a. 82; 1993 a. 189, 198; 1997 a. 32, 88, 237, 277, 283; 2001 a. 15, 109.

346.175 Vehicle owner's liability for fleeing a traffic officer. (1) (a) Subject to s. 346.01 (2), the owner of a vehicle involved in a violation of s. 346.04 (2t) or (3) for fleeing a traffic officer shall be presumed liable for the violation as provided in this section.

(b) Notwithstanding par. (a), no owner of a vehicle involved in a violation of s. 346.04 (2t) or (3) for fleeing a traffic officer may be convicted under this section if the person operating the vehicle or having the vehicle under his or her control at the time of the violation has been convicted for the violation under this section or under s. 346.04 (2t) or (3).

(2) A traffic officer may proceed under sub. (3) instead of pursuing the operator of a motor vehicle who flees after being given a visual or audible signal by the officer or marked police vehicle.

(3) (a) Within 72 hours after observing the violation, the traffic officer shall investigate the violation and may prepare a uniform traffic citation under s. 345.11 for the violation and, within 96 hours after observing the violation, any traffic officer employed by the authority issuing the citation may personally serve it upon the owner of the vehicle.

(b) If with reasonable diligence the owner cannot be served under par. (a), service may be made by leaving a copy of the citation at the owner's usual place of abode within this state in the presence of a competent member of the family at least 14 years of age, who shall be informed of the contents thereof. Service under this paragraph may be made by any traffic officer employed by the authority issuing the citation and shall be performed within 96 hours after the violation was observed.

(c) If with reasonable diligence the owner cannot be served under par. (a) or (b) or if the owner lives outside of the jurisdiction of the issuing authority, service may be made by certified mail addressed to the owner's last-known address. Service under this paragraph shall be performed by posting the certified mail within 96 hours after the violation was observed.

(4) Defenses to the imposition of liability under this section include:

(a) That a report that the vehicle was stolen was given to a traffic officer before the violation occurred or within a reasonable time after the violation occurred.

(b) If the owner of the vehicle provides a traffic officer employed by the authority issuing the citation with the name and address of the person operating the vehicle or having the vehicle under his or her control at the time of the violation and sufficient information for the officer to determine that probable cause does not exist to believe that the owner of the vehicle was operating the vehicle at the time of the violation, then the owner of the vehicle shall not be liable under this section or under s. 346.04 (2t) or (3).

(c) If the vehicle is owned by a lessor of vehicles and at the time of the violation the vehicle was in the possession of a lessee, and the lessor provides a traffic officer employed by the authority issuing the citation with the information required under s. 343.46 (3), then the lessee and not the lessor shall be liable under this section or under s. 346.04 (2t) or (3).

(d) If the vehicle is owned by a dealer, as defined in s. 340.01 (11) (intro.) but including the persons specified in s. 340.01 (11) (a) to (d), and at the time of the violation the vehicle was being operated by or was under the control of any person on a trial run, and if the dealer provides a traffic officer employed by the authority issuing the citation with the name, address and operator's license number of the person operating the vehicle, then that person, and not the dealer, shall be liable under this section or under s. 346.04 (2t) or (3).

(5) Notwithstanding the penalty otherwise specified under s. 346.17 (2t) or (3) for a violation of s. 346.04 (2t) or (3):

(a) A vehicle owner or other person found liable under this section for a violation of s. 346.04 (2t) or (3) shall be required to forfeit not less than $300 nor more than $1,000.

(b) Imposition of liability under this section shall not result in suspension or revocation of a person's operating license under s. 343.30 or 343.31, nor shall it result in demerit points being recorded on a person's driving record under s. 343.32 (2) (a).

History: 1993 a. 189; 1997 a. 27; 2001 a. 109.

SUBCHAPTER III

RIGHT-OF-WAY

346.19 What to do on approach of emergency vehicle. (1) Upon the approach of any authorized emergency vehicle giving audible signal by siren the operator of a vehicle shall yield the right-of-way and shall immediately drive such vehicle to a position as near as possible and parallel to the right curb or the right-hand edge of the shoulder of the roadway, clear of any intersection and, unless otherwise directed by a traffic officer, shall stop and remain standing in such position until the authorized emergency vehicle has passed.

(2) This section does not relieve the operator of an authorized emergency vehicle from the duty to drive with due regard under the circumstances for the safety of all persons using the highway.

History: 1993 a. 490.

Section 346.19, regarding the requirements on the approach of an emergency vehicle, is the proper statute to invoke when the proof requirements for fleeing under s. 346.04 are not met. 76 Atty. Gen. 214.

346.195 Owner's liability for vehicle failing to yield the right-of-way to an authorized emergency vehicle. (1) Subject to s. 346.01 (2), the owner of a vehicle involved in a violation of s. 346.19 (1) for failing to yield the right-of-way to an authorized emergency vehicle shall be liable for the violation as provided in this section.

(2) The operator of an authorized emergency vehicle who observes a violation of s. 346.19 (1) for failing to yield the

right-of-way to an authorized emergency vehicle may prepare a written report indicating that a violation has occurred. If possible, the report shall contain the following information:

(a) The time and the approximate location at which the violation occurred.

(b) The license number and color of the vehicle involved in the violation.

(c) Identification of the vehicle as an automobile, motor truck, motor bus, motorcycle or other type of vehicle.

(3) Within 24 hours after observing the violation, the operator of the authorized emergency vehicle may deliver the report to a traffic officer of the county or municipality in which the violation occurred. A report that does not contain all the information in sub. (2) shall, nevertheless, be delivered and shall be maintained by the county or municipality for statistical purposes.

(4) (a) Within 48 hours after receiving a report containing all the information in sub. (2) and after investigating the violation, the traffic officer may prepare a uniform traffic citation under s. 345.11 and may personally serve it upon the owner of the vehicle.

(b) If with reasonable diligence the owner cannot be served under par. (a), service may be made by leaving a copy of the citation at the owner's usual place of abode within this state in the presence of a competent member of the family at least 14 years of age, who shall be informed of the contents thereof.

(c) If with reasonable diligence the owner cannot be served under par. (a) or (b) or if the owner lives outside of the jurisdiction of the issuing authority, service may be made by certified mail addressed to the owner's last-known address.

(5) (a) Except as provided in par. (b), it shall be no defense to a violation of this section that the owner was not operating the vehicle at the time of the violation.

(b) The following are defenses to a violation of this section:

1. That a report that the vehicle was stolen was given to a traffic officer before the violation occurred or within a reasonable time after the violation occurred.

2. That the owner of the vehicle provides a traffic officer with the name and address of the person operating the vehicle at the time of the violation and the person so named admits operating the vehicle at the time of the violation. In such case, the person operating the vehicle and not the owner shall be charged under this section.

3. That the vehicle is owned by a lessor of vehicles and at the time of the violation the vehicle was in the possession of a lessee, and the lessor provides a traffic officer with the information required under s. 343.46 (3). In such case, the lessee and not the lessor shall be charged under this section.

4. That the vehicle is owned by a dealer, as defined in s. 340.01 (11) (intro.) but including the persons specified in s. 340.01 (11) (a) to (d), and at the time of the violation the vehicle was being operated by any person on a trial run, and the dealer provides a traffic officer with the name, address and operator's license number of the person operating the vehicle. In such case, the person operating the vehicle, and not the dealer, shall be charged under this section.

History: 1995 a. 121; 1997 a. 27; 1999 a. 80.

SUBCHAPTER IV

RESPECTIVE RIGHTS AND DUTIES OF DRIVERS, PEDESTRIANS, BICYCLISTS, AND RIDERS OF ELECTRIC PERSONAL ASSISTIVE MOBILITY DEVICES

346.29 When standing or loitering in roadway or highway prohibited. (1) No person shall be on a roadway for the purpose of soliciting a ride from the operator of any vehicle other than a public passenger vehicle.

(2) No person shall stand or loiter on any roadway other than in a safety zone if such act interferes with the lawful movement of traffic.

(3) No person shall be on a bridge or approach thereto for the purpose of utilizing such bridge or approach for fishing or swimming when signs have been erected by the authority in charge of maintenance of the highway indicating that fishing or swimming off of such bridge or approach is prohibited.

SUBCHAPTER V

TURNING AND STOPPING AND REQUIRED SIGNALS

346.35 Method of giving signals on turning and stopping. Whenever a stop or turn signal is required by s. 346.34, such signal may in any event be given by a signal lamp or lamps of a type meeting the specifications set forth in s. 347.15. Except as provided in s. 347.15 (3m), such signals also may be given by the hand and arm in lieu of or in addition to signals by signal lamp. When given by hand and arm, such signals, except signals by the operator of a bicycle, who may use either hand and arm, shall be given from the left side of the vehicle in the following manner and shall indicate as follows:

(1) Left turn or U-turn — Hand and arm extended horizontally.

(2) Right turn — Hand and arm extended upward.

(3) Stop or decrease speed — Hand and arm extended downward.

History: 2009 a. 97; 2011 a. 73.

SUBCHAPTER VIII

RESTRICTIONS ON STOPPING AND PARKING

346.50 Exceptions to stopping and parking restrictions. (1) The prohibitions against stopping or leaving a vehicle stand contained in ss. 346.51 to 346.54 and 346.55 do not apply when:

(a) The vehicle becomes disabled while on the highway in such a manner or to such an extent that it is impossible to avoid stopping or temporarily leaving the vehicle in the prohibited place; or

(b) The stopping of the vehicle is necessary to avoid conflict with other traffic or to comply with traffic regulations or the directions of a traffic officer or traffic control sign or signal.

(c) The vehicle of a public utility, as defined in s. 196.01 (5), a telecommunications carrier, as defined in s. 196.01 (8m), or a rural electric cooperative is stopped or left standing and is

required for maintenance, installation, repair, construction or inspection of its facilities by the public utility or a rural electric cooperative when warning signs, flags, traffic cones, or flashing yellow lights or barricades, have been placed to warn approaching motorists of any obstruction to the traveled portion of the highway.

(1m) In subs. (2) and (2a), the terms "municipal" and "municipally" include county.

(2) Except as provided in sub. (3m), a motor vehicle bearing a special registration plate issued under s. 341.14 (1) to a disabled veteran or on his or her behalf is exempt from any ordinance imposing time limitations on parking in any street or highway zone and parking lot, whether municipally owned or leased, or both municipally owned and leased or a parking place owned or leased, or both owned and leased by a municipal parking utility, with one-half hour or more limitation but otherwise is subject to the laws relating to parking. Where the time limitation on a metered stall is one-half hour or more, no meter payment is required. Parking privileges granted by this subsection are limited to the disabled veteran to whom or on whose behalf the special plates were issued and to qualified operators acting under the disabled veteran's express direction with the disabled veteran present.

(2a) Except as provided in sub. (3m), a motor vehicle bearing special registration plates issued under s. 341.14 (1a), (1e), (1m), or (1q) or a motor vehicle, other than a motorcycle, upon which a special identification card issued under s. 343.51 is displayed or a motor vehicle registered in another jurisdiction upon which is displayed a registration plate, a card or an emblem issued by the other jurisdiction designating the vehicle as a vehicle used by a physically disabled person is exempt from any ordinance imposing time limitations on parking in any street or highway zone and parking lot, whether municipally owned or leased, or both municipally owned and leased or a parking place owned or leased, or both owned and leased by a municipal parking utility, with one-half hour or more limitation but otherwise is subject to the laws relating to parking. Where the time limitation on a metered stall is one-half hour or more, no meter payment is required. Parking privileges granted by this subsection are limited to the following:

(a) A person to whom plates were issued under s. 341.14 (1a).

(b) A qualified operator acting under the express direction of a person to whom plates were issued under s. 341.14 (1a) when such person is present.

(c) A person to whom plates were issued under s. 341.14 (1m) when the disabled person for whom the plates were issued is present.

(d) A person for whom plates were issued under s. 341.14 (1q).

(e) A qualified operator acting under the express direction of a person for whom plates were issued under s. 341.14 (1q) when such person is present.

(h) A person or organization to whom a special identification card was issued under s. 343.51.

(j) A qualified operator acting under the express direction of a person to whom a special identification card was issued under s. 343.51 when such person is present.

(k) A qualified operator of a motor vehicle registered in another jurisdiction upon which is displayed a registration plate, a card or an emblem issued by the other jurisdiction designating the vehicle as a vehicle used by a physically disabled person if the vehicle is transporting the disabled person for whom the plate, card or emblem was issued.

(L) A person to whom a plate was issued under s. 341.14 (1e).

(m) A qualified operator acting under the express direction of a person to whom a plate was issued under s. 341.14 (1e) when such person is present.

(3) Except as provided in sub. (3m), a vehicle bearing special registration plates issued under s. 341.14 (1), (1a), (1e), (1m), or (1q) or a motor vehicle, other than a motorcycle, upon which a special identification card issued under s. 343.51 is displayed or a motor vehicle registered in another jurisdiction upon which is displayed a registration plate, a card or an emblem issued by the other jurisdiction designating the vehicle as a vehicle used by a person with a physical disability is exempt from s. 346.505 (2) (a) or any ordinance in conformity therewith prohibiting parking, stopping or standing upon any portion of a street, highway or parking facility reserved for persons with physical disabilities by official traffic signs indicating the restriction. Stopping, standing and parking privileges granted by this subsection are limited to the persons listed under subs. (2) and (2a) (a) to (m).

(3m) (a) In this subsection, "motor vehicle used by a physically disabled person" has the meaning given in s. 346.503 (1).

(b) The city council of a 1st or 2nd class city may enact an ordinance imposing a 3-hour or less limitation on parking of a motor vehicle used by a physically disabled person upon any portion of a street, highway or parking facility reserved by the city for physically disabled persons by official traffic signs indicating the restriction if the following conditions are complied with:

1. Before enactment, the city council seeks the advice and recommendation of a disabled parking council of at least 7 members established by an ordinance of the city or, if the city has established a disabled parking enforcement assistance council under s. 349.145, by that council, and holds a public hearing on the proposal. The majority of the members of any disabled parking council shall be appointed by the city council from among those residents of the city to whom or on whose behalf the department has issued a special registration plate under s. 341.14 (1) to (1q) or a special identification card under s. 343.51.

2. The ordinance may apply to not more than one-third of the number of spaces reserved by the city for use by a motor vehicle used by a physically disabled person, and no time limitation may be imposed on a reserved space in a parking facility unless an adjacent space without any such time limitation is reserved for use by a motor vehicle used by a physically disabled person. The ordinance shall require that the disabled parking council or, if applicable, the disabled parking enforcement assistance council give advice and make a recommendation on the location of such reserved spaces.

3. The official traffic sign for such reserved spaces shall include information on the applicable time limitation for use by a motor vehicle used by a physically disabled person.

4. The ordinance may not impose a penalty for a violation of the ordinance that is greater than the penalty for violation of

any ordinance of the city imposing time limitations on parking upon any portion of a street, highway or parking facility.

5. The ordinance shall require the city to submit a report by December 31 of each odd-numbered year to the council on physical disabilities under s. 46.29 (1) (fm) on implementation and administration of the ordinance, including an evaluation of the effectiveness of time limitations imposed by the ordinance. With respect to spaces reserved by the city for use by a motor vehicle used by a physically disabled person upon any portion of a street, highway or parking facility, the report shall include the total number of spaces; the total number of spaces in a parking facility and the number of those spaces that are subject to a time limitation, and the duration of any such limitation; and the total number of spaces upon a street or highway and the number of those spaces that are subject to a time limitation, and the duration of any such limitation.

History: 1977 c. 29, 418; 1979 c. 55, 276, 288; 1981 c. 119; 1981 c. 255 ss. 5, 6, 13; 1983 a. 53 s. 114; 1983 a. 227; 1985 a. 87; 1989 a. 304; 1991 a. 239; 1993 a. 256, 496; 1995 a. 422; 1997 a. 92; 2001 a. 103; 2009 a. 246.

346.503 Parking spaces for vehicles displaying special registration plates or special identification cards. (1) In this section, "motor vehicle used by a physically disabled person" means a motor vehicle bearing special registration plates issued under s. 341.14 (1), (1a), (1e), (1m), or (1q) or a motor vehicle, other than a motorcycle, upon which a special identification card issued under s. 343.51 is displayed or a motor vehicle registered in another jurisdiction and displaying a registration plate, card or emblem issued by the other jurisdiction which designates the vehicle as a vehicle used by a physically disabled person.

(1m) (a) The owner or lessee of any public building or place of employment and the owner or lessee of any parking facility which offers parking to the public shall reserve at least the following number of spaces for use by a motor vehicle used by a physically disabled person:

1. At least one space for a facility offering 26 to 49 spaces.

2. At least 2% of all spaces for a facility offering 50 to 1,000 spaces.

3. At least one percent, in addition to that specified in subd. 2., of each 1,000 spaces over the first 1,000 for a facility offering more than 1,000 spaces.

(b) Parking spaces reserved under this subsection shall be at least 12 feet wide.

(c) Parking spaces reserved under this subsection shall be located as close as possible to an entrance of the parking facility and to an entrance of a public building or place of employment which allows a physically disabled person to enter and leave without assistance. Parking spaces reserved under this subsection in a parking ramp shall be located as close as possible to the main entrance of the parking ramp, to an adjacent public walk, or to an elevator which allows a physically disabled person to enter and leave without assistance.

(d) If the state or any other employer maintains a parking facility restricted to use by employees, the employer shall, at the request of a physically disabled employee, reserve a parking space for the employee as provided by pars. (b) and (c) for use by a motor vehicle used by a physically disabled person.

(e) Instead of complying with the requirements under par. (a), a nonprofit organization as defined under s. 108.02 (19), an institution of higher education as defined under s. 108.02 (18) or a government unit as defined under s. 108.02 (17) which owns more than one parking facility which offers parking to the public may reserve at least 2% of the total number of parking spaces in its facilities. A nonprofit organization, institution of higher education or government unit which reserves parking space under this paragraph shall reserve at least one parking space in each facility for use by a motor vehicle used by any physically disabled person. If the number of spaces so reserved in a facility is fewer than would be reserved under par. (a), upon request of a physically disabled person the nonprofit organization, institution of higher education or government unit shall reserve one additional space in the facility for use by a motor vehicle used by any physically disabled person.

(f) The owner or lessee of a parking facility which is ancillary to a building and restricted wholly or in part to use by tenants of the building shall, at the request of a physically disabled tenant, reserve a parking space in the facility as provided by pars. (b) and (c) for use by a motor vehicle used by the physically disabled tenant.

(g) This subsection does not affect the authority under s. 101.13 of the department of safety and professional services to require by rule the reservation of parking spaces for use by a motor vehicle used by a physically disabled person.

(2) The owner or lessee subject to the requirements of sub. (1m) shall post official traffic signs indicating that the spaces are reserved.

(2e) The owner or lessee subject to the requirements of sub. (1m) shall keep the parking spaces reserved for vehicles designated under sub. (1m) or (2m) clear of snow and ice in a timely manner and make other reasonable efforts to ensure that the spaces are available for use by a motor vehicle used by a physically disabled person.

(2m) In addition to the requirements of sub. (1m), the owner or lessee of a parking facility not open to the public and the owner or lessee of a parking facility which offers parking for 25 or fewer motor vehicles to the public may reserve one or more spaces as provided under sub. (1m) (b) and (c) for use by a motor vehicle used by a physically disabled person. An owner or lessee reserving spaces under this subsection shall post official traffic signs indicating that the spaces are reserved.

(3) The official traffic sign shall include the international symbol for barrier-free environments and a statement to inform the public that the parking space is reserved for vehicles designated under sub. (1m) or (2m).

(4) The department, after consulting with the department of safety and professional services, shall promulgate rules governing the design, size and installation of the official traffic signs required under sub. (2) or (2m).

(5) (b) A member of a disabled parking enforcement assistance council under s. 349.145 who observes a violation of this section may prepare a written report indicating that a violation has occurred. The report shall contain the time and location at which the violation occurred and any other relevant information relating to the violation.

(c) Within 24 hours after observing the violation, the member may deliver the report to a traffic officer of the political subdivision in which the violation occurred. A report which does not contain all of the information in par. (b) shall nevertheless be delivered and shall be maintained by the political subdivision for statistical purposes.

(d) 1. Within 48 hours after receiving a report containing all of the information in par. (b) and after conducting an investigation, the traffic officer may prepare a uniform traffic citation under s. 345.11 for the violation and may personally serve it upon the owner or lessee.

2. If with reasonable diligence the owner or lessee cannot be served under subd. 1. or if the owner or lessee lives outside of the jurisdiction of the issuing authority, service may be made by certified mail addressed to the owner's or lessee's last-known address.

History: 1981 c. 255 ss. 7, 13; 1983 a. 77, 227, 246; 1985 a. 87 s. 5; 1985 a. 135 s. 85; 1987 a. 260; 1989 a. 304; 1993 a. 256; 1995 a. 27 ss. 6415, 6416, 9116 (5); 2009 a. 246; 2011 a. 32.

Cross-reference: See also s. Trans 200.07, Wis. adm. code.

346.505 Stopping, standing or parking prohibited in parking spaces reserved for vehicles displaying special registration plates or special identification cards. (1) The legislature finds that parking facilities which are open to use by the public without a permit, whether publicly or privately owned, are public places. By enacting this section the legislature intends to ensure that people who are physically disabled have clear and reasonable access to public places. The legislature, therefore, urges the police, sheriff's and traffic departments of every unit of government and each authorized department of the state to enforce this section vigorously and see that all violations of this section are promptly prosecuted.

(2) (a) Except for a motor vehicle used by a physically disabled person as defined under s. 346.503 (1), no person may park, stop or leave standing any vehicle, whether attended or unattended and whether temporarily or otherwise, upon any portion of a street, highway or parking facility reserved, by official traffic signs indicating the restriction, for vehicles displaying special registration plates issued under s. 341.14 (1), (1a), (1e), (1m), or (1q) or a special identification card issued under s. 343.51 or vehicles registered in another jurisdiction and displaying a registration plate, card or emblem issued by the other jurisdiction which designates the vehicle as a vehicle used by a physically disabled person.

(b) No person may park, stop or leave standing any vehicle, whether attended or unattended and whether temporarily or otherwise, upon any portion of a street, highway or parking facility so as to obstruct, block or otherwise limit the use of any portion of a street, highway or parking facility reserved, by official traffic signs indicating the restriction, for vehicles displaying special registration plates issued under s. 341.14 (1), (1a), (1e), (1m), or (1q) or a special identification card issued under s. 343.51 or vehicles registered in another jurisdiction and displaying a registration plate, card or emblem issued by the other jurisdiction which designates the vehicle as a vehicle used by a physically disabled person.

(c) Notwithstanding par. (b), no person may park, stop or leave standing any vehicle, whether attended or unattended and whether temporarily or otherwise, upon any portion of a street, highway or parking facility that is clearly marked as and intended to be an access aisle to provide entry to and exit from vehicles by persons with physical disabilities and which is immediately adjacent to any portion of a street, highway or parking facility reserved, by official traffic signs indicating the restriction, for vehicles displaying special registration plates issued under s. 341.14 (1), (1a), (1e), (1m), or (1q) or a special identification card issued under s. 343.51 or vehicles registered in another jurisdiction and displaying a registration plate, card or emblem issued by the other jurisdiction which designates the vehicle as a vehicle used by a person with a physical disability.

(3) (a) Subject to s. 346.01 (2), the owner of a vehicle involved in a violation of sub. (2) shall be liable for the violation as provided in this subsection.

(b) A member of a disabled parking enforcement assistance council under s. 349.145 who observes a violation of sub. (2), or any person who observes a violation of sub. (2) (c), may prepare a written report indicating that a violation has occurred. The report shall contain the following information:

1. The time and location at which the violation occurred.

2. The license number and color of the vehicle involved in the violation.

3. Identification of the vehicle as an automobile, motor truck, motor bus, motorcycle or other type of vehicle.

(c) Within 24 hours after observing the violation, the member or other person may deliver the report to a traffic officer of the political subdivision in which the violation occurred. A report which does not contain all of the information in par. (b) shall nevertheless be delivered and shall be maintained by the political subdivision for statistical purposes.

(d) 1. Within 48 hours after receiving a report containing all of the information in par. (b) and after conducting an investigation, the traffic officer may prepare a uniform traffic citation under s. 345.11 for the violation and may personally serve it upon the owner of the vehicle.

2. If with reasonable diligence the owner cannot be served under subd. 1. or if the owner lives outside of the jurisdiction of the issuing authority, service may be made by certified mail addressed to the owner's last-known address.

(e) 1. Except as provided in subd. 2., it shall be no defense to a violation of sub. (2) that the owner was not in control of the vehicle at the time of the violation.

2. The following are defenses to a violation of sub. (2):

a. That a report that the vehicle was stolen was given to a traffic officer before the violation occurred or within a reasonable time after the violation occurred.

b. If the owner of the vehicle provides a traffic officer with the name and address of the person who was in control of the vehicle at the time of the violation and the person so named admits having the vehicle under his or her control at the time of the violation, then that person and not the owner shall be charged with the violation.

c. If the vehicle is owned by a lessor of vehicles and at the time of the violation the vehicle was in the possession of a lessee, and the lessor provides a traffic officer with the information required under s. 343.46 (3), then the lessee and not the lessor shall be charged with the violation.

d. If the vehicle is owned by a dealer as defined in s. 340.01 (11) (intro.) but including the persons specified in s. 340.01 (11) (a) to (d), and at the time of the violation the vehicle was under the control of any person on a trial run, and if the dealer provides a traffic officer with the name, address and operator's license number of that person, then that person and not the dealer shall be charged with the violation.

History: 1977 c. 418; 1979 c. 276; 1981 c. 255 ss. 8, 9, 13; 1983 a. 77, 192; 1985 a. 87 s. 5; 1987 a. 260; 1989 a. 304; 1993 a. 256, 490; 1997 a. 27, 92; 1999 a. 80; 2009 a. 246.

346.52 Stopping prohibited in certain specified places. (1) No person may stop or leave standing any vehicle, whether attended or unattended and whether temporarily or otherwise, in any of the following places:

(a) Within an intersection.

(b) On a crosswalk.

(c) Between a safety zone and the adjacent curb, or within 15 feet of a point on the curb immediately opposite the end of a safety zone unless a different distance is clearly indicated by an official traffic sign or marker or parking meter.

(d) On a sidewalk or sidewalk area, except when parking on the sidewalk or sidewalk area is clearly indicated by official traffic signs or markers or parking meters.

(e) Alongside or opposite any highway excavation or obstruction when stopping or standing at that place would obstruct traffic or when pedestrian traffic would be required to travel in the roadway.

(f) On the roadway side of any parked vehicle unless double parking is clearly indicated by official traffic signs or markers.

(g) Within 15 feet of the driveway entrance to a fire station or directly across the highway from a fire station entrance.

(h) Upon any portion of a highway where, and at the time when, stopping or standing is prohibited by official traffic signs indicating the prohibition of any stopping or standing.

(i) Within 25 feet of the nearest rail at a railroad crossing.

(1m) Notwithstanding sub. (1) (a) and (b), if snow accumulation at the usual bus passenger loading area makes it difficult to load or discharge bus passengers, the driver may stop a motor bus to load or discharge passengers on a crosswalk at an intersection where traffic is not controlled by a traffic control signal or a traffic officer.

(2) During the hours of 7:30 a.m. to 4:30 p.m. during school days, no person may stop or leave any vehicle standing, whether temporarily or otherwise, upon the near side of a through highway adjacent to a schoolhouse used for any children below the 9th grade. If the highway adjacent to the schoolhouse is not a through highway, the operator of a vehicle may stop upon the near side thereof during such hours, provided such stopping is temporary and only for the purpose of receiving or discharging passengers. This subsection shall not apply to villages, towns or cities when the village or town board or common council thereof by ordinance permits parking of any vehicle or of school buses only on the near side of specified highways adjacent to schoolhouses during specified hours, or to the parking of vehicles on the near side of highways adjacent to schoolhouses authorized by s. 349.13 (1j).

History: 1979 c. 325; 1983 a. 59; 1989 a. 71; 1993 a. 246; 1997 a. 159; 1999 a. 85.

SUBCHAPTER X

RECKLESS AND DRUNKEN DRIVING

346.61 Applicability of sections relating to reckless and drunken driving. In addition to being applicable upon highways, ss. 346.62 to 346.64 are applicable upon all premises held out to the public for use of their motor vehicles, all premises provided by employers to employees for the use of their motor vehicles and all premises provided to tenants of rental housing in buildings of 4 or more units for the use of their motor vehicles, whether such premises are publicly or privately owned and whether or not a fee is charged for the use thereof. Sections 346.62 to 346.64 do not apply to private parking areas at farms or single-family residences.

History: 1995 a. 127.

A privately owned parking lot was not included under this section. City of Kenosha v. Phillips, 142 Wis. 2d 549, 419 N.W.2d 236 (1988).

A parking lot for patrons of a business is held out for the use of the public under this section. City of LaCrosse v. Richling, 178 Wis. 2d 856, 505 N.W.2d 448 (Ct. App. 1993).

346.62 Reckless driving. (1) In this section:

(a) "Bodily harm" has the meaning designated in s. 939.22 (4).

(b) "Great bodily harm" has the meaning designated in s. 939.22 (14).

(c) "Negligent" has the meaning designated in s. 939.25 (2).

(d) "Vehicle" has the meaning designated in s. 939.22 (44), except that for purposes of sub. (2m) "vehicle" has the meaning given in s. 340.01 (74).

(2) No person may endanger the safety of any person or property by the negligent operation of a vehicle.

(2m) No person may recklessly endanger the safety of any person by driving a vehicle on or across a railroad crossing in violation of s. 346.44 (1) or through, around or under any crossing gate or barrier at a railroad crossing in violation of s. 346.44 (2).

(3) No person may cause bodily harm to another by the negligent operation of a vehicle.

(4) No person may cause great bodily harm to another by the negligent operation of a vehicle.

History: 1987 a. 399; 1997 a. 135.

Judicial Council Note, 1988: The revisions contained in subs. (2) and (3) are intended as editorial, not substantive, as is the substitution of a cross-reference to s. 939.25 (2) for the prior definition of a high degree of negligence. New sub. (4) carries forward the crime created by 1985 Wisconsin Act 293. [Bill 191-S]

That the defendant was an experienced stock car racer was not a defense to a charge of reckless driving. State v. Passarelli, 55 Wis. 2d 78, 197 N.W.2d 740.

Sub. (4) is not unconstitutionally irrational. State v. King, 187 Wis. 2d 547, 523 N.W.2d 159 (Ct. App. 1994).

This section may be applied to a corporation. State v. Steenberg Homes, Inc. 223 Wis. 2d 511, 589 N.W.2d 668 (Ct. App. 1998), 98-0104.

346.63 Operating under influence of intoxicant or other drug. (1) No person may drive or operate a motor vehicle while:

(a) Under the influence of an intoxicant, a controlled substance, a controlled substance analog or any combination of an intoxicant, a controlled substance and a controlled substance analog, under the influence of any other drug to a degree which renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving; or

(am) The person has a detectable amount of a restricted controlled substance in his or her blood.

(b) The person has a prohibited alcohol concentration.

(c) A person may be charged with and a prosecutor may proceed upon a complaint based upon a violation of any combination of par. (a), (am), or (b) for acts arising out of the same incident or occurrence. If the person is charged with violating any combination of par. (a), (am), or (b), the offenses shall be joined. If the person is found guilty of any combination of par. (a), (am), or (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 ss. 343.30 (1q) and 343.305. Paragraphs (a), (am), and (b) each require proof of a fact for conviction which the others do not require.

(d) In an action under par. (am) that is based on the defendant allegedly having a detectable amount of methamphetamine, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol in his or her blood, the defendant has a defense if he or she proves by a preponderance of the evidence that at the time of the incident or occurrence he or she had a valid prescription for methamphetamine or one of its metabolic precursors, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol.

(2) (a) It is unlawful for any person to cause injury to another person by the operation of a vehicle while:

1. Under the influence of an intoxicant, a controlled substance, a controlled substance analog or any combination of an intoxicant, a controlled substance and a controlled substance analog, under the influence of any other drug to a degree which renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving; or

2. The person has a prohibited alcohol concentration.

3. The person has a detectable amount of a restricted controlled substance in his or her blood.

(am) A person may be charged with and a prosecutor may proceed upon a complaint based upon a violation of any combination of par. (a) 1., 2., or 3. for acts arising out of the same incident or occurrence. If the person is charged with violating any combination of par. (a) 1., 2., or 3. in the complaint, the crimes shall be joined under s. 971.12. If the person is found guilty of any combination of par. (a) 1., 2., or 3. 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 ss. 343.30 (1q) and 343.305. Paragraph (a) 1., 2., and 3. each require proof of a fact for conviction which the others do not require.

(b) 1. In an action under this subsection, the defendant has a defense if he or she proves by a preponderance of the evidence that the injury would have occurred even if he or she had been exercising due care and he or she had not been under the influence of an intoxicant, a controlled substance, a controlled substance analog or a combination thereof, under the influence of any other drug to a degree which renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving, did not have a prohibited alcohol concentration described under par. (a) 2., or did not have a detectable amount of a restricted controlled substance in his or her blood.

2. In an action under par. (a) 3. that is based on the defendant allegedly having a detectable amount of methamphetamine, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol in his or her blood, the defendant has a defense if he or she proves by a preponderance of the evidence that at the time of the incident or occurrence he or she had a valid prescription for methamphetamine or one of its metabolic precursors, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol.

(2m) If a person has not attained the legal drinking age, as defined in s. 125.02 (8m), the person may not drive or operate a motor vehicle while he or she has an alcohol concentration of more than 0.0 but not more than 0.08. One penalty for violation of this subsection is suspension of a person's operating privilege under s. 343.30 (1p). The person is eligible for an occupational license under s. 343.10 at any time. If a person arrested for a violation of this subsection refuses to take a test under s. 343.305, the refusal is a separate violation and the person is subject to revocation of the person's operating privilege under s. 343.305 (10) (em).

(3) In this section:

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

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

(4) If a person is convicted under sub. (1) or a local ordinance in conformity therewith, or sub. (2), the court shall proceed under s. 343.30 (1q).

(5) (a) No person may drive or operate a commercial motor vehicle while the person has an alcohol concentration of 0.04 or more but less than 0.08.

(b) A person may be charged with and a prosecutor may proceed upon a complaint based on a violation of par. (a) or sub. (1) (a) or both for acts arising out of the same incident or occurrence. If the person is charged with violating both par. (a) and sub. (1) (a), the offenses shall be joined. Paragraph (a) and sub. (1) (a) each require proof of a fact for conviction which the other does not require. If the person is found guilty of violating both par. (a) and sub. (1) (a) 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. Each conviction shall be reported to the department and counted separately for purposes of suspension or revocation of the operator's license and disqualification.

(6) (a) No person may cause injury to another person by the operation of a commercial motor vehicle while the person has an alcohol concentration of 0.04 or more but less than 0.08.

(b) A person may be charged with and a prosecutor may proceed upon a complaint based upon a violation of par. (a) or sub. (2) (a) 1. or both for acts arising out of the same incident or occurrence. If the person is charged with violating both par. (a) and sub. (2) (a) 1. in the complaint, the crimes shall be joined under s. 971.12. If the person is found guilty of violating both par. (a) and sub. (2) (a) 1. 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. Paragraph (a) and sub. (2) (a) 1. each require proof of a fact for conviction which the other does not require.

(c) Under par. (a), the person charged has a defense if it appears by a preponderance of the evidence that the injury would have occurred even if he or she had not been under the influence of an intoxicant, a controlled substance, a controlled substance analog or a combination thereof, under the influence of any other drug to a degree which renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him

or her incapable of safely driving or did not have an alcohol concentration described under par. (a).

(7) (a) No person may drive or operate or be on duty time with respect to a commercial motor vehicle under any of the following circumstances:

1. While having an alcohol concentration above 0.0.

2. Within 4 hours of having consumed or having been under the influence of an intoxicating beverage, regardless of its alcohol content.

3. While possessing an intoxicating beverage, regardless of its alcohol content. This subdivision does not apply to possession of an intoxicating beverage if the beverage is unopened and is manifested and transported as part of a shipment.

(b) A person may be charged with and a prosecutor may proceed upon complaints based on a violation of this subsection and sub. (1) (a) or (b) or both, or sub. (1) (a) or (5) (a), or both, for acts arising out of the same incident or occurrence. If the person is charged with violating this subsection and sub. (1) or (5), the proceedings shall be joined. If the person is found guilty of violating both this subsection and sub. (1) or (5) 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. This subsection and subs. (1) and (5) each require proof of a fact for conviction which the others do not require. Each conviction shall be reported to the department and counted separately for purposes of suspension or revocation of the operator's license and disqualification.

History: 1971 c. 40 s. 93; 1971 c. 219; 1977 c. 193; 1981 c. 20, 184; 1983 a. 74, 459, 521; 1985 a. 32, 337; 1987 a. 3, 27; 1989 a. 105, 275; 1991 a. 277; 1995 a. 436, 448; 1997 a. 27, 252; 1999 a. 85; 2003 a. 30, 97.

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

It is no defense that the defendant is an alcoholic. State v. Koller, 60 Wis. 2d 755, 210 N.W.2d 770 (1973).

Evidence that the defendant, found asleep in parked car, had driven to the parking place 14 minutes earlier, was sufficient to support a conviction for operating a car while intoxicated. Monroe County v. Kruse, 76 Wis. 2d 126, 250 N.W.2d 375 (1977).

Intent to drive or move a motor vehicle is not required to find an accused guilty of operating the vehicle while under influence of intoxicant. Milwaukee County v. Proegler, 95 Wis. 2d 614, 291 N.W.2d 608 (Ct. App. 1980).

The court properly instructed the jury that it could infer from a subsequent breathalyzer reading of .13% that the defendant was intoxicated at the time of the stop. Alcohol absorption is discussed. State v. Vick, 104 Wis. 2d 678, 312 N.W.2d 489 (1981).

A previous conviction for operating while intoxicated is a penalty enhancer, not an element of the crime. State v. McAllister, 107 Wis. 2d 532, 319 N.W.2d 865 (1982). But as to operating with a prohibited blood alcohol count, see the note to State v. Ludeking, 195 Wis. 2d 132, 536 N.W.2d 392 (Ct. App. 1995), 94-1527.

Videotapes of sobriety tests were properly admitted to show the physical manifestation of the defendant driver's intoxication. State v. Haefer, 110 Wis. 2d 381, 328 N.W.2d 894 (Ct. App. 1982).

Sub. (1) (b) is not unconstitutionally vague. State v. Muehlenberg, 118 Wis. 2d 502, 347 N.W.2d 914 (Ct. App. 1984).

The trial court abused its discretion by excluding from evidence a blood alcohol chart produced by the department of transportation showing the amount of alcohol burned up over time. State v. Hinz, 121 Wis. 2d 282, 360 N.W.2d 56 (Ct. App. 1984).

The definitions of "under the influence" in this section and in s. 939.22 are equivalent. State v. Waalen, 130 Wis. 2d 18, 386 N.W.2d 47 (1986).

Sub. (1) (b) establishes a per se rule that it is a violation to operate a motor vehicle with a specified breath alcohol content, regardless of the individual's "partition ratio." The provision is constitutional. State v. McManus, 152 Wis. 2d 113, 447 N.W.2d 654 (1989).

First offender OMVWI prosecution is a civil offense, and jeopardy does not attach to prevent a subsequent criminal prosecution. State v. Lawton, 167 Wis. 2d 461, 482 N.W.2d 142 (Ct. App. 1992).

Because there is no privilege under s. 904.05 (4) (f) for chemical tests for intoxication, results of a test taken for diagnostic purposes are admissible in an OMVWI trial without patient approval. City of Muskego v. Godec, 167 Wis. 2d 536, 482 N.W.2d 79 (1992).

Dissipation of alcohol in the bloodstream constitutes a sufficient exigency to justify a warrantless blood draw when it is drawn incident to a lawful arrest and there is a clear indication that evidence of intoxication will be found. State v. Bohling, 173 Wis. 2d 529, 494 N.W.2d 399 (1993).

When a municipal court found the defendant guilty of OWI and dismissed a blood alcohol count charge without finding guilt, the defendant's appeal of the OWI conviction under s. 800.14 (1) did not give the circuit court jurisdiction to hear the BAC charge absent an appeal of the dismissal. Town of Menasha v. Bastian, 178 Wis. 2d 191, 503 N.W.2d 382 (Ct. App. 1993).

Prior convictions are an element of sub. (1) (b) and evidence of the convictions is required regardless of potential prejudice. State v. Ludeking, 195 Wis. 2d 132, 536 N.W.2d 392 (Ct. App. 1995), 94-1527.

Failure to timely notify a person of the right to an alternative blood alcohol test does not affect the presumption of the validity of a properly given blood test and is not grounds for suppressing the test results. County of Dane v. Granum, 203 Wis. 2d 252, 551 N.W.2d 859 (Ct. App. 1996), 95-3470.

A request to perform field sobriety tests does not convert an otherwise lawful investigatory stop into an arrest requiring probable cause. County of Dane v. Campshure, 204 Wis. 2d 27, 552 N.W.2d 876 (Ct. App. 1996), 96-0474.

Immobility of a vehicle does not preclude a finding that the vehicle was being operated. Movement is not necessary for operation. State v. Modory, 204 Wis. 2d 538, 555 N.W.2d 399 (Ct. App. 1996), 96-0241.

Criminal prosecution for operating a motor vehicle with a prohibited blood alcohol content subsequent to administrative suspension of a driver's operating privileges does not constitute multiple punishment and double jeopardy. State v. McMaster, 206 Wis. 2d 30, 556 N.W.2d 673 (1996), 95-1159.

Evidence of a refusal that follows an inadequate warning under s. 343.305 (4) violates due process, but admission is subject to harmless error analysis. State v. Schirmang, 210 Wis. 2d 324, 565 N.W.2d 225 (Ct. App. 1997), 96-2008.

A defendant's refusal to submit to a field sobriety test is not protected by the right against self-incrimination and is admissible as evidence. State v. Mallick, 210 Wis. 2d 427, 565 N.W.2d 245 (Ct. App. 1997), 96-3048.

While prior convictions are an element of a violation of sub. (1) (b), admitting evidence of that element may not be proper. Admitting any evidence of prior convictions and submitting the element of the defendant's status as a prior offender to the jury when the defendant admitted to the element was an erroneous exercise of discretion. State v. Alexander, 214 Wis.2d 628, 571 N.W.2d 662 (1997), 96-1973.

Prosecution under both sub. (1) (a) and (b) does not violate double jeopardy because there can only be one conviction and one punishment. Dual prosecution also does not violate due process. State v. Raddeman, 2000 WI App 190, 238 Wis. 2d 628, 618 N.W.2d 258, 00-0143.

A warrantless blood draw is permissible when: 1) the blood is taken to obtain evidence of intoxication from a person lawfully arrested; 2) there is a clear indication that evidence of intoxication will be produced; 3) the method used is reasonable and performed in a reasonable manner; and 4) the arrestee presents no reasonable objection. State v. Thorstad, 2000 WI App 199, 238 Wis. 2d 666, 618 N.W.2d 240, 99-1765.

A department of transportation driving record abstract presented at a preliminary examination to show prior convictions was sufficient to establish probable cause of prior offenses. State v. Lindholm, 2000 WI App 225, 239 Wis. 2d 167, 619 N.W.2d 267, 99-2298.

Sub. (1), operating while intoxicated and with a prohibited alcohol count, is not a lesser included offense of sub. (2) (a), injury-related operating while intoxicated and with a prohibited alcohol count. State v. Smits, 2001 WI App 45, 241 Wis. 2d 374, 626 N.W.2d 42, 00-1158.

That a person agreed to a breath test, but not a blood test, did not render police insistence on a blood test unreasonable. State v. Wodenjak, 2001 WI App 216, 247 Wis. 2d 554, 634 N.W.2d 867, 00-3419.

By consenting to the taking of a blood sample, the defendant also consented to the chemical analysis of the sample. Those are not separate events for warrant requirement purposes. State v. VanLaarhoven, 2001 WI App 275, 248 Wis. 2d 881, 637 N.W.2d 411, 01-0222.

Probation is permitted under s. 973.09 (1) (d) for 4th and subsequent OWI violations, as long as the probation requires confinement for at least the mandatory minimum time period under this section. State v. Eckola, 2001 WI App 295, 249 Wis. 2d 276, 638 N.W.2d 903, 01-1044.

A warrantless nonconsensual blood draw from a person arrested with probable cause for drunk driving is constitutional under the exigent circumstances exception to the warrant requirement of the 4th amendment, even if the person offers to submit to a chemical test other than the blood test chosen by law enforcement, provided that the blood draw complies with the factors enumerated

in *Bohling*. State v. Krajewski, 2002 WI 97, 255 Wis. 2d 98, 648 N.W.2d 385, 99-3165.

The analysis of blood taken in a warrantless nonconsensual draw, constitutional under *Krajewski*, is the examination of evidence obtained pursuant to a valid search and not a second search requiring a warrant. State v. Riedel, 2003 WI App 18, 259 Wis. 2d 921, 656 N.W.2d 789, 02-1772.

Evidence from a warrantless nonconsensual blood draw is admissible when: 1) the blood is drawn to obtain evidence of intoxication from a person lawfully arrested for a drunk-driving related violation; 2) there is a clear indication that the blood draw will produce evidence of intoxication; 3) the method used to take the blood sample is reasonable and performed in a reasonable manner; and 4) the arrestee presents no reasonable objection to the blood draw. In the absence of an arrest, probable cause to believe blood currently contains evidence of a drunk-driving-related violation satisfies the first and second prong. State v. Erickson, 2003 WI App 43, 260 Wis. 2d 279, 659 N.W.2d 407, 01-3367.

A DOT certified driving transcript was admissible evidence that established the defendant's repeater status as an element of the PAC offense beyond a reasonable doubt. State v. Van Riper, 2003 WI App 237, 267 Wis. 2d 759, 672 N.W.2d 156, 03-0385.

The rapid dissipation of alcohol in the bloodstream of an individual arrested for drunk driving is an exigency that justifies the warrantless nonconsensual test of the individual's blood, so long as the test satisfies the 4 factors enumerated in *Bohling*. A presumptively valid chemical sample of the defendant's breath does not extinguish the exigent circumstances justifying a warrantless blood draw. The nature of the evidence sought, (the rapid dissipation of alcohol from the bloodstream) not the existence of other evidence, determines the exigency. State v. Faust, 2004 WI 99, 274 Wis. 2d 183, 682 N.W.2d 371, 03-0952.

Field sobriety tests are not scientific tests but are observational tools that law enforcement officers commonly use to assist them in discerning various indicia of intoxication, the perception of which is necessarily subjective. The procedures an officer employs in determining probable cause for intoxication go to the weight of the evidence, not its admissibility. City of West Bend v. Wilkens, 2005 WI App 36, 278 Wis. 2d 643, 693 N.W.2d 324, 04-1871.

The per se ban on driving or operating a motor vehicle with a detectable amount of a restricted controlled substance in one's blood under sub. (1) (am) bears a reasonable and rational relationship to the goal of regulating the safety of roadways and is not fundamentally unfair such that there is a due process violation, nor does the statute offend principles of equal protection. State v. Smet, 2005 WI App 263, 288 Wis. 2d 525, 709 N.W.2d 474, 05-0690.

A defendant was not operating a vehicle under this section by merely sitting in the driver's seat of a parked vehicle, although the engine was running, when the uncontested evidence showed that the defendant was not the person who left the engine running, had never physically manipulated or activated the controls necessary to put the vehicle in motion, and there was no circumstantial evidence that the defendant recently operated the vehicle, while another person had operated the vehicle. Village of Cross Plains v. Haanstad, 2006 WI 16, 288 Wis. 2d 573, 709 N.W.2d 447, 04-2232.

Weaving within a single traffic lane does not alone give rise to the reasonable suspicion necessary to conduct an investigative stop of a vehicle. The reasonableness of a stop must be determined based on the totality of the facts and circumstances. State v. Post, 2007 WI 60, 301 Wis. 2d 1, 733 N.W.2d 634, 05-2778.

Circumstantial evidence may be used to prove operation of a motor vehicle. While the motor in this case was not running, the keys were in the ignition and the parking and dash lights were on. Even absent a running motor, the jury was entitled to consider the circumstantial evidence to determine how and when the car arrived where it did and whether it was the defendant who operated it. State v. Mertes, 2008 WI App 179, 315 Wis. 2d 756, 762 N.W.2d 813, 07-2757.

Although evidence of intoxicant usage, such as odors, an admission, or containers, ordinarily exists in drunk driving cases and strengthens the existence of probable cause, such evidence is not required. The totality of the circumstances is the test. State v. Lange, 2009 WI 49, 317 Wis. 2d 383, 766 N.W.2d 551, 08-0882.

The legislature meant to make the crime of operating a motor vehicle with a prohibited alcohol concentration (PAC) one that requires a person to have the PAC at the time he or she drove or operated the motor vehicle. A defendant who has two countable OWI convictions at the time of arrest has a BAC limit of 0.08 percent. Accordingly, the state could not properly charge him with a PAC based on a blood alcohol content (BAC) of 0.048 percent. The circuit court properly dismissed the charge of fourth offense PAC although a 3rd OWI conviction was entered subsequent to the arrest. State v. Sowatzke, 2010 WI App 81, 326 Wis. 2d 227, 784 N.W.2d 700, 09-1990.

First offense violations of sub. (1) (a) are assimilated under federal Assimilative Crimes Act when committed on federal enclave. U.S. v. Manning, 700 F. Supp. 1001 (W.D. Wis. 1988).

Offense definition in Wisconsin's impaired driving statutes. Hammer. 69 MLR 165 (1986).

Alcohol and other drugs in Wisconsin drivers: The laboratory perspective. Field. 69 MLR 235 (1986).

Effective use of expert testimony in the defense of drunk driving cases. Olson, WBB December 1981.

The new OMVWI law: Wisconsin changes its approach to the problem of drinking and driving. Hammer, WBB April, May 1982.

Double Jeopardy: A New Tool in the Arsenal of Drunk Driving Defenses. Sines & Ekman. Wis. Law. Dec. 1995.

Wisconsin's New OWI Law. Mishlove & Stuckert. Wis. Law. June 2010.

346.635 Report arrest or out-of-service order to department. Whenever a law enforcement officer arrests a person for a violation of s. 346.63 (1), (5) or (7), or a local ordinance in conformity therewith, or s. 346.63 (2) or (6) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, the officer shall notify the department of the arrest and of issuance of an out-of-service order under s. 343.305 (7) (b) or (9) (am) as soon as practicable.

History: 1981 c. 20; 1989 a. 105.

346.65 Penalty for violating sections 346.62 to 346.64. (1) Except as provided in sub. (5m), any person who violates s. 346.62 (2):

(a) May be required to forfeit not less than $25 nor more than $200, except as provided in par. (b).

(b) May be fined not less than $50 nor more than $500 or imprisoned for not more than one year in the county jail or both if the total of convictions under s. 346.62 (2) or a local ordinance in conformity therewith or a law of a federally recognized American Indian tribe or band in this state in conformity with s. 346.62 (2) equals 2 or more in a 4-year period. The 4-year period shall be measured from the dates of the violations which resulted in the convictions.

(2) (am) Any person violating s. 346.63 (1):

1. Shall forfeit not less than $150 nor more than $300, except as provided in subds. 2. to 5. and par. (f).

2. Except as provided in pars. (bm) and (f), shall be fined not less than $350 nor more than $1,100 and imprisoned for not less than 5 days nor more than 6 months if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions, revocations, and other convictions counted under s. 343.307 (1) within a 10-year period, equals 2, except that suspensions, revocations, or convictions arising out of the same incident or occurrence shall be counted as one.

3. Except as provided in pars. (cm), (f), and (g), shall be fined not less than $600 nor more than $2,000 and imprisoned for not less than 45 days nor more than one year in the county jail if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions, revocations, and other convictions counted under s. 343.307 (1), equals 3, except that suspensions, revocations, or convictions arising out of the same incident or occurrence shall be counted as one.

4. Except as provided in subd. 4m. and pars. (dm), (f), and (g), shall be fined not less than $600 nor more than $2,000 and imprisoned for not less than 60 days nor more than one year in the county jail if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions, revocations, and other convictions counted under s. 343.307 (1), equals 4, except that suspensions, revocations, or convictions arising out of the same incident or occurrence shall be counted as one.

4m. Except as provided in pars. (f) and (g), is guilty of a Class H felony and shall be fined not less than $600 and imprisoned for not less than 6 months if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions, revocations, and other convictions counted under s. 343.307 (1), equals 4 and the person committed an offense that resulted in a suspension, revocation, or other conviction counted under s. 343.307 (1) within 5 years prior to the day of current offense, except that suspensions, revocations, or convictions arising out of the same incident or occurrence shall be counted as one.

5. Except as provided in pars. (f) and (g), is guilty of a Class H felony and shall be fined not less than $600 and imprisoned for not less than 6 months if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions, revocations and other convictions counted under s. 343.307 (1), equals 5 or 6, except that suspensions, revocations or convictions arising out of the same incident or occurrence shall be counted as one.

6. Except as provided in par. (f), is guilty of a Class G felony if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions, revocations, and other convictions counted under s. 343.307 (1), equals 7, 8, or 9, except that suspensions, revocations, or convictions arising out of the same incident or occurrence shall be counted as one. The confinement portion of a bifurcated sentence imposed on the person under s. 973.01 shall be not less than 3 years.

7. Except as provided in par. (f), is guilty of a Class F felony if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions, revocations, and other convictions counted under s. 343.307 (1), equals 10 or more except that suspensions, revocations, or convictions arising out of the same incident or occurrence shall be counted as one. The confinement portion of a bifurcated sentence imposed on the person under s. 973.01 shall be not less than 4 years.

(bm) In any county that opts to offer a reduced minimum period of imprisonment for the successful completion of a probation period that includes alcohol and other drug treatment, if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions, revocations, and other convictions counted under s. 343.307 (1) within a 10-year period, equals 2, except that suspensions, revocations, or convictions arising out of the same incident or occurrence shall be counted as one, the fine shall be the same as under par. (am) 2., but the period of imprisonment shall be not less than 5 days, except that if the person successfully completes a period of probation that includes alcohol and other drug treatment, the period of imprisonment shall be not less than 5 nor more than 7 days. A person may be sentenced under this paragraph or under par. (cm) or (dm) or sub. (2j) (bm), (cm), or (cr) or (3r) once in his or her lifetime.

(cm) In any county that opts to offer a reduced minimum period of imprisonment for the successful completion of a probation period that includes alcohol and other drug treatment, if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions, revocations, and other convictions counted under s. 343.307 (1) equals 3, except that suspensions, revocations, or convictions arising out of the same incident or occurrence shall be counted as one, the fine shall be the same as under par. (am) 3., but the period of imprisonment shall be not less than 45 days, except that if the person successfully completes a period of probation that includes alcohol and other drug treatment, the period of imprisonment shall be not less than 14 days. A person may be sentenced under this paragraph or under par. (bm) or (dm) or sub. (2j) (bm), (cm), or (cr) or (3r) once in his or her lifetime.

(dm) In any county that opts to offer a reduced minimum period of imprisonment for the successful completion of a probation period that includes alcohol and other drug treatment, if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions, revocations, and other convictions counted under s. 343.307 (1) equals 4, and par. (am) 4m. does not apply, except that suspensions, revocations, or convictions arising out of the same incident or occurrence shall be counted as one, the fine shall be the same as under par. (am) 4., but the period of imprisonment shall be not less than 60 days, except that if the person successfully completes a period of probation that includes alcohol and other drug treatment, the period of imprisonment shall be not less than 29 days. A person may be sentenced under this paragraph or under par. (bm) or (cm) or sub. (2j) (bm), (cm), or (cr) or (3r) once in his or her lifetime.

(f) 1. If there was a minor passenger under 16 years of age in the motor vehicle at the time of the violation that gave rise to the conviction under s. 346.63 (1), the person shall be fined not less than $350 nor more than $1,100 and imprisoned for not less than 5 days nor more than 6 months, except as provided in subd. 2.

2. If there was a minor passenger under 16 years of age in the motor vehicle at the time of the violation that gave rise to the conviction under s. 346.63 (1), the applicable minimum and maximum fines and imprisonment under par. (am) 2. to 7. for the conviction are doubled. An offense under s. 346.63 (1) that subjects a person to a penalty under par. (am) 3., 4., 4m., 5., 6., or 7. when there is a minor passenger under 16 years of age in the motor vehicle is a felony and the place of imprisonment shall be determined under s. 973.02.

(g) 1. If a person convicted had an alcohol concentration of 0.17 to 0.199, the applicable minimum and maximum fines under par. (am) 3. to 5. are doubled.

2. If a person convicted had an alcohol concentration of 0.20 to 0.249, the applicable minimum and maximum fines under par. (am) 3. to 5. are tripled.

3. If a person convicted had an alcohol concentration of 0.25 or above, the applicable minimum and maximum fines under par. (am) 3. to 5. are quadrupled.

(2c) In sub. (2) (am) 2., 3., 4., 4m., 5., 6., and 7., the time period shall be measured from the dates of the refusals or violations that resulted in the revocation or convictions. If a person has a suspension, revocation, or conviction for any offense under a local ordinance or a state statute of another state that would be counted under s. 343.307 (1), that suspension, revocation, or conviction shall count as a prior suspension, revocation, or conviction under sub. (2) (am) 2., 3., 4., 4m., 5., 6., and 7.

(2e) If the court determines that a person does not have the ability to pay the costs and fine or forfeiture imposed under sub. (2) (am), (f), or (g), the court may reduce the costs, fine, and

forfeiture imposed and order the person to pay, toward the cost of the assessment and driver safety plan imposed under s. 343.30 (1q) (c), the difference between the amount of the reduced costs and fine or forfeiture and the amount of costs and fine or forfeiture imposed under sub. (2) (am), (f), or (g).

(2g) (a) In addition to the authority of the court under s. 973.05 (3) (a) to provide that a defendant perform community service work for a public agency or a nonprofit charitable organization in lieu of part or all of a fine imposed under sub. (2) (am) 2., 3., 4., 4m., and 5., (f), and (g) and except as provided in par. (ag), the court may provide that a defendant perform community service work for a public agency or a nonprofit charitable organization in lieu of part or all of a forfeiture under sub. (2) (am) 1. or may require a person who is subject to sub. (2) to perform community service work for a public agency or a nonprofit charitable organization in addition to the penalties specified under sub. (2).

(ag) If the court determines that a person does not have the ability to pay a fine imposed under sub. (2) (am) 2., 3., 4., 4m., or 5., (f), or (g), the court shall require the defendant to perform community service work for a public agency or a nonprofit charitable organization in lieu of paying the fine imposed or, if the amount of the fine was reduced under sub. (2e), in lieu of paying the remaining amount of the fine. Each hour of community service performed in compliance with an order under this paragraph shall reduce the amount of the fine owed by an amount determined by the court.

(am) Notwithstanding s. 973.05 (3) (b), an order under par. (a) or (ag) may apply only if agreed to by the organization or agency. The court shall ensure that the defendant is provided a written statement of the terms of the community service order and that the community service order is monitored. Any organization or agency acting in good faith to which a defendant is assigned pursuant to an order under this subsection has immunity from any civil liability in excess of $25,000 for acts or omissions by or impacting on the defendant. The issuance or possibility of the issuance of a community service order under this subsection does not entitle an indigent defendant who is subject to sub. (2) (am) 1. to representation by counsel under ch. 977.

(b) The court may require a person ordered to perform community service work under par. (a) or (ag), or under s. 973.05 (3) (a) if that person's fine resulted from violating s. 346.63 (2), 940.09 (1) or 940.25, to participate in community service work that demonstrates the adverse effects of substance abuse or of operating a vehicle while under the influence of an intoxicant or other drug, including working at an alcoholism treatment facility approved under s. 51.45, an emergency room of a general hospital or a driver awareness program under s. 346.637. The court may order the person to pay a reasonable fee, based on the person's ability to pay, to offset the cost of establishing, maintaining and monitoring the community service work ordered under this paragraph. If the opportunities available to perform community service work are fewer in number than the number of defendants eligible under this subsection, the court shall, when making an order under this paragraph, give preference to defendants who were under 21 years of age at the time of the offense. All provisions of par. (am) apply to any community service work ordered under this paragraph.

(c) If there was a minor passenger under 16 years of age in the motor vehicle or commercial motor vehicle at the time of the violation that gave rise to the conviction, the court may require a person ordered to perform community service work under par. (a) or (ag), under s. 973.05 (3) (a) if that person's fine resulted from violating s. 346.63 (2), (5) (a) or (6) (a), 940.09 (1) or 940.25, or under s. 973.05 (3) (a) if that person's fine resulted from violating s. 346.63 (1) (am) and the motor vehicle that the person was driving or operating was a commercial motor vehicle, to participate in community service work that benefits children or that demonstrates the adverse effects on children of substance abuse or of operating a vehicle while under the influence of an intoxicant or other drug. The court may order the person to pay a reasonable fee, based on the person's ability to pay, to offset the cost of establishing, maintaining and monitoring the community service work ordered under this paragraph.

(d) With respect to imprisonment under sub. (2) (am) 2., the court shall ensure that the person is imprisoned for not less than 5 days or ordered to perform not less than 30 days of community service work under s. 973.03 (3) (a).

(2i) In addition to the authority of the court under sub. (2g) and s. 973.05 (3) (a), the court may order a defendant subject to sub. (2), or a defendant subject to s. 973.05 (3) (a) who violated s. 346.63 (2), 940.09 (1), or 940.25, to visit a site that demonstrates the adverse effects of substance abuse or of operating a vehicle while under the influence of an intoxicant or other drug, including an alcoholism treatment facility approved under s. 51.45 or an emergency room of a general hospital in lieu of part or all of any forfeiture imposed or in addition to any penalty imposed. The court may order the defendant to pay a reasonable fee, based on the person's ability to pay, to offset the costs of establishing, maintaining, and monitoring the visits ordered under this subsection. The court may order a visit to the site only if agreed to by the person responsible for the site. If the opportunities available to visit sites under this subsection are fewer than the number of defendants eligible for a visit, the court shall, when making an order under this subsection, give preference to defendants who were under 21 years of age at the time of the offense. The court shall ensure that the visit is monitored. A visit to a site may be ordered for a specific time and a specific day to allow the defendant to observe victims of vehicle accidents involving intoxicated drivers. If it appears to the court that the defendant has not complied with the court order to visit a site or to pay a reasonable fee, the court may order the defendant to show cause why he or she should not be held in contempt of court. Any organization or agency acting in good faith to which a defendant is assigned pursuant to an order under this subsection has immunity from any civil liability in excess of $25,000 for acts or omissions by or impacting on the defendant. The issuance or possibility of the issuance of an order under this subsection does not entitle an indigent defendant who is subject to sub. (2) (am) 1. to representation by counsel under ch. 977.

(2j) (am) Any person violating s. 346.63 (5):

1. Shall forfeit not less than $150 nor more than $300 except as provided in subd. 2. or 3. or par. (d).

2. Except as provided in pars. (bm) and (d), shall be fined not less than $300 nor more than $1,000 and imprisoned for not less than 5 days nor more than 6 months if the number of prior

convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of other convictions, suspension, and revocations counted under s. 343.307 (2) within a 10-year period, equals 2.

3. Except as provided in pars. (cm), (cr), and (d), shall be fined not less than $600 nor more than $2,000 and imprisoned for not less than 45 days nor more than one year in the county jail if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of other convictions, suspensions, and revocations counted under s. 343.307 (2), equals 3 or more.

(bm) In any county that opts to offer a reduced minimum period of imprisonment for the successful completion of a probation period that includes alcohol and other drug treatment, if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions, revocations, and other convictions counted under s. 343.307 (1) within a 10-year period, equals 2, except that suspensions, revocations, or convictions arising out of the same incident or occurrence shall be counted as one, the fine shall be the same as under par. (am) 2., but the period of imprisonment shall be not less than 5 days, except that if the person successfully completes a period of probation that includes alcohol and other drug treatment, the period of imprisonment shall be not less than 5 nor more than 7 days. A person may be sentenced under this paragraph or under par. (cm) or (cr) or sub. (2) (bm), (cm), or (dm) or (3r) once in his or her lifetime.

(cm) In any county that opts to offer a reduced minimum period of imprisonment for the successful completion of a probation period that includes alcohol and other drug treatment, if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions, revocations, and other convictions counted under s. 343.307 (1) equals 3, except that suspensions, revocations, or convictions arising out of the same incident or occurrence shall be counted as one, the fine shall be the same as under par. (am) 3., but the period of imprisonment shall be not less than 45 days, except that if the person successfully completes a period of probation that includes alcohol and other drug treatment, the period of imprisonment shall be not less than 14 days. A person may be sentenced under this paragraph or under par. (bm) or (cr) or sub. (2) (bm), (cm), or (dm) or (3r) once in his or her lifetime.

(cr) In any county that opts to offer a reduced minimum period of imprisonment for the successful completion of a probation period that includes alcohol and other drug treatment, if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions, revocations, and other convictions counted under s. 343.307 (1) equals 4, and sub. (2) (am) 4m. does not apply, except that suspensions, revocations, or convictions arising out of the same incident or occurrence shall be counted as one, the fine shall be the same as under par. (am) 3., but the period of imprisonment shall be not less than 60 days, except that if the person successfully completes a period of probation that includes alcohol and other drug treatment, the period of imprisonment shall be not less than 29 days. A person may be sentenced under this paragraph or under par. (bm) or (cm) or sub. (2) (bm), (cm), or (dm) or (3r) once in his or her lifetime.

(d) If there was a minor passenger under 16 years of age in the commercial motor vehicle at the time of the violation that gave rise to the conviction under s. 346.63 (5), the applicable minimum and maximum forfeitures, fines, or imprisonment under par. (am) 1., 2., or 3. for the conviction are doubled. An offense under s. 346.63 (5) that subjects a person to a penalty under par. (am) 3. when there is a minor passenger under 16 years of age in the commercial motor vehicle is a felony and the place of imprisonment shall be determined under s. 973.02.

(2m) (a) In imposing a sentence under sub. (2) for a violation of s. 346.63 (1) (am) or (b) or (5) or a local ordinance in conformity therewith, the court shall review the record and consider the aggravating and mitigating factors in the matter. If the amount of alcohol in the person's blood or urine or the amount of a restricted controlled substance in the person's blood is known, the court shall consider that amount as a factor in sentencing. The chief judge of each judicial administrative district shall adopt guidelines, under the chief judge's authority to adopt local rules under SCR 70.34, for the consideration of aggravating and mitigating factors.

(b) The court shall consider a report submitted under s. 85.53 (2) (d) when imposing a sentence under sub. (2), (2q) or (3m).

(2q) Any person violating s. 346.63 (2m) shall forfeit $200. If there was a minor passenger under 16 years of age in the motor vehicle at the time of the violation that gave rise to the conviction under 346.63 (2m), the person shall be fined $400.

(2r) (a) In addition to the other penalties provided for violation of s. 346.63, a judge may order a defendant to pay restitution under s. 973.20.

(b) This subsection is applicable in actions concerning violations of local ordinances in conformity with s. 346.63.

(2u) (a) Any person violating s. 346.63 (7) shall forfeit $10.

(b) Upon his or her arrest for a violation of s. 346.63 (7), a person shall be issued an out-of-service order for a 24-hour period by the arresting officer under s. 343.305 (7) (b) or (9) (am).

(c) If a person arrested for a violation of s. 346.63 (7) refuses to take a test under s. 343.305, the refusal is a separate violation and the person is subject to revocation of the person's operating privilege under s. 343.305 (10) (em).

(2w) In determining the number of prior convictions for purposes of sub. (2j), the court shall count convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus other suspensions, revocations and convictions counted under s. 343.307 (2). Revocations, suspensions and convictions arising out of the same incident or occurrence shall be counted as one. The time period shall be measured from the dates of the refusals or violations which resulted in the revocation, suspension or convictions. If a person has a conviction under s. 940.09 (1) or 940.25 in the person's lifetime, or another suspension, revocation or conviction for any offense that is counted under s. 343.307 (2), that suspension, revocation or conviction shall count as a prior suspension, revocation or conviction under this section.

(3) Except as provided in sub. (5m), any person violating s. 346.62 (3) shall be fined not less than $300 nor more than $2,000 and may be imprisoned for not less than 30 days nor more than one year in the county jail.

(3m) Except as provided in sub. (3p) or (3r), any person violating s. 346.63 (2) or (6) shall be fined not less than $300

nor more than $2,000 and may be imprisoned for not less than 30 days nor more than one year in the county jail. If there was a minor passenger under 16 years of age in the motor vehicle at the time of the violation that gave rise to the conviction under s. 346.63 (2) or (6), the offense is a felony, the applicable minimum and maximum fines or periods of imprisonment for the conviction are doubled and the place of imprisonment shall be determined under s. 973.02.

(3p) Any person violating s. 346.63 (2) or (6) is guilty of a Class H felony if the person has one or more prior convictions, suspensions, or revocations, as counted under s. 343.307 (1). If there was a minor passenger under 16 years of age in the motor vehicle at the time of the violation that gave rise to the conviction under s. 346.63 (2) or (6), the offense is a felony and the applicable maximum fines or periods of imprisonment for the conviction are doubled.

(3r) In any county that opts to offer a reduced minimum period of imprisonment for the successful completion of a probation period that includes alcohol and other drug treatment, any person violating s. 346.63 (2) or (6) shall be fined the same as under sub. (3m), but the period of imprisonment shall be not less than 30 days, except that if the person successfully completes a period of probation that includes alcohol and other drug treatment, the period of imprisonment shall be not less than 15 days. If there was a minor passenger under 16 years of age in the motor vehicle at the time of the violation that gave rise to the conviction under s. 346.63 (2) or (6), the offense is a felony, the applicable minimum and maximum fines or periods of imprisonment for the conviction are doubled and the place of imprisonment shall be determined under s. 973.02. A person may be sentenced under this subsection or under sub. (2) (bm) or (cm) or (2j) (bm) or (cm) once in his or her lifetime. This subsection does not apply to a person sentenced under sub. (3p).

(4) Any person violating s. 346.64 may be fined not less than $50 nor more than $500 or imprisoned not more than 6 months or both.

(4m) Except as provided in sub. (5m), any person violating s. 346.62 (2m) shall forfeit not less than $300 nor more than $1,000.

(4r) (a) If a court imposes a forfeiture under sub. (4m) for a violation of s. 346.62 (2m), the court shall also impose a railroad crossing improvement surcharge under ch. 814 equal to 50% of the amount of the forfeiture.

(b) If a forfeiture is suspended in whole or in part, the railroad crossing improvement surcharge shall be reduced in proportion to the suspension.

(c) If any deposit is made for an offense to which this subsection applies, the person making the deposit shall also deposit a sufficient amount to include the railroad crossing improvement surcharge under this subsection. If the deposit is forfeited, the amount of the railroad crossing improvement surcharge shall be transmitted to the secretary of administration under par. (d). If the deposit is returned, the amount of the railroad crossing improvement surcharge shall also be returned.

(d) The clerk of the circuit court shall collect and transmit to the county treasurer the railroad crossing improvement surcharge as required under s. 59.40 (2) (m). The county treasurer shall then pay the secretary of administration as provided in s. 59.25 (3) (f) 2. The secretary of administration shall deposit all amounts received under this paragraph in the transportation fund to be appropriated under s. 20.395 (2) (gj).

(5) Except as provided in sub. (5m), any person violating s. 346.62 (4) is guilty of a Class I felony.

(5m) If an operator of a vehicle violates s. 346.62 (2) to (4) where persons engaged in work in a highway maintenance or construction area or in a utility work area are at risk from traffic, any applicable minimum and maximum forfeiture or fine specified in sub. (1), (3), (4m) or (5) for the violation shall be doubled.

(7) A person convicted under sub. (2) (am) 2., 3., 4., 4m., 5., 6., or 7. or (2j) (am) 2. or 3. shall be required to remain in the county jail for not less than a 48-consecutive-hour period.

History: 1971 c. 278; 1973 c. 218; 1977 c. 193; 1979 c. 221; 1981 c. 20; 1985 a. 80, 337; 1987 a. 3, 27, 398, 399; 1989 a. 105, 176, 271; 1991 a. 39, 251, 277, 315; 1993 a. 198, 317, 475; 1995 a. 44, 338, 359, 425; 1997 a. 27, 135, 199, 237, 277, 283, 295; 1999 a. 32, 109; 2001 a. 16 ss. 3443k, 4060gm, 4060hw, 4060hy; 2001 a. 109; 2003 a. 33, 97, 139, 326; 2005 a. 149, 317, 389; 2007 a. 97, 111; 2009 a. 100, 180; 2011 a. 258.

Cross-reference: For suspension or revocation of operating privileges upon convictions for OWI see s. 343.30.

Penalty provisions of sub. (2) are mandatory and apply to subsequent violations committed prior to a conviction for the 1st offense. State v. Banks, 105 Wis. 2d 32, 313 N.W.2d 67 (1981).

When the accused was represented by counsel in proceedings leading to the 2nd conviction, but not the first, there was no violation of the right to counsel precluding incarceration for the 2nd conviction since the first offense was a civil forfeiture case. State v. Novak, 107 Wis. 2d 31, 318 N.W.2d 364 (1982).

The state has exclusive jurisdiction over 2nd offense for drunk driving. It is criminal and may not be prosecuted as an ordinance violation. County of Walworth v. Rohner, 108 Wis. 2d 713, 324 N.W.2d 682 (1982).

Under sub. (3), a fine is mandatory but a jail sentence is discretionary. State v. McKenzie, 139 Wis. 2d 171, 407 N.W.2d 274 (Ct. App. 1987).

Probation with a condition of 30-days' confinement in the county jail is inadequate to meet the mandatory imprisonment requirement of sub. (2) (c). State v. Meddaugh, 148 Wis. 2d 204, 435 N.W.2d 269 (Ct. App. 1988).

An OWI conviction in another state need not be under a law with the same elements as the Wisconsin statute to be counted as a prior conviction. State v. White, 177 Wis. 2d 121, 501 N.W.2d 463 (Ct. App. 1993).

A judgment entered in municipal court against a defendant for what is actually a second or subsequent offense is void. The state may proceed against the defendant criminally regardless of whether the judgment in municipal court is vacated. City of Kenosha v. Jensen, 184 Wis. 2d 91, 516 N.W.2d 4 (Ct. App. 1994).

The general requirements for establishing prior criminal offenses in s. 973.12 are not applicable to the penalty enhancement provisions for drunk driving offenses under sub. (2). There is no presumption of innocence accruing to the defendant as to prior convictions, but the accused must have an opportunity to challenge the existence of the prior offense. State v. Wideman, 206 Wis. 2d 91, 556 N.W.2d 737 (1996), 95-0852.

Sub. (2) is primarily a penalty enhancement statute. When a prior conviction is determined to be constitutionally defective, that conviction cannot be relied on for either charging or sentencing a present offense. State v. Foust, 214 Wis. 2d 568, 570 N.W.2d 905 (Ct. App. 1997), 97-0499.

Seizure and forfeiture under sub. (6) of a vehicle used in the commission of the crime is an in rem civil forfeiture to which the constitution's double jeopardy clause is inapplicable. State v. Konrath, 218 Wis. 2d 290, 577 N.W.2d 601 (1998), 96-1261.

The requirement under sub. (6) (k) that a court find a transfer to have been in good faith does not apply to security interests, but the creation of a security interest in a vehicle must be done in good faith in accordance with the Uniform Commercial Code. State v. Frankwick, 229 Wis. 2d 406, 599 N.W.2d 893 (Ct. App. 1999), 98-2484.

A trial court cannot accept guilty pleas to both a second and a third offense OWI, and then apply the increased penalties of third offense OWI to the second offense conviction at sentencing. There must be a conviction before the graduated penalties can be used. State v. Skibinski, 2001 WI App 109, 244 Wis. 2d 229, 629 N.W.2d 12, 00-1278.

A defendant convicted of a second or subsequent OWI is subject to the penalty enhancements provided for in both ss. 346.65 (2) and 939.62, if the application of each enhancer is based on a separate and distinct prior conviction or convictions. State v. Delaney, 2003 WI 9, 259 Wis. 2d 77, 658 N.W.2d 416, 01-1051.

Nothing in sub. (2m) (a) prohibits chief judges from linking the aggravating and mitigating factors with an appropriate sentence within the broader range of

sentences allowed under s. 346.65 when adopting guidelines for their districts. A court may refer to the guidelines when sentencing under s. 346.63 (1) (a), but as the guidelines specifically only apply to s. 343.63 (1) (b) and (5), it is inappropriate for a court to apply the guidelines as the sole basis for its sentence in a s. 346.63 (1) (a) case. That the various judicial districts have different guidelines and defendants may receive different sentences based on where the crime was committed does not make guidelines adopted under sub. (2m) (a) unconstitutional. State v. Jorgensen, 2003 WI 105, 264 Wis. 2d 157, 667 N.W.2d 318, 01-2690.

The proper time to determine the number of a defendant's prior OWI convictions for sentence enhancement purposes is at sentencing, regardless of whether some convictions may have occurred after a defendant committed the present offense. State v. Matke, 2005 WI App 4, 278 Wis. 2d 403, 692 N.W.2d 265, 03-2278.

Although the defendant's Michigan and Wisconsin convictions stemmed from one continuous stint of driving, they arose from two separate incidents — one incident in Michigan and one incident in Wisconsin. Because the extraterritorial jurisdiction exceptions in Wisconsin and Michigan were not applicable to the defendant's separate convictions in Wisconsin and Michigan, each state had jurisdiction only over his act of driving while intoxicated within each state's own boundaries. State v. Holder, 2011 WI App 116, 337 Wis. 2d 79, 803 N.W.2d 82, 09-2952.

When a person is charged under s. 346.63 (1) with a 2nd offense, the charge may not be reduced to a first offense and the court may not sentence under s. 346.65 (2) (a) 1. The department of transportation must treat this as a 2nd offense for purposes of revocation. 69 Atty. Gen. 47.

An uncounseled civil forfeiture conviction may provide the basis for criminal penalties for a subsequent offense. Schindler v. Clerk of Circuit Court, 715 F.2d 341 (1983).

New Law's 'Get Tough' Provisions Fall Short of the Mark. Pangman & Mutschler. Wis. Law. Feb. 1993.

Targeting the Repeat Offender. Emerson & Maasen. Wis. Law. Feb. 1993.

Wisconsin's New OWI Law. Mishlove & Stuckert. Wis. Law. June 2010.

SUBCHAPTER XI

ACCIDENTS AND ACCIDENT REPORTS

346.67 Duty upon striking person or attended or occupied vehicle. (1) The operator of any vehicle involved in an accident resulting in injury to or death of any person or in damage to a vehicle which is driven or attended by any person shall immediately stop such vehicle at the scene of the accident or as close thereto as possible but shall then forthwith return to and in every event shall remain at the scene of the accident until the operator has fulfilled the following requirements:

(a) The operator shall give his or her name, address and the registration number of the vehicle he or she is driving to the person struck or to the operator or occupant of or person attending any vehicle collided with; and

(b) The operator shall, upon request and if available, exhibit his or her operator's license to the person struck or to the operator or occupant of or person attending any vehicle collided with; and

(c) The operator shall render to any person injured in such accident reasonable assistance, including the carrying, or the making of arrangements for the carrying, of such person to a physician, surgeon or hospital for medical or surgical treatment if it is apparent that such treatment is necessary or if such carrying is requested by the injured person.

(2) Any stop required under sub. (1) shall be made without obstructing traffic more than is necessary.

History: 1991 a. 316; 1997 a. 258.

Violation of this section is a felony. State ex rel. McDonald v. Douglas Cty. Cir. Ct. 100 Wis. 2d 569, 302 N.W.2d 462 (1981).

Elements of the duty under this section are discussed. State v. Lloyd, 104 Wis. 2d 49, 310 N.W.2d 617 (Ct. App. 1981).

Failure to stop and render aid to multiple victims of a single accident may result in multiple charges without multiplicity defects arising. State v. Hartnek, 146 Wis. 2d 188, 430 N.W.2d 361 (Ct. App. 1988).

A "person injured" in sub. (1) (c) includes a person who is fatally injured. A subsequent determination of instantaneous death does not absolve a person of the duty to investigate whether assistance is possible. State v. Swatek, 178 Wis. 2d 1, 502 N.W.2d 909 (Ct. App. 1993).

"Accident" in sub. (1) means an unexpected, undesirable event and may encompass intentional conduct. By including intentional conduct within the definition, the reporting requirements do not infringe on the 5th amendment privilege against self-incrimination. State v. Harmon, 2006 WI App 214, 296 Wis. 2d 861, 723 N.W. 2d 732, 05-2480.

"Accident" in the context of sub. (1) includes, at a minimum, the operator's loss of control of the vehicle that results in a collision. Because the defendant's loss of control of the vehicle occurred on the highway, even though the resulting collision occurred off the highway, she was "involved in an accident" "upon a highway" within the meaning of sub. (1) and s. 346.02 (1). State v. Dartez, 2007 WI App 126, 301 Wis. 2d 499, 731 N.W.2d 340, 06-1845.

Sub. (1) requires an operator of a vehicle to identify him or herself as the operator of the vehicle. State v. Wuteska, 2007 WI App 157, 303 Wis. 2d 646, 735 N.W.2d 574, 06-2248.

346.675 Vehicle owner's liability for failing to stop at the scene of an accident. (1) Subject to s. 346.01 (2), the owner of a vehicle operated in the commission of a violation of s. 346.67 (1), 346.68, or 346.69 shall be liable for the violation as provided in this section.

(2) Any person who observes a violation of s. 346.67 (1), 346.68, or 346.69 may, within 24 hours after observing the violation, report the violation to a traffic officer of the county or municipality in which the violation occurred. If possible, the report shall contain the following information:

(a) A description of the violation alleged.

(b) The time and the approximate location at which the violation occurred.

(c) The vehicle registration number and color of all vehicles involved in the violation.

(d) Identification of each vehicle involved in the violation as an automobile, station wagon, motor truck, motor bus, motorcycle, or other type of vehicle.

(e) If the violation included damage to property other than a vehicle, a description of such property.

(3) (a) Within 72 hours after receiving a report containing all of the information in sub. (2), the traffic officer may investigate the violation and, after verifying the information provided under sub. (2) (c) to (e) and determining that there is probable cause to believe that a violation of s. 346.67 (1), 346.68, or 346.69 has occurred, may prepare a uniform traffic citation under s. 345.11 and personally serve it upon the owner of the vehicle being operated in the commission of the violation of s. 346.67 (1), 346.68, or 346.69.

(b) If with reasonable diligence the owner specified in par. (a) cannot be served under par. (a), service may be made by leaving a copy of the citation at the owner's usual place of abode within this state in the presence of a competent member of the family at least 14 years of age, who shall be informed of the contents thereof.

(c) If with reasonable diligence the owner specified in par. (a) cannot be served under par. (a) or (b) or if the owner specified in par. (a) lives outside of the jurisdiction of the issuing authority, service may be made by certified mail addressed to the owner's last-known address.

(4) (a) Except as provided in par. (b), it shall be no defense to a violation of this section that the owner was not operating the vehicle at the time of the violation.

(b) The following are defenses to a violation of this section:

1. That a report that the vehicle was stolen was given to a traffic officer before the violation occurred or within a reasonable time after the violation occurred.

2. If the owner of the vehicle, including a lessee specified in subd. 3., or a person on a trial run specified in subd. 4. provides a traffic officer with the name and address of the person operating the vehicle at the time of the violation and sufficient information for the officer to determine that probable cause does not exist to believe that the owner of the vehicle was operating the vehicle at the time of the violation, then the person operating the vehicle shall be charged under s. 346.67 (1), 346.68, or 346.69 and the owner, including a lessee, or person on a trial run shall not be charged under this section.

3. Subject to subd. 2., if the vehicle is owned by a lessor of vehicles and at the time of the violation the vehicle was in the possession of a lessee, and the lessor provides a traffic officer with the information required under s. 343.46 (3), then the lessee and not the lessor shall be charged under this section.

4. Subject to subd. 2., if the vehicle is owned by a dealer as defined in s. 340.01 (11) (intro.) but including the persons specified in s. 340.01 (11) (a) to (d), and at the time of the violation the vehicle was being operated by any person on a trial run, and if the dealer provides a traffic officer with the name, address, and operator's license number of the person authorized to operate the vehicle on the trial run, then this person, and not the dealer, shall be charged under this section.

5. That another person has been convicted under s. 346.67 (1), 346.68, or 346.69 for the violation of s. 346.67 (1), 346.68, or 346.69 specified in sub. (1).

History: 2005 a. 411.

346.68 Duty upon striking unattended vehicle. The operator of any vehicle which collides with any vehicle which is unattended shall immediately stop and either locate and notify the operator or owner of such vehicle of the name and address of the operator and owner of the vehicle striking the unattended vehicle or leave in a conspicuous place in the vehicle struck, a written notice giving the name and address of the operator and of the owner of the vehicle doing the striking and a statement of the circumstances thereof. Any such stop shall be made without obstructing traffic more than is necessary.

History: 1997 a. 258.

A driver's knowledge of a collision with an unattended vehicle need not be proved under this section. 68 Atty. Gen. 274.

346.69 Duty upon striking property on or adjacent to highway. The operator of any vehicle involved in an accident resulting only in damage to fixtures or other property legally upon or adjacent to a highway shall take reasonable steps to locate and notify the owner or person in charge of such property of such fact and of the operator's name and address and of the registration number of the vehicle the operator is driving and shall upon request and if available exhibit his or her operator's license and shall make report of such accident when and as required in s. 346.70.

History: 1991 a. 316.

346.70 Duty to report accident; assistance following accident. **(1)** IMMEDIATE NOTICE OF ACCIDENT. The operator or occupant of a vehicle involved in an accident resulting in injury to or death of any person, any damage to state or other government-owned property, except a state or other government-owned vehicle, to an apparent extent of $200 or more, or total damage to property owned by any one person or to a state or other government-owned vehicle to an apparent extent of $1,000 or more shall immediately by the quickest means of communication give notice of such accident to the police department, the sheriff's department or the traffic department of the county or municipality in which the accident occurred or to a state traffic patrol officer. In this subsection, "injury" means injury to a person of a physical nature resulting in death or the need of first aid or attention by a physician or surgeon, whether or not first aid or medical or surgical treatment was actually received; "total damage to property owned by one person" means the sum total cost of putting the property damaged in the condition it was before the accident, if repair thereof is practical, and if not practical, the sum total cost of replacing such property. For purposes of this subsection if any property which is damaged is held in a form of joint or multiple ownership, the property shall be considered to be owned by one person.

(1m) LAW ENFORCEMENT CONTACT AND INVOLVEMENT FOLLOWING AN ACCIDENT. (a) 1. No person in the business of towing, recovery, or repair of motor vehicles may contract for retrieval, recovery, or removal from the scene of a traffic accident described in sub. (1) of any motor vehicle that has sustained damage unless the person notifies, or has been contacted by, a law enforcement agency prior to retrieval, recovery, or removal of the vehicle.

2. This paragraph does not apply with respect to removal of a motor vehicle from the roadway at the scene of an accident if such removal is necessary to avoid imminent danger to motorists or other persons.

(b) No person may knowingly assist an operator or occupant of a motor vehicle involved in an accident as described in sub. (1) to flee the scene of the accident unless the accident has, or the person is advised that the accident has, first been reported to a law enforcement agency, except to provide medical assistance.

(2) WRITTEN REPORT OF ACCIDENT. Unless a report is made under sub. (4) by a law enforcement agency, within 10 days after an accident of the type described in sub. (1), the operator of a vehicle involved in the accident shall forward a written report of the accident to the department. The department may accept or require a report of the accident to be filed by an occupant or the owner in lieu of a report from the operator. Every accident report required to be made in writing shall be made on the appropriate form approved by the department and shall contain all of the information required therein unless not available. The report shall include information sufficient to enable the department to determine whether the requirements for deposit of security under s. 344.14 are inapplicable by reason of the existence of insurance or other exceptions specified in ch. 344.

(3) WHO TO REPORT WHEN OPERATOR UNABLE. Whenever the operator of a vehicle is physically incapable of giving the notice and making the report required by subs. (1) and (2), the owner of the vehicle involved in the accident shall give the notice and make the report required by subs. (1) and (2). If the owner of the vehicle is physically or mentally incapable of making the report required by sub. (2), and if there was another

occupant in the vehicle at the time of the accident capable of making the report, the occupant shall make the report.

(3m) DUTY OF DEPARTMENT WITH RESPECT TO ACCIDENT REPORTS. (a) The department may require any operator, occupant or owner of a vehicle involved in an accident of which report must be made as provided in this section to file supplemental reports whenever the original report is insufficient in the opinion of the department and may require witnesses of accidents to render reports to the department.

(b) The department shall tabulate and may analyze all accident reports and shall publish annually or at more frequent intervals statistical information based thereon as to the number and circumstances of traffic accidents.

(c) The department shall prepare and supply at its own expense to police departments, coroners, sheriffs and other suitable agencies or individuals, forms or an automated format for accident reports required to be made to the department. Any report forms and automated format shall call for sufficiently detailed information to disclose with reference to a traffic accident the cause, conditions then existing, and the persons and vehicles involved.

(4) POLICE AND TRAFFIC AGENCIES TO REPORT. (a) Every law enforcement agency investigating or receiving a report of a traffic accident as described in sub. (1) shall forward an original written report of the accident or a report of the accident in an automated format to the department within 10 days after the date of the accident.

(b) The reports shall be made on a uniform traffic accident report form or in an automated format prescribed by the secretary. The uniform traffic accident report form shall be supplied by the secretary in sufficient quantities to meet the requirements of the department and the law enforcement agency.

(f) Notwithstanding s. 346.73, any person may with proper care, during office hours, and subject to such orders or regulations as the custodian thereof prescribes, examine or copy such uniform traffic accident reports, including supplemental or additional reports, statements of witnesses, photographs and diagrams, retained by local authorities, the state traffic patrol or any other investigating law enforcement agency.

(g) The department, upon request of local enforcement agencies, shall make available to them compilations of data obtained from such reports.

(h) Every law enforcement agency investigating or receiving a report of a traffic accident as described in sub. (1) shall forward a copy of the report of the accident to the county traffic safety commission or to the person designated to maintain spot maps under s. 83.013 (1) (a) in the county where the accident occurred when the accident occurred on a county or town road or on a street where the population of the city, village or town is less than 5,000. For traffic accidents occurring within a city or village with a population of 5,000 or more, the law enforcement agency investigating or receiving a report shall forward a copy of the report of the accident to the city or village where the accident occurred.

(i) Whenever a law enforcement officer investigates or receives a report of a traffic accident subject to sub. (1), in which the operator of any vehicle involved in the accident displays a driver's license issued by the federal department of state or otherwise claims immunities or privileges under 22 USC 254a to 258a with respect to the operator's violation of any state traffic law or any local traffic law enacted by any local authority in accordance with s. 349.06, the officer shall do all of the following:

1. As soon as practicable, contact the diplomatic security command center of the office of foreign missions, diplomatic motor vehicle office, within the federal department of state, to verify the status and immunity, if any, of the driver claiming diplomatic immunity.

2. Within 10 days after the date of the accident, forward a copy of the report of the accident, at no charge, to the diplomatic security command center of the office of foreign missions, diplomatic motor vehicle office, within the federal department of state.

(5) FALSIFYING REPORTS. No person shall falsely make and file or transmit any accident report or knowingly make a false statement in any accident report which is filed or transmitted pursuant to this section.

History: 1975 c. 240, 381; 1977 c. 29 ss. 1486, 1654 (7) (a), (c); 1977 c. 100; 1979 c. 99; 1981 c. 20, 133, 314; 1985 a. 29; 1987 a. 211; 1993 a. 246, 437; 1995 a. 113; 2001 a. 27; 2005 a. 253; 2009 a. 276; 2011 a. 256.

Cross-reference: See also ch. Trans 100, Wis. adm. code.

Items subject to examination under s. 346.70 (4) (f) may not be withheld by the prosecution under the common law rule that investigative material may be withheld from a criminal defendant. State ex rel. Young v. Shaw, 165 Wis. 2d 276, 477 N.W.2d 340 (Ct. App. 1991).

A county sheriff's department is not a consumer reporting agency subject to the fair credit reporting act for reports under sub. (4). However, the federal trade commission has taken an opposite position. 63 Atty. Gen. 364.

346.71 Coroners or medical examiners to report; require blood specimen. (1) Every coroner or medical examiner shall, on or before the 10th day of each month, report in writing any accident involving a motor vehicle occurring within the coroner's or medical examiner's jurisdiction resulting in the death of any person during the preceding calendar month. If the accident involved an all-terrain vehicle or utility terrain vehicle, the report shall be made to the department of natural resources and shall include the information specified by that department. If the accident involved any other motor vehicle, the report shall be made to the department and shall include the information specified by the department. The coroner or medical examiner of the county where the death occurs, if the accident occurred in another jurisdiction, shall, immediately upon learning of the death, report it to the coroner or medical examiner of the county where the accident occurred, as provided in s. 979.01 (1).

(2) In cases of death involving a motor vehicle in which the decedent was the operator of a motor vehicle, a pedestrian 14 years of age or older or a bicycle or electric personal assistive mobility device operator 14 years of age or older and who died within 6 hours of the time of the accident, the coroner or medical examiner of the county where the death occurred shall require that a blood specimen of at least 10 cc. be withdrawn from the body of the decedent within 12 hours after his or her death, by the coroner or medical examiner or by a physician so designated by the coroner or medical examiner or by a qualified person at the direction of the physician. All funeral directors shall obtain a release from the coroner or medical examiner of the county where the accident occurred as provided in s. 979.01 (4) prior to proceeding with embalming any body coming under the scope of this section. The blood so drawn shall be forwarded to a laboratory approved by the department of health

services for analysis of the alcoholic content of the blood specimen. The coroner or medical examiner causing the blood to be withdrawn shall be notified of the results of each analysis made and shall forward the results of each such analysis to the department of health services. If the death involved a motor vehicle, the department shall keep a record of all such examinations to be used for statistical purposes only and the department shall disseminate and make public the cumulative results of the examinations without identifying the individuals involved. If the death involved an all-terrain vehicle or utility terrain vehicle, the department of natural resources shall keep a record of all such examinations to be used for statistical purposes only and the department of natural resources shall disseminate and make public the cumulative results of the examinations without identifying the individuals involved.

(3) In a case of death involving a motor vehicle in which the accident and the death occur in different counties, the county where the death occurs may charge the county where the accident occurs a reasonable fee for withdrawing the blood specimen from the body of the decedent as required under sub. (2).

History: 1973 c. 272; 1977 c. 29 s. 1654 (7) (a); 1977 c. 273; 1983 a. 485; 1985 a. 29; 1987 a. 302; 1995 a. 27 s. 9126 (19); 2001 a. 90; 2007 a. 20 s. 9121 (6) (a); 2011 a. 208.

Coroners' blood test records under sub. (2) are not confidential. Test results are presumptively accurate. Staples v. Glienke, 142 Wis. 2d 19, 416 N.W.2d 920 (Ct. App. 1987).

346.74 Penalty for violating sections 346.67 to 346.73. (1) Any person violating s. 346.72 may be required to forfeit not less than $20 nor more than $40 for the first offense and may be required to forfeit not less than $50 nor more than $100 for the 2nd or subsequent conviction within a year.

(2) Any person violating s. 346.70 (2) or (3), 346.71 or 346.73 may be required to forfeit not less than $40 nor more than $200 for the first offense and may be required to forfeit not less than $100 nor more than $500 for the 2nd or subsequent conviction within a year.

(2g) Any operator of a vehicle, and any occupant of a vehicle who is at least 16 years of age, who violates s. 346.70 (1) may be required to forfeit not less than $200 nor more than $500 for the first offense and may be required to forfeit not less than $300 nor more than $500 for the 2nd or subsequent conviction within a year.

(2r) Any person violating s. 346.70 (1m) may be required to forfeit not less than $40 nor more than $200.

(3) Any person violating s. 346.68 or 346.69 may be required to forfeit not more than $200.

(4) Any person violating s. 346.70 (5) may be required to forfeit not less than $25 nor more than $50.

(5) Any person violating any provision of s. 346.67 (1):

(a) Shall be fined not less than $300 nor more than $1,000 or imprisoned not more than 6 months or both if the accident did not involve death or injury to a person.

(b) May be fined not more than $10,000 or imprisoned for not more than 9 months or both if the accident involved injury to a person but the person did not suffer great bodily harm.

(c) Is guilty of a Class E felony if the accident involved injury to a person and the person suffered great bodily harm.

(d) Is guilty of a Class D felony if the accident involved death to a person.

(e) Is guilty of a felony if the accident involved death or injury to a person.

(6) (a) A vehicle owner or other person found liable under s. 346.675 with respect to a violation of s. 346.67 (1) may be required to forfeit not more than $1,000.

(b) A vehicle owner or other person found liable under s. 346.675 with respect to a violation of s. 346.68 or 346.69 may be required to forfeit not more than $100.

(c) Imposition of liability under s. 346.675 shall not result in suspension or revocation of a person's operating privilege under s. 343.30 or 343.31, nor shall it result in demerit points being recorded on a person's driving record under s. 343.32 (2) (a).

History: 1971 c. 278; 1973 c. 218; 1981 c. 20, 70; 1997 a. 258, 283; 2001 a. 109; 2003 a. 74; 2005 a. 411; 2011 a. 256.

Although sub. (5) (b) establishes a maximum of 9 months' imprisonment for a violation of s. 346.67 (1) when the accident involves injury to a person but not great bodily harm, and offenses punishable by a maximum period of incarceration of less than one year are ordinarily classified as misdemeanors under ss. 939.60 and 973.02, sub. (5) (e) states that a violation of s. 346.67 (1) is "a felony if the accident involved death or injury to a person." Any inconsistency is resolved by the principle that when two statutes relate to the same subject matter, the more specific language controls, in this case the language providing that the offense is a felony. State v. Brandt, 2009 WI App 115, 321 Wis. 2d 84, 772 N.W.2d 674, 08-0550.

SUBCHAPTER XIII

MISCELLANEOUS RULES

346.89 Inattentive driving. (1) No person while driving a motor vehicle shall be so engaged or occupied as to interfere with the safe driving of such vehicle.

(2) No person shall drive any motor vehicle equipped with any device for visually receiving a television broadcast when such device is located in the motor vehicle at any point forward of the back of the operator's seat or when such device is visible to the operator while driving the motor vehicle.

(3) (a) No person may drive, as defined in s. 343.305 (1) (b), any motor vehicle while composing or sending an electronic text message or an electronic mail message.

(b) This subsection does not apply to any of the following:

1. The operator of an authorized emergency vehicle.

2. The use of any device whose primary function is transmitting and receiving emergency alert messages and messages related to the operation of the vehicle or an accessory that is integrated into the electrical system of a vehicle, including a global positioning system device.

3. An amateur radio operator who holds a valid amateur radio operator's license issued by the federal communications commission when he or she is using dedicated amateur radio 2-way radio communication equipment and observing proper amateur radio operating procedures.

4. The use of a voice-operated or hands-free device if the driver of the motor vehicle does not use his or her hands to operate the device, except to activate or deactivate a feature or function of the device.

(4) Subject to sub. (3), no person who holds a probationary license issued under s. 343.085, or an instruction permit issued under s. 343.07, may drive, as defined in s. 343.305 (1) (b), any

motor vehicle while using a cellular or other wireless telephone, except to report an emergency.

History: 2009 a. 220; 2011 a. 164.

346.922 Transporting children in cargo areas of motor trucks. (1) Notwithstanding s. 346.92, no person may operate upon a highway a motor truck having a gross weight of 10,000 pounds or less when any child under the age of 16 years is in an open cargo area of the motor truck.

(2) Subsection (1) does not apply to any of the following:

(a) A person operating a farm truck in conjunction with farm operations.

(b) A person operating a motor truck in a parade sanctioned by a local municipality.

(c) A person operating a motor truck for the purpose of transporting licensed deer hunters during the authorized deer hunting season with firearms.

History: 1995 a. 420.

This section is a safety statute intended to prevent any and all harms that could result from a child being transported in the open cargo area of a vehicle, including those resulting from a child's immature decision to jump from the cargo area of a moving vehicle. A destaging area of a parade falls under the exception under sub. (2) (b) for parades sanctioned by local municipalities. Nunez v. American Family Mutual Insurance, 2003 WI App 35, 260 Wis. 2d 377, 659 N.W.2d 171, 02-1041.

346.93 Intoxicants in vehicle; underage persons. (1) No underage person, as defined under s. 125.02 (20m), may knowingly possess, transport, or have under his or her control any alcohol beverage in any motor vehicle unless the person is employed by a brewer, brewpub, alcohol beverage licensee, wholesaler, retailer, distributor, manufacturer, or rectifier and is possessing, transporting, or having such beverage in a motor vehicle under his or her control during his or her working hours and in the course of employment, as provided under s. 125.07 (4) (bm).

(2) In addition to any other penalty prescribed by law, any violation of this section by an underage person driving or operating or on duty time with respect to a commercial motor vehicle shall be punished under s. 346.65 (2u).

(2f) Except as provided in sub. (2g), any person violating this section may have his or her operating privilege suspended under s. 343.30 (6) (b) 1.

(2g) Any person violating this section may be required to forfeit not less than $20 nor more than $400 and shall have his or her operating privilege:

(a) For a violation committed within 12 months of one previous violation, suspended under s. 343.30 (6) (b) 2.

(b) For a violation committed within 12 months of 2 or more previous violations, suspended under s. 343.30 (6) (b) 3.

History: 1971 c. 213 s. 5; 1983 a. 74; 1985 a. 28; 1989 a. 105; 1999 a. 109; 2007 a. 20.

346.935 Intoxicants in motor vehicles. (1) No person may drink alcohol beverages or inhale nitrous oxide while he or she is in any motor vehicle when the vehicle is upon a highway.

(2) No person may possess on his or her person, in a privately owned motor vehicle upon a public highway, any bottle or receptacle containing alcohol beverages or nitrous oxide if the bottle or receptacle has been opened, the seal has been broken or the contents of the bottle or receptacle have been partially removed or released.

(3) The owner of a privately owned motor vehicle, or the driver of the vehicle if the owner is not present in the vehicle, shall not keep, or allow to be kept in the motor vehicle when it is upon a highway any bottle or receptacle containing alcohol beverages or nitrous oxide if the bottle or receptacle has been opened, the seal has been broken or the contents of the bottle or receptacle have been partially removed or released. This subsection does not apply if the bottle or receptacle is kept in the trunk of the vehicle or, if the vehicle has no trunk, in some other area of the vehicle not normally occupied by the driver or passengers. A utility compartment or glove compartment is considered to be within the area normally occupied by the driver and passengers.

(4) (a) In this subsection:

1. "Chauffeur" means a person employed full time or on a regular basis, including leased drivers, for the principal purpose of operating a motor vehicle.

2. "Limousine" means any motor vehicle for charter or hire which is operated by a chauffeur and designed for transporting persons rather than property.

(b) This section does not apply to passengers in a limousine or in a motor bus who possess any bottle or receptacle containing alcohol beverages that has been opened, on which the seal has been broken or the contents of which have been partially removed or released if the vehicle is operated by a chauffeur holding a valid license and endorsements authorizing operation of the vehicle as provided in ch. 343 and is in compliance with any local ordinance or regulation adopted under s. 349.24.

(5) In addition to any other penalty prescribed by law, any violation of this section by an operator of a commercial motor vehicle shall be punished under s. 346.65 (2u).

History: 1975 c. 297 s. 16; Stats. 1975 s. 346.935; 1981 c. 20; 1981 c. 79 s. 17; 1983 a. 535; 1985 a. 332 s. 253; 1989 a. 105; 1997 a. 336.

346.95 Penalty for violating sections 346.87 to 346.94. (1) Any person violating s. 346.87, 346.88, 346.89 (2) or (4), 346.90 to 346.92 or 346.94 (1), (9), (10), (11), (12) or (15) may be required to forfeit not less than $20 nor more than $40 for the first offense and not less than $50 nor more than $100 for the 2nd or subsequent conviction within a year.

(2) Any person violating s. 346.89 (1) or (3) (a) or 346.94 (2), (4), or (7) may be required to forfeit not less than $20 nor more than $400.

(2m) Any person violating s. 346.935 may be required to forfeit not more than $100.

(3) Any person violating s. 346.94 (5) or (14) shall be required to forfeit $50 for each offense.

(4) Any person violating s. 346.923, 346.925, or 346.94 (8), (8m), or (8s) may be required to forfeit not more than $20 for the first offense and not more than $50 for each subsequent offense.

(5) Any person violating s. 346.94 (13) or (21) may be required to forfeit not more than $200.

(5e) Any person violating s. 346.94 (16) may be required to forfeit not less than $40 nor more than $80 for the first offense and not less than $100 nor more than $200 for the 2nd or subsequent conviction within a year.

(5g) A vehicle owner or other person found liable under s. 346.945 may be required to forfeit not less than $40 nor more

than $80 for the first offense and not less than $100 nor more than $200 for the 2nd or subsequent conviction within a year. Imposition of liability under s. 346.945 shall not result in suspension or revocation of a person's operating license under s. 343.30, nor shall it result in demerit points being recorded on a person's driving record under s. 343.32 (2) (a).

(6) Any person violating s. 346.94 (17) or (18) may be required to forfeit not less than $10 nor more than $20 for the first offense and not less than $25 nor more than $50 for the 2nd or subsequent conviction within a year.

(7) Any person violating s. 346.922 may be required to forfeit not less than $10 nor more than $25 for the first offense and not less than $25 nor more than $200 for a 2nd or subsequent conviction within 3 years.

(8) Any person violating s. 346.94 (19) may be required to forfeit not less than $30 nor more than $300.

(9) Any person violating s. 346.924 may be required to forfeit not less than $500 nor more than $5,000. Each violation constitutes a separate offense.

(10) (a) Any person who violates s. 346.94 (20) (b) and any person 16 years of age or older who violates s. 346.94 (20) (a) may be required to forfeit not less than $20 nor more than $40 for the first offense and not less than $50 nor more than $100 for the 2nd or subsequent conviction within a year.

(b) No forfeiture may be assessed for a violation of s. 346.94 (20) (a) if the violator is less than 16 years of age when the offense occurs.

(11) Any person violating s. 346.94 (22) (c) or (d) may be required to forfeit not more than $200.

History: 1971 c. 278; 1973 c. 182, 314, 336; 1975 c. 297, 320; 1977 c. 68; 1983 a. 56, 175, 538; 1989 a. 335 s. 89; 1991 a. 83; 1993 a. 260, 455; 1995 a. 194, 373, 420; 1999 a. 109; 2001 a. 90; 2003 a. 192, 297, 327; 2005 a. 250; 2009 a. 22, 157, 220, 311; 2011 a. 164.

CHAPTER 347

EQUIPMENT OF VEHICLES

Cross-reference: See also ch. Trans 305, Wis. adm. code.

SUBCHAPTER I

GENERAL PROVISIONS

347.01 Words and phrases defined. Words and phrases defined in s. 340.01 are used in the same sense in this chapter unless a different definition is specifically provided.

SUBCHAPTER III

OTHER EQUIPMENT

347.38 Horns and warning devices. (1) No person shall operate a motor vehicle upon a highway unless such motor vehicle is equipped with a horn in good working order and capable of emitting sound audible under normal conditions from a distance of not less than 200 feet, but no person shall at any time use a horn otherwise than as a reasonable warning or make any unnecessary or unreasonably loud or harsh sound by means of a horn or other warning device.

(2) Except as otherwise provided in this section, no vehicle shall be equipped with nor shall any person use upon a vehicle any siren or compression or exhaust whistle.

(3) Any vehicle may be equipped with a theft alarm signal device if such device is so arranged that it cannot be used by the driver as an ordinary warning signal.

(4) An authorized emergency vehicle shall be equipped with a siren, but such siren shall not be used except when such vehicle is operated in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the law, when responding to but not upon returning from a fire alarm, when transporting an organ for human transplantation, or when transporting medical personnel for the purpose of performing human organ harvesting or transplantation immediately after the transportation, in which events the driver of such vehicle shall sound the siren when reasonably necessary to warn pedestrians and other drivers.

Cross-reference: See also ss. Trans 305.25 and 305.41, Wis. adm. code.
History: 2007 a. 20.

347.413 Ignition interlock device tampering; failure to install. (1) No person may remove, disconnect, tamper with, or otherwise circumvent the operation of an ignition interlock device installed in response to the court order under s. 346.65 (6), 1999 stats., or s. 343.301 (1), 2007 stats., or s. 343.301 (1g), or fail to have the ignition interlock device installed as ordered by the court. This subsection does not apply to the removal of an ignition interlock device upon the expiration of the order requiring the motor vehicle to be so equipped or to necessary repairs to a malfunctioning ignition interlock device by a person authorized by the department.

(3) The department shall design a warning label which shall be affixed to each ignition interlock device upon installation. The label shall provide notice of the penalties for tampering with or circumventing the operation of the ignition interlock device under sub. (1) and s. 343.10 (5) (a) 3.

History: 1991 a. 277; 1993 a. 213; 1999 a. 109; 2001 a. 16 ss. 3445f, 3445g, 4060hd, 4060hw, 4060hy; 2009 a. 100, 121.

347.43 Safety glass. (1g) In this section, "safety glass" means glass so treated or combined with other materials as to reduce, in comparison with ordinary sheet glass or plate glass, the likelihood of injury to persons by objects from external sources or by such glass when it is struck, cracked or broken.

(1s) No person may operate upon a highway any motor vehicle manufactured after January 1, 1936, except a recreational vehicle other than a 5th-wheel recreational vehicle, unless the motor vehicle is equipped with safety glass wherever glass is used on the motor vehicle in partitions, doors, windows or windshields.

(2) No person may sell any new motor vehicle unless such vehicle is equipped with safety glass in accordance with the requirements of sub. (1s).

(4) If a common carrier or person operating under a permit or certificate issued by the department is convicted of operating a vehicle in violation of this section, the department may suspend or revoke the permit or certificate until such time as the vehicle has been equipped with safety glass as required by this section.

History: 1977 c. 29 s. 1654 (9) (f); 1981 c. 347; 1985 a. 187; 1993 a. 16; 1999 a. 85; 2007 a. 60.

Cross-reference: See also ss. Trans 305.32 and 305.34, Wis. adm. code.

Sub. (1) [now sub. (1s)] requires that whenever broken glass is replaced in a vehicle it must be replaced with safety glass. Replacing glass with plastic violated this section, and an officer observing a vehicle with replacement plastic had probable cause to stop the vehicle for a violation of this section. State v. Longcore, 2001 WI App 15, 240 Wis. 2d 429, 623 N.W.2d 201, 00-1171.

347.48 Safety belts and child safety restraint systems. (1) SAFETY BELTS REQUIRED. (a) No person may buy, sell, lease, trade or transfer a motor vehicle other than an automobile at retail from or to Wisconsin residents unless the vehicle is equipped with safety belts installed for use as

required under 49 CFR 571, and no such vehicle may be operated in this state unless such belts remain installed.

(b) No person may buy, sell, lease, trade or transfer an automobile that is required under 49 CFR 571 to be equipped with safety belts from or to a resident of this state unless the front designated seating positions of the automobile are equipped with safety belts installed for use as required under 49 CFR 571 and unless each rear outboard designated seating position of the automobile is equipped with a safety belt consisting of a combination of a pelvic and upper torso restraint that conforms to standards for a Type 2 seat belt assembly under 49 CFR 571.209, and no automobile may be operated in this state unless such belts remain installed. Nothing in this section applies to antique reproductions.

(2) TYPE AND MANNER OF INSTALLING. All such safety belts must be of a type and must be installed in a manner approved by the department. The department shall establish specifications and requirements for approved types of safety belts and attachments thereto. The department will accept, as approved, all seat belt installations and the belt and anchor meeting the society of automotive engineers' specifications.

(2m) REQUIRED USE. (a) In this subsection, "properly restrained" means wearing a safety belt approved by the department under sub. (2) and fastened in a manner prescribed by the manufacturer of the safety belt which permits the safety belt to act as a body restraint.

(b) If a motor vehicle is required to be equipped with safety belts in this state, no person may operate that motor vehicle unless the person is properly restrained in a safety belt.

(c) If a motor vehicle is required to be equipped with safety belts in this state, no person may operate that motor vehicle unless each passenger who is at least 8 years old and who is seated at a designated seating position in the front seat required under 49 CFR 571 to have a safety belt installed or at a designated seating position in the seats, other than the front seats, for which a safety belt is required to be installed is properly restrained.

(d) If a motor vehicle is required to be equipped with safety belts in this state, no person who is at least 8 years old and who is seated at a designated seating position in the front seat required under 49 CFR 571 to have a safety belt installed or at a designated seating position in the seats, other than the front seats, for which a safety belt is required to be installed may be a passenger in that motor vehicle unless the person is properly restrained.

(dm) Paragraphs (b), (c) and (d) do not apply to the operation of an authorized emergency vehicle by a law enforcement officer or other authorized operator under circumstances in which compliance could endanger the safety of the operator or another.

(dr) Paragraph (b) does not apply to the operator of a vehicle while on a route which requires the operator to make more than 10 stops per mile involving an exit from the vehicle in the scope of his or her employment. Paragraphs (c) and (d) do not apply to a passenger while on a route which requires the passenger to make more than 10 stops per mile involving an exit from the vehicle in the scope of his or her employment.

(e) The department shall, by rule, exempt from the requirements under pars. (b) to (d) persons who, because of a physical or medical condition, cannot be properly restrained in a safety belt.

Cross-reference: See also ch. Trans 315, Wis. adm. code.

(f) 1. This subsection does not apply if the motor vehicle is a taxicab or is not required to be equipped with safety belts under sub. (1) or 49 CFR 571.

2. This subsection does not apply to a privately owned motor vehicle while being operated by a rural letter carrier for the delivery of mail or while being operated by a delivery person for the delivery of newspapers or periodicals.

3. This subsection does not apply to a motor vehicle while being operated by a land surveying crew while conducting a land survey along or upon the highway.

7. This subsection does not apply to a farm truck or dual purpose farm truck while being used in conjunction with the planting or harvesting of crops and not being operated upon the highway.

(g) Evidence of compliance or failure to comply with par. (b), (c) or (d) is admissible in any civil action for personal injuries or property damage resulting from the use or operation of a motor vehicle. Notwithstanding s. 895.045, with respect to injuries or damages determined to have been caused by a failure to comply with par. (b), (c) or (d), such a failure shall not reduce the recovery for those injuries or damages by more than 15%. This paragraph does not affect the determination of causal negligence in the action.

(gm) A law enforcement officer may not take a person into physical custody solely for a violation of this subsection or sub. (1) or (2) or a local ordinance in conformity with this subsection, sub. (1) or (2) or rules of the department.

(3m) SAFETY BELT INFORMATION PROGRAM. The department shall develop and administer a public information program to promote safety belt awareness and use.

(4) CHILD SAFETY RESTRAINT SYSTEMS REQUIRED; STANDARDS; EXEMPTIONS. (ag) In this subsection:

1. "Child booster seat" means a child passenger restraint system that meets the applicable federal standards under 49 CFR 571.213 and is designed to elevate a child from a vehicle seat to allow the vehicle's safety belt to be properly positioned over the child's body.

2. "Designated seating position" has the meaning given in 49 CFR 571.3.

3. "Properly restrained" means any of the following:

a. With respect to par. (as) 1. and 2., fastened in a manner prescribed by the manufacturer of the child safety restraint system which permits the system to act as a body restraint but does not include a system in which the only body restraint is a safety belt of the type required under sub. (1).

b. With respect to par. (as) 3., wearing a safety belt consisting of a combination lap belt and shoulder harness approved by the department under sub. (2) and fastened in a manner prescribed by the manufacturer of the safety belt so that the safety belt properly fits across the child's lap and the center of the child's chest in a manner appropriate to the child's height, weight, and age that permits the safety belt to act as a body restraint.

c. With respect to par. (as) 4., fastened in a manner prescribed by the manufacturer of the system which permits the system to act as a body restraint.

(am) No person may transport a child under the age of 8 in a motor vehicle unless the child is restrained in compliance with par. (as) in a safety restraint system that is appropriate to the child's age and size and that meets the standards established by the department under this paragraph. The department shall, by rule, establish standards in compliance with applicable federal standards, including standards under 49 CFR 571.213, for child safety restraint systems.

(as) A child under the age of 8 years who is being transported in a motor vehicle shall be restrained as follows:

1. If the child is less than one year old or weighs less than 20 pounds, the child shall be properly restrained in a rear-facing child safety restraint system, positioned at a designated seating position in a back passenger seat of the vehicle if the vehicle is equipped with a back passenger seat.

2. Subject to subd. 1., if the child is at least one year old and weighs at least 20 pounds but is less than 4 years old or weighs less than 40 pounds, the child shall be properly restrained as provided in subd. 1. or properly restrained in a forward-facing child safety restraint system, positioned at a designated seating position in a back passenger seat of the vehicle if the vehicle is equipped with a back passenger seat.

3. Subject to subds. 1. and 2., if the child is at least 4 years old but less than 8 years old, weighs at least 40 pounds but not more than 80 pounds, and is not more than 57 inches in height, the child shall be properly restrained as provided in subd. 2. or properly restrained in a child booster seat.

4. Subject to subds. 1. to 3., if the child is less than 8 years old, the child shall be properly restrained as provided in subds. 1. to 3. or properly restrained in a safety belt approved by the department under sub. (2).

(b) The department may, by rule, exempt from the requirements under pars. (am) and (as) any child who because of a physical or medical condition or body size cannot be placed in a child safety restraint system, child booster seat, or safety belt.

(c) This subsection does not apply if the motor vehicle is a motor bus, school bus, taxicab, moped, motorcycle or is not required to be equipped with safety belts under sub. (1) or 49 CFR 571.

(d) Evidence of compliance or failure to comply with pars. (am) and (as) is admissible in any civil action for personal injuries or property damage resulting from the use or operation of a motor vehicle but failure to comply with pars. (am) and (as) does not by itself constitute negligence.

History: 1975 c. 337; 1977 c. 29 s. 1654 (7) (a); 1981 c. 327; 1983 a. 285; 1987 a. 132 ss. 3 to 6, 11; 1987 a. 399; 1989 a. 22; 1991 a. 26, 39, 198, 269; 1997 a. 190; 2005 a. 106; 2009 a. 28; 2011 a. 111.

Cross-reference: See also ch. Trans 310 and s. Trans 305.27, Wis. adm. code.

"Seat belt negligence" and "passive negligence" are distinguished. Jury instructions regarding seat belts are recommended. A method for apportioning damages in seat belt negligence cases is adopted. Foley v. City of West Allis, 113 Wis. 2d 475, 335 N.W.2d 824 (1983).

A common law action for contribution may not be brought against a person who violates sub. (2m) (g). Gaertner v. Holcka, 219 Wis. 2d 436, 580 N.W.2d 271 (1998), 96-2726.

A statute requiring the wearing of seat belts in motor vehicles would be constitutional. 58 Atty. Gen. 241.

The seat belt defense — state of the law. Kircher, 53 MLR 172.

The seat belt defense — the trial lawyer's view. Bowman, 53 MLR 191.

Practical defense problems — the expert's view. Huelke, 53 MLR 203.

The seat belt as a cause of injury. Snyder, 53 MLR 211.

347.50 Penalties. (1) Any person violating ss. 347.35 to 347.49, except s. 347.385 (5), s. 347.413 (1) or s. 347.415 (1m), (2) and (3) to (5) or s. 347.417 (1) or s. 347.475 or s. 347.48 (2m) or (4) or s. 347.489, may be required to forfeit not less than $10 nor more than $200.

(1m) Any person violating s. 347.385 (5) may be fined not more than $10,000 or imprisoned for not more than one year in the county jail, or both, for each violation.

(1s) Any person violating s. 347.413 (1) or 347.417 (1) may be fined not less than $150 nor more than $600, or may be imprisoned for not more than 6 months, or both for the first offense. For a 2nd or subsequent conviction within 5 years, the person may be fined not less than $300 nor more than $1,000, or imprisoned for not more than 6 months, or both.

(1t) In addition to the penalty under sub. (1s), if a person who is subject to an order under s. 343.301 violates s. 347.413, the court shall extend the order under s. 343.301 (1g) or (2m) for 6 months for each violation.

(2) Any person violating s. 347.415 (1m), (2), and (3) to (5) or 347.475 may be fined not more than $5,000 or imprisoned for not more than one year in the county jail, or both, for each violation.

(2m) (a) Any person who violates s. 347.48 (2m) (b) or (c) and any person 16 years of age or older who violates s. 347.48 (2m) (d) shall be required to forfeit $10.

(b) No forfeiture may be assessed for a violation of s. 347.48 (2m) (d) if the violator is less than 16 years of age when the offense occurs.

(3) (a) Any person violating s. 347.48 (4) (am) may be required to forfeit not less than $30 nor more than $75 if the child is less than 4 years old.

(b) No forfeiture may be assessed under par. (a) if all of the following apply:

1. The motor vehicle was not equipped with a child safety restraint system meeting the requirements under s. 347.48 (4) (am) at the time the uniform traffic citation was issued.

2. The person provides proof that, within 30 days after the uniform traffic citation was issued, a child safety restraint system meeting the requirements under s. 347.48 (4) (am) was purchased or leased and properly installed in the motor vehicle.

3. The person has not, within the immediately preceding 3 years, been issued a uniform traffic citation for a violation of s. 347.48 (4) (am).

(4) Any person violating s. 347.48 (4) (am) may be required to forfeit not less than $10 nor more than $25 for the first offense if the child is at least 4 years old and less than 8 years old. For a 2nd or subsequent conviction within 3 years involving a child who is at least 4 years old and less than 8 years old, a person may be required to forfeit not less than $25 nor more than $200.

(5) Any person violating s. 347.489 may be required to forfeit not more than $20.

History: 1971 c. 278; 1975 c. 121; 1981 c. 327; 1983 a. 243; 1985 a. 309; 1987 a. 132; 1989 a. 22; 1991 a. 26, 277; 2001 a. 28; 2003 a. 166; 2005 a. 106, 193; 2007 a. 97; 2009 a. 28, 100.

CHAPTER 349

VEHICLES — POWERS OF STATE AND LOCAL AUTHORITIES

SUBCHAPTER I
GENERAL PROVISIONS

SUBCHAPTER I

GENERAL PROVISIONS

349.01 Words and phrases defined. (1) Words and phrases defined in s. 340.01 are used in the same sense in this chapter unless a different definition is specifically provided.

(2) In this chapter, "chauffeur" means a person employed full time or on a regular basis, including leased drivers, for the principal purpose of operating a motor vehicle.

History: 1989 a. 105.

349.02 Police and traffic officers to enforce law. (1) It is the duty of the police, sheriff's and traffic departments of every unit of government and each authorized department of the state to enforce chs. 346 to 348 and 350. Police officers, sheriffs, deputy sheriffs and traffic officers are authorized to direct all traffic within their respective jurisdictions either in person or by means of visual or audible signal in accordance with chs. 346 to 348 and 350. In the event of fire or other emergency, police officers, sheriffs, deputy sheriffs and traffic officers and officers of the fire department may direct traffic as conditions may require notwithstanding the provisions of chs. 346 to 348 and 350.

(2) (a) Notwithstanding sub. (1), a police officer, sheriff, deputy sheriff, traffic officer or motor vehicle inspector may not stop or inspect a vehicle solely to determine compliance with a statute or ordinance specified under par. (b) unless the police officer, sheriff, deputy sheriff, traffic officer or motor vehicle inspector has reasonable cause to believe that a violation of a statute or ordinance specified under par. (b) has been committed. This paragraph does not limit the authority of a police officer, sheriff, deputy sheriff, traffic officer or motor vehicle inspector to make an arrest or issue a citation for a violation of any statute or ordinance specified under par. (b) observed in the course of a stop or inspection made for a lawful purpose. This paragraph does not apply to a traffic officer or motor vehicle inspector in the performance of duties under s. 110.075 (2).

(b) The statutes and ordinances covered under par. (a) are all of the following:

1. This chapter and local ordinances enacted under this chapter.

2. Chapter 961 and local ordinances that strictly conform to s. 961.573 (1) or (2), 961.574 (1) or (2), or 961.575 (1) or (2).

3. Chapters 341 to 346.

4. Local ordinances enacted under s. 59.54 (25) or (25m) or 66.0107 (1) (bm).

(c) Notwithstanding par. (a), a law enforcement officer may not stop a vehicle solely because the vehicle's color differs from the color stated in the application for registration of that vehicle. This paragraph does not limit the authority of a law enforcement officer to issue a citation for improper registration of a vehicle whose color differs from the color stated in the application for registration of the vehicle, if the difference is observed in the course of a stop or inspection made for other purposes.

(3) (a) In this subsection, "photo radar speed detection" means the detection of a vehicle's speed by use of a radar device combined with photographic identification of the vehicle.

(b) Notwithstanding sub. (1), the state and local authorities may not use photo radar speed detection to determine compliance with any speed restriction imposed by s. 346.57, 346.58, 346.59, 346.595 or 349.11 or a local ordinance in conformity therewith.

History: 1971 c. 277; 1987 a. 34, 399; 1991 a. 39, 269; 1993 a. 246; 1995 a. 113, 201, 448; 1999 a. 90; 1999 a. 150 s. 672; 2003 a. 193; 2005 a. 116.

While it is clear that ss. 110.07 and 110.075 authorize the traffic officers of the state patrol and DOT to make stops and inspections and perhaps arrests for equipment violations, nothing in these statutes limits local law enforcements officers' powers to do so. A city police officer is a traffic officer under a. 340.01 (70), and because s. 110.075 provides that any traffic officer can stop and inspect vehicles for violations of ch. 110 or rules issued under ch. 110, and because sub. (2) permits a police officer to enforce a city ordinance violation upon reasonable basis to believe a violation has occurred, a city officer had authority to make a stop for violation of an ordinance adopting a safety rule. State v. Bailey, 2009 WI App 140, 321 Wis. 2d 350, 773 N.W.2d 488, 08-3153.

In case of an emergency, a sheriff has the power to temporarily close any highway in the county and to divert traffic. 67 Atty. Gen. 335.

349.025 Quotas relating to the enforcement of traffic regulations prohibited. (1) In this section:

(a) "Law enforcement officer" has the meaning given in s. 165.85 (2) (c).

(b) "Political subdivision" means a city, village, town or county.

(c) "State agency" means an office, commission, department or independent agency in the executive branch of state government.

(d) "Traffic regulation" means a provision of chs. 194 or 341 to 348 or an ordinance enacted in accordance with this chapter.

(2) No state agency or political subdivision of this state may require a law enforcement officer to issue a specific number of citations, complaints or warning notices during any specified time period for violations of traffic regulations.

(3) A state agency or political subdivision may, for purposes of evaluating a law enforcement officer's job performance, compare the number of citations, complaints or warning notices issued by the law enforcement officer to the number of citations, complaints or warning notices issued by all law enforcement officers employed by the state agency or political subdivision who have similar job duties and who serve in the same administrative unit as the law enforcement officer.

History: 1999 a. 16.

ce: See also ch. Trans 145, Wis. adm. code.

CHAPTER 350

SNOWMOBILES

350.01 Definitions. In this chapter:

(1g) "Alcohol beverages" has the meaning designated in s. 125.02.

(1h) "Alcohol concentration" has the meaning given in s. 340.01 (1v).

(1i) "Approved public treatment facility" has the meaning specified under s. 51.45 (2) (c).

(1r) "Board" means the natural resources board.

(2) "Controlled substance" has the meaning designated in s. 961.01 (4).

(2d) "Controlled substance analog" has the meaning given in s. 961.01 (4m).

(3) "Department" means the department of natural resources.

(3m) "Drug" has the meaning specified in s. 450.01 (10).

(6) "Headlamp" has the meaning designated in s. 340.01 (21).

(6m) "Headlamp barrier" means a fence, natural growth, difference in elevation or other means of restricting the view that users of an adjacent roadway have of headlamps on a snowmobile trail.

(7) "Highway" has the meaning designated in s. 340.01 (22).

(8) "Hours of darkness" has the meaning designated in s. 340.01 (23).

(8m) "Immediate family" means persons who are related as spouses, as siblings or as parent and child.

(9) "Intoxicant" means any alcohol beverage, controlled substance, controlled substance analog or other drug or any combination thereof.

(9c) "Intoxicated snowmobiling law" means s. 350.101 (1) or a local ordinance in conformity therewith, s. 350.101 (2) or, if the operation of a snowmobile is involved, s. 940.09 or 940.25.

(9e) "Land under the management and control of the person's immediate family" means land owned or leased by the person or a member of the person's immediate family and over which the owner or lessee has management and control. This term excludes land owned or leased by an organization of which the person or a member of the person's immediate family is a member.

(9g) "Law enforcement officer" has the meaning specified under s. 165.85 (2) (c) and includes a person appointed as a conservation warden by the department under s. 23.10 (1).

(9m) "Lodging establishment" means any of the following:

(a) A bed and breakfast establishment, as defined in s. 254.61 (1).

(b) A hotel, as defined in s. 254.61 (3).

(c) A tourist rooming house, as defined in s. 254.61 (6).

(d) A campground.

(9r) "Operate" means the exercise of physical control over the speed or direction of a snowmobile or the physical manipulation or activation of any of the controls of a snowmobile necessary to put it in motion. "Operate" includes the operation of a snowmobile.

(9w) "Operator" means a person who operates a snowmobile, who is responsible for the operation of a snowmobile or who is supervising the operation of a snowmobile.

(10) "Owner" means a person who has lawful possession of a snowmobile by virtue of legal title or equitable interest therein which entitles the person to possession.

(10d) "Purpose of access from lodging" means for the purpose of traveling for the shortest distance that is necessary for a person operating the snowmobile to go between a lodging establishment and the snowmobile route or snowmobile trail that is closest to the lodging establishment.

(10g) "Purpose of authorized analysis" means for the purpose of determining or obtaining evidence of the presence, quantity or concentration of any intoxicant in a person's blood, breath or urine.

(10m) "Purpose of residential access" means for the purpose of traveling for the shortest distance that is necessary for a person operating the snowmobile to go between a residence and the snowmobile route or snowmobile trail that is closest to that residence.

(10r) "Refusal law" means s. 350.104 (5) or a local ordinance in conformity therewith.

(10t) "Registration documentation" means a snowmobile registration certificate, a validated registration receipt, or a registration decal.

(10v) "Restricted controlled substance" means any of the following:

(a) A controlled substance included in schedule I under ch. 961 other than a tetrahydrocannabinol.

(b) A controlled substance analog, as defined in s. 961.01 (4m), of a controlled substance described in par. (a).

(c) Cocaine or any of its metabolites.

(d) Methamphetamine.

(e) Delta-9-tetrahydrocannabinol.

(11) "Roadway" has the meaning designated in s. 340.01 (54).

(11m) "Sanctioned race or derby" means a competitive snowmobile event sponsored by a county, town, city or village, by a promoter, by a chamber of commerce or by a snowmobile club or other similar organization.

(12) "Snowmobile" has the meaning designated in s. 340.01 (58a).

(13) "Snowmobile dealer" means any person engaged in the sale of snowmobiles for a profit at wholesale or retail.

(13m) "Snowmobile distributor" means a person who sells or distributes snowmobiles to snowmobile dealers or who maintains distributor representatives.

(14) "Snowmobile manufacturer" means any person engaged in the manufacture of snowmobiles for sale to the public.

(15) "Snowmobile renter" means any person engaged in the rental or leasing of snowmobiles to the public.

(16) "Snowmobile route" means a highway or sidewalk designated for use by snowmobile operators by the governmental agency having jurisdiction as authorized under this chapter.

(17) "Snowmobile trail" means a marked corridor on public property or on private lands subject to public easement or lease, designated for use by snowmobile operators by the governmental agency having jurisdiction, but excluding highways except those highways on which the roadway is not normally maintained for other vehicular traffic by the removal of snow.

(18) "State trunk highway" has the meaning designated in s. 340.01 (60).

(19) "Street" has the meaning designated in s. 340.01 (64).

(20) "Tail lamp" has the meaning designated in s. 340.01 (66).

(21) "Test facility" means a test facility or agency prepared to administer tests under s. 343.305 (2).

(22) "Validated registration receipt" means a receipt issued by the department or an agent under s. 350.12 (3h) (ag) 1. a. that shows that an application and the required fee for a registration certificate has been submitted to the department.

History: 1971 c. 219, 277; 1973 c. 298; 1981 c. 79 s. 18; 1981 c. 295; 1983 a. 27 s. 2202 (38); 1983 a. 189, 459; 1985 a. 146 s. 8; 1985 a. 331, 332; 1987 a. 399; 1989 a. 51, 359; 1991 a. 39; 1995 a. 61, 436, 448; 1997 a. 34, 35, 248, 267; 1999 a. 9; 2001 a. 16, 56; 2003 a. 97.

Cross-reference: See also s. NR 6.03, Wis. adm. code.

Operation under sub. (9r) does not include the act of sitting on a parked snowmobile with its engine off. Burg v. Cincinnati Casualty Insurance Co. 2002 WI 76, 254 Wis. 2d 36, 645 N.W.2d 880, 00-3258.

350.101 Intoxicated snowmobiling. (1) OPERATION. (a) *Operating while under the influence of an intoxicant.* No person may engage in the operation of a snowmobile while under the influence of an intoxicant to a degree which renders him or her incapable of safe snowmobile operation.

(b) *Operating with alcohol concentrations at or above specified levels.* No person may engage in the operation of a snowmobile while the person has an alcohol concentration of 0.08 or more.

(bm) *Operating with a restricted controlled substance.* No person may engage in the operation of a snowmobile with a detectable amount of a restricted controlled substance in his or her blood.

(c) *Operating with alcohol concentrations at specified levels; below age 19.* If a person has not attained the age of 19, the person may not engage in the operation of a snowmobile while he or she has an alcohol concentration of more than 0.0 but not more than 0.08.

(d) *Related charges.* A person may be charged with and a prosecutor may proceed upon a complaint based upon a violation of any combination of par. (a), (b), or (bm) for acts arising out of the same incident or occurrence. If the person is charged with violating any combination of par. (a), (b), or (bm), the offenses shall be joined. If the person is found guilty of any combination of par. (a), (b), or (bm) 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. 350.11 (3) (a) 2. and 3. Paragraphs (a), (b), and (bm) each require proof of a fact for conviction which the others do not require.

(e) *Defenses.* In an action under par. (bm) that is based on the defendant allegedly having a detectable amount of methamphetamine, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol in his or her blood, the defendant has a defense if he or she proves by a preponderance of the evidence that at the time of the incident or occurrence he or she had a valid prescription for methamphetamine or one of its metabolic precursors, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol.

(2) CAUSING INJURY. (a) *Causing injury while under the influence of an intoxicant.* No person while under the influence of an intoxicant to a degree which renders him or her incapable of safe snowmobile operation may cause injury to another person by the operation of a snowmobile.

(b) *Causing injury with alcohol concentrations at or above specified levels.* No person who has an alcohol concentration of 0.08 or more may cause injury to another person by the operation of a snowmobile.

(bm) *Causing injury while operating a snowmobile with a detectable amount of a restricted controlled substance.* No person who has a detectable amount of a restricted controlled substance in his or her blood may cause injury to another person by the operation of a snowmobile.

(c) *Related charges.* A person may be charged with and a prosecutor may proceed upon a complaint based upon a violation of any combination of par. (a), (b), or (bm) for acts arising out of the same incident or occurrence. If the person is charged with violating any combination of par. (a), (b), or (bm) in the complaint, the crimes shall be joined under s. 971.12. If the person is found guilty of any combination of par. (a), (b), or (bm) 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. 350.11 (3) (a) 2. and 3. Paragraphs (a), (b), and (bm) each require proof of a fact for conviction which the others do not require.

(d) *Defenses.* 1. In an action under this subsection, the defendant has a defense if he or she proves by a preponderance of the evidence that the injury would have occurred even if he or she had been exercising due care and he or she had not been under the influence of an intoxicant or did not have an alcohol

concentration of 0.08 or more or a detectable amount of a restricted controlled substance in his or her blood.

2. In an action under par. (bm) that is based on the defendant allegedly having a detectable amount of methamphetamine, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol in his or her blood, the defendant has a defense if he or she proves by a preponderance of the evidence that at the time of the incident or occurrence he or she had a valid prescription for methamphetamine or one of its metabolic precursors, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol.

History: 1987 a. 399; 1989 a. 275; 1995 a. 436; 2003 a. 30, 97, 326.

350.102 Preliminary breath screening test. (1) REQUIREMENT. A person shall provide a sample of his or her breath for a preliminary breath screening test if a law enforcement officer has probable cause to believe that the person is violating or has violated the intoxicated snowmobiling law and if, prior to an arrest, the law enforcement officer requested the person to provide this sample.

(2) USE OF TEST RESULTS. A law enforcement officer may use the results of a preliminary breath screening test for the purpose of deciding whether or not to arrest a person for a violation of the intoxicated snowmobiling law or for the purpose of deciding whether or not to request a chemical test under s. 350.104. Following the preliminary breath screening test, chemical tests may be required of the person under s. 350.104.

(3) ADMISSIBILITY. The result of a preliminary breath screening test is not admissible in any action or proceeding except to show probable cause for an arrest, if the arrest is challenged, or to show that a chemical test was properly required of a person under s. 350.104.

(4) REFUSAL. There is no penalty for a violation of sub. (1). Section 350.11 (1) and the general penalty provision under s. 939.61 do not apply to that violation.

History: 1987 a. 399.

350.1025 Application of intoxicated snowmobiling law. Except as provided in this section, the intoxicated snowmobiling law is applicable to all property, whether the property is publicly or privately owned and whether or not a fee is charged for the use of that property. The intoxicated snowmobiling law does not apply to the operation of a snowmobile on private land not designated as a snowmobile trail unless an accident involving personal injury occurs as the result of the operation of a snowmobile and the snowmobile was operated on the private land without the consent of the owner of that land.

History: 1987 a. 399; 1991 a. 91.

350.103 Implied consent. Any person who engages in the operation of a snowmobile upon the public highways of this state, or in those areas enumerated in s. 350.1025, is deemed to have given consent to provide one or more samples of his or her breath, blood or urine for the purpose of authorized analysis as required under s. 350.104. Any person who engages in the operation of a snowmobile within this state is deemed to have given consent to submit to one or more chemical tests of his or her breath, blood or urine for the purpose of authorized analysis as required under s. 350.104.

History: 1987 a. 399.

350.104 Chemical tests. (1) REQUIREMENT. (a) *Samples; submission to tests.* A person shall provide one or more samples of his or her breath, blood or urine for the purpose of authorized analysis if he or she is arrested for a violation of the intoxicated snowmobiling law and if he or she is requested to provide the sample by a law enforcement officer. A person shall submit to one or more chemical tests of his or her breath, blood or urine for the purpose of authorized analysis if he or she is arrested for a violation of the intoxicated snowmobiling law and if he or she is requested to submit to the test by a law enforcement officer.

(b) *Information.* A law enforcement officer requesting a person to provide a sample or to submit to a chemical test under par. (a) shall inform the person of all of the following at the time of the request and prior to obtaining the sample or administering the test:

1. That he or she is deemed to have consented to tests under s. 350.103.

2. That a refusal to provide a sample or to submit to a chemical test constitutes a violation under sub. (5) and is subject to the same penalties and procedures as a violation of s. 350.101 (1) (a).

3. That in addition to the designated chemical test under sub. (2) (b), he or she may have an additional chemical test under sub. (3) (a).

(c) *Unconscious person.* A person who is unconscious or otherwise not capable of withdrawing consent is presumed not to have withdrawn consent under this subsection, and if a law enforcement officer has probable cause to believe that the person violated the intoxicated snowmobiling law, one or more chemical tests may be administered to the person without a request under par. (a) and without providing information under par. (b).

(2) CHEMICAL TESTS. (a) *Test facility.* Upon the request of a law enforcement officer, a test facility shall administer a chemical test of breath, blood or urine for the purpose of authorized analysis. A test facility shall be prepared to administer 2 of the 3 chemical tests of breath, blood or urine for the purpose of authorized analysis. The department may enter into agreements for the cooperative use of test facilities.

(b) *Designated chemical test.* A test facility shall designate one chemical test of breath, blood or urine which it is prepared to administer first for the purpose of authorized analysis.

(c) *Additional chemical test.* A test facility shall specify one chemical test of breath, blood or urine, other than the test designated under par. (b), which it is prepared to administer for the purpose of authorized analysis as an additional chemical test.

(d) *Validity; procedure.* A chemical test of blood or urine conducted for the purpose of authorized analysis is valid as provided under s. 343.305 (6). The duties and responsibilities of the laboratory of hygiene, department of health services and department of transportation under s. 343.305 (6) apply to a chemical test of blood or urine conducted for the purpose of authorized analysis under this section. Blood may be withdrawn from a person arrested for a violation of the intoxicated snowmobiling law only by a physician, registered nurse, medical technologist, physician assistant or person acting under the direction of a physician and the person who

withdraws the blood, the employer of that person and any hospital where blood is withdrawn have immunity from civil or criminal liability as provided under s. 895.53

(e) *Report.* A test facility which administers a chemical test of breath, blood or urine for the purpose of authorized analysis under this section shall prepare a written report which shall include the findings of the chemical test, the identification of the law enforcement officer or the person who requested a chemical test and the identification of the person who provided the sample or submitted to the chemical test. The test facility shall transmit a copy of the report to the law enforcement officer and the person who provided the sample or submitted to the chemical test.

(3) ADDITIONAL AND OPTIONAL CHEMICAL TESTS. (a) *Additional chemical test.* If a person is arrested for a violation of the intoxicated snowmobiling law or is the operator of a snowmobile involved in an accident resulting in great bodily harm to or the death of someone and if the person is requested to provide a sample or to submit to a test under sub. (1) (a), the person may request the test facility to administer the additional chemical test specified under sub. (2) (c) or, at his or her own expense, reasonable opportunity to have any qualified person administer a chemical test of his or her breath, blood or urine for the purpose of authorized analysis.

(b) *Optional test.* If a person is arrested for a violation of the intoxicated snowmobiling law and if the person is not requested to provide a sample or to submit to a test under sub. (1) (a), the person may request the test facility to administer a chemical test of his or her breath or, at his or her own expense, reasonable opportunity to have any qualified person administer a chemical test of his or her breath, blood or urine for the purpose of authorized analysis. If a test facility is unable to perform a chemical test of breath, the person may request the test facility to administer the designated chemical test under sub. (2) (b) or the additional chemical test under sub. (2) (c).

(c) *Compliance with request.* A test facility shall comply with a request under this subsection to administer any chemical test it is able to perform.

(d) *Inability to obtain chemical test.* The failure or inability of a person to obtain a chemical test at his or her own expense does not preclude the admission of evidence of the results of a chemical test required and administered under subs. (1) and (2).

(4) ADMISSIBILITY; EFFECT OF TEST RESULTS; OTHER EVIDENCE. The results of a chemical test required or administered under sub. (1), (2) or (3) are admissible in any civil or criminal action or proceeding arising out of the acts committed by a person alleged to have violated the intoxicated snowmobiling law on the issue of whether the person was under the influence of an intoxicant or the issue of whether the person had alcohol concentrations at or above specified levels or a detectable amount of a restricted controlled substance in his or her blood. Results of these chemical tests shall be given the effect required under s. 885.235. This section does not limit the right of a law enforcement officer to obtain evidence by any other lawful means.

(5) REFUSAL. No person may refuse a lawful request to provide one or more samples of his or her breath, blood or urine or to submit to one or more chemical tests under sub. (1). A person shall not be deemed to refuse to provide a sample or to submit to a chemical test if it is shown by a preponderance of the evidence that the refusal was due to a physical inability to provide the sample or to submit to the test due to a physical disability or disease unrelated to the use of an intoxicant. Issues in any action concerning violation of sub. (1) or this subsection are limited to:

(a) Whether the law enforcement officer had probable cause to believe the person was violating or had violated the intoxicated snowmobiling law.

(b) Whether the person was lawfully placed under arrest for violating the intoxicated snowmobiling law.

(c) Whether the law enforcement officer requested the person to provide a sample or to submit to a chemical test and provided the information required under sub. (1) (b) or whether the request and information was unnecessary under sub. (1) (c).

(d) Whether the person refused to provide a sample or to submit to a chemical test.

History: 1987 a. 399; 1989 a. 359; 1993 a. 105; 1995 a. 27 s. 9126 (19); 2003 a. 97; 2007 a. 20 s. 9121 (6) (a).

350.106 Report arrest to department. If a law enforcement officer arrests a person for a violation of the intoxicated snowmobiling law or the refusal law, the law enforcement officer shall notify the department of the arrest as soon as practicable.

History: 1987 a. 399.

350.107 Officer's action after arrest for operating a snowmobile while under influence of intoxicant. A person arrested for a violation of s. 350.101 (1) (a) or (b) or a local ordinance in conformity therewith or s. 350.101 (2) (a) or (b) may not be released until 12 hours have elapsed from the time of his or her arrest or unless a chemical test administered under s. 350.104 (1) (a) shows that the person has an alcohol concentration of 0.05 or less, but the person may be released to his or her attorney, spouse, relative or other responsible adult at any time after arrest.

History: 1987 a. 399; 1995 a. 436.

350.11 Penalties. (1) (a) Except as provided in par. (b) and subs. (2g), (2m) and (3), any person who violates any provision of this chapter shall forfeit not more than $250.

(b) Except as provided in subs. (2g), (2m) and (3), any person who violates any provision of this chapter and who, within the last 3 years prior to the conviction for the current violation, was 2 or more times previously convicted for violating the same provision of this chapter shall forfeit not more than $500.

(2g) Any person who violates s. 350.12 (3j) shall forfeit not more than $1,000.

(2m) Any person who violates s. 350.135 (1) is guilty of a Class H felony if the violation causes the death or injury, as defined in s. 30.67 (3) (b), of another person.

(3) (a) *Penalties related to prohibited operation of a snowmobile; intoxicants; refusal.* 1. Except as provided under subds. 2. and 3., a person who violates s. 350.101 (1) (a), (b), or (bm) or s. 350.104 (5) shall forfeit not less than $400 nor more than $550.

2. Except as provided under subd. 3., a person who violates s. 350.101 (1) (a), (b), or (bm) or 350.104 (5) and who, within 5 years prior to the arrest for the current violation, was convicted previously under the intoxicated snowmobiling law or

the refusal law shall be fined not less than $300 nor more than $1,000 and shall be imprisoned not less than 5 days nor more than 6 months.

3. A person who violates s. 350.101 (1) (a), (b), or (bm) or 350.104 (5) and who, within 5 years prior to the arrest for the current violation, was convicted 2 or more times previously under the intoxicated snowmobiling law or refusal law shall be fined not less than $600 nor more than $2,000 and shall be imprisoned not less than 30 days nor more than one year in the county jail.

4. A person who violates s. 350.101 (1) (c) or 350.104 (5) and who has not attained the age of 19 shall forfeit not more than $50.

(b) *Penalties related to failure to stop; and for causing injury while under influence of intoxicants.* A person who violates s. 350.101 (2) or 350.17 (2) shall be fined not less than $300 nor more than $2,000 and may be imprisoned for not less than 30 days nor more than one year in the county jail.

(bm) *Sentence of detention.* The legislature intends that courts use the sentencing option under s. 973.03 (4) whenever appropriate for persons subject to par. (a) 2. or 3. or (b). The use of this option can result in significant cost savings for the state and local governments.

(c) *Calculation of previous convictions.* In determining the number of previous convictions under par. (a) 2. and 3., convictions arising out of the same incident or occurrence shall be counted as one previous conviction.

(cm) *Reporting convictions to the department.* Whenever a person is convicted of a violation of the intoxicated snowmobiling law, the clerk of the court in which the conviction occurred, or the justice, judge or magistrate of a court not having a clerk, shall forward to the department the record of such conviction. The record of conviction forwarded to the department shall state whether the offender was involved in an accident at the time of the offense.

(d) *Alcohol, controlled substances or controlled substance analogs; assessment.* In addition to any other penalty or order, a person who violates s. 350.101 (1) or (2) or 350.104 (5) or who violates s. 940.09 or 940.25 if the violation involves the operation of a snowmobile, shall be ordered by the court to submit to and comply with an assessment by an approved public treatment facility for an examination of the person's use of alcohol, controlled substances or controlled substance analogs. The assessment order shall comply with s. 343.30 (1q) (c) 1. a. to c. Intentional failure to comply with an assessment ordered under this paragraph constitutes contempt of court, punishable under ch. 785.

(4) In addition to the penalties under this section, the court may order the defendant to restore or replace any uniform snowmobile trail sign or standard that the defendant removed, damaged, defaced, moved or obstructed.

History: 1971 c. 277; 1973 c. 218; 1975 c. 365; 1987 a. 399; 1991 a. 269; 1993 a. 119, 436; 1995 a. 417, 448; 1997 a. 27, 283; 2001 a. 109; 2003 a. 97.

Cross-reference: See s. 23.50 concerning enforcement procedures.

CHAPTER 813

INJUNCTIONS, NE EXEAT AND RECEIVERS

813.12 Domestic abuse restraining orders and injunctions. (1) DEFINITIONS. In this section:

(ad) "Caregiver" means an individual who is a provider of in-home or community care to an individual through regular and direct contact.

(ag) "Dating relationship" means a romantic or intimate social relationship between 2 adult individuals but "dating relationship" does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context. A court shall determine if a dating relationship existed by considering the length of the relationship, the type of the relationship, and the frequency of the interaction between the adult individuals involved in the relationship.

(am) "Domestic abuse" means any of the following engaged in by an adult family member or adult household member against another adult family member or adult household member, by an adult caregiver against an adult who is under the caregiver's care, by an adult against his or her adult former spouse, by an adult against an adult with whom the individual has or had a dating relationship, or by an adult against an adult with whom the person has a child in common:

1. Intentional infliction of physical pain, physical injury or illness.

2. Intentional impairment of physical condition.

3. A violation of s. 940.225 (1), (2) or (3).

5. A violation of s. 943.01, involving property that belongs to the individual.

6. A threat to engage in the conduct under subd. 1., 2., 3., or 5.

(b) "Family member" means a spouse, a parent, a child or a person related by blood or adoption to another person.

(c) "Household member" means a person currently or formerly residing in a place of abode with another person.

(cg) "Reasonable grounds" means more likely than not that a specific event has occurred or will occur.

(cj) "Regular and direct contact" means face-to-face physical proximity to an individual that is planned, scheduled, expected, or periodic.

(d) "Tribal court" means a court established by any federally recognized Wisconsin Indian tribe or band, except the Menominee Indian tribe of Wisconsin.

(e) "Tribal order or injunction" means a temporary restraining order or injunction issued by a tribal court under a tribal domestic abuse ordinance adopted in conformity with this section.

(2) COMMENCEMENT OF ACTION AND RESPONSE. (a) No action under this section may be commenced by complaint and summons. An action under this section may be commenced only by a petition described under sub. (5) (a). The action commences with service of the petition upon the respondent if a copy of the petition is filed before service or promptly after service. If the judge or a circuit court commissioner extends the time for a hearing under sub. (3) (c) and the petitioner files an affidavit with the court stating that personal service by the sheriff or a private server under s. 801.11 (1) (a) or (b) was unsuccessful because the respondent is avoiding service by concealment or otherwise, the judge or circuit court commissioner shall inform the petitioner that he or she may serve the respondent by publication of a summary of the petition as a class 1 notice, under ch. 985, and by mailing or sending a facsimile if the respondent's post-office address or facsimile number is known or can with due diligence be ascertained. The mailing or sending of a facsimile may be omitted if the post-office address or facsimile number cannot be ascertained with due diligence. A summary of the petition published as a class 1 notice shall include the name of the respondent and of the petitioner, notice of the temporary restraining order, and notice of the date, time, and place of the hearing regarding the injunction. The court shall inform the petitioner in writing that, if the petitioner chooses to have the documents in the action served by the sheriff, the petitioner should contact the sheriff to verify the proof of service of the petition.

(b) A petition may be filed in conjunction with an action affecting the family commenced under ch. 767, but commencement of an action affecting the family or any other action is not necessary for the filing of a petition or the issuance of a temporary restraining order or an injunction. A judge or circuit court commissioner may not make findings or issue orders under s. 767.225 or 767.41 while granting relief requested only under this section. Section 813.06 does not apply to an action under this section. The respondent may respond to the petition either in writing before or at the hearing on the issuance of the injunction or orally at that hearing.

(2m) TWO-PART PROCEDURE. Procedure for an action under this section is in 2 parts. First, if the petitioner requests a temporary restraining order the court shall issue or refuse to issue that order. Second, the court shall hold a hearing under sub. (4) on whether to issue an injunction, which is the final relief. If the court issues a temporary restraining order, the order shall set forth the date for the hearing on an injunction. If the court does not issue a temporary restraining order, the date for the hearing shall be set upon motion by either party.

(3) TEMPORARY RESTRAINING ORDER. (a) A judge or circuit court commissioner shall issue a temporary restraining order ordering the respondent to refrain from committing acts of domestic abuse against the petitioner, to avoid the petitioner's residence, except as provided in par. (am), or any other location temporarily occupied by the petitioner or both, or to avoid contacting or causing any person other than a party's attorney or a law enforcement officer to contact the petitioner unless the petitioner consents in writing, or any combination of these remedies requested in the petition, or any other appropriate

remedy not inconsistent with the remedies requested in the petition, if all of the following occur:

1. The petitioner submits to the judge or circuit court commissioner a petition alleging the elements set forth under sub. (5) (a).

2. The judge or circuit court commissioner finds reasonable grounds to believe that the respondent has engaged in, or based on prior conduct of the petitioner and the respondent may engage in, domestic abuse of the petitioner.

(aj) In determining whether to issue a temporary restraining order, the judge or circuit court commissioner shall consider the potential danger posed to the petitioner and the pattern of abusive conduct of the respondent but may not base his or her decision solely on the length of time since the last domestic abuse or the length of time since the relationship ended. The judge or circuit court commissioner may grant only the remedies requested or approved by the petitioner. The judge or circuit court commissioner may not dismiss or deny granting a temporary restraining order because of the existence of a pending action or of any other court order that bars contact between the parties, nor due to the necessity of verifying the terms of an existing court order.

(am) If the petitioner and the respondent are not married, the respondent owns the premises where the petitioner resides and the petitioner has no legal interest in the premises, in lieu of ordering the respondent to avoid the petitioner's residence under par. (a) the judge or circuit court commissioner may order the respondent to avoid the premises for a reasonable time until the petitioner relocates and shall order the respondent to avoid the new residence for the duration of the order.

(b) Notice need not be given to the respondent before issuing a temporary restraining order under this subsection. A temporary restraining order may be entered only against the respondent named in the petition.

(c) The temporary restraining order is in effect until a hearing is held on issuance of an injunction under sub. (4). The temporary restraining order is not voided if the respondent is admitted into a dwelling that the order directs him or her to avoid. A judge or circuit court commissioner shall hold a hearing on issuance of an injunction within 14 days after the temporary restraining order is issued, unless the time is extended upon the written consent of the parties or extended once for 14 days upon a finding that the respondent has not been served with a copy of the temporary restraining order although the petitioner has exercised due diligence.

(d) The judge or circuit court commissioner shall advise the petitioner of the right to serve the respondent the petition by published notice if with due diligence the respondent cannot be served as provided under s. 801.11 (1) (a) or (b). The clerk of circuit court shall assist the petitioner with the preparation of the notice and filing of the affidavit of printing.

(4) INJUNCTION. (a) A judge or circuit court commissioner may grant an injunction ordering the respondent to refrain from committing acts of domestic abuse against the petitioner, to avoid the petitioner's residence, except as provided in par. (am), or any other location temporarily occupied by the petitioner or both, or to avoid contacting or causing any person other than a party's attorney or a law enforcement officer to contact the petitioner unless the petitioner consents to that contact in writing, or any combination of these remedies requested in the petition, or any other appropriate remedy not inconsistent with the remedies requested in the petition, if all of the following occur:

1. The petitioner files a petition alleging the elements set forth under sub. (5) (a).

2. The petitioner serves upon the respondent a copy or summary of the petition and notice of the time for hearing on the issuance of the injunction, or the respondent serves upon the petitioner notice of the time for hearing on the issuance of the injunction.

3. After hearing, the judge or circuit court commissioner finds reasonable grounds to believe that the respondent has engaged in, or based upon prior conduct of the petitioner and the respondent may engage in, domestic abuse of the petitioner.

(aj) In determining whether to issue an injunction, the judge or circuit court commissioner shall consider the potential danger posed to the petitioner and the pattern of abusive conduct of the respondent but may not base his or her decision solely on the length of time since the last domestic abuse or the length of time since the relationship ended. The judge or circuit court commissioner may grant only the remedies requested by the petitioner. The judge or circuit court commissioner may not dismiss or deny granting an injunction because of the existence of a pending action or of any other court order that bars contact between the parties, nor due to the necessity of verifying the terms of an existing court order.

(am) If the petitioner and the respondent are not married, the respondent owns the premises where the petitioner resides and the petitioner has no legal interest in the premises, in lieu of ordering the respondent to avoid the petitioner's residence under par. (a) the judge or circuit court commissioner may order the respondent to avoid the premises for a reasonable time until the petitioner relocates and shall order the respondent to avoid the new residence for the duration of the order.

(b) The judge or circuit court commissioner may enter an injunction only against the respondent named in the petition. No injunction may be issued under this subsection under the same case number against the person petitioning for the injunction. The judge or circuit court commissioner may not modify an order restraining the respondent based solely on the request of the respondent.

(c) 1. An injunction under this subsection is effective according to its terms, for the period of time that the petitioner requests, but not more than 4 years. An injunction granted under this subsection is not voided if the petitioner allows or initiates contact with the respondent or by the admittance of the respondent into a dwelling that the injunction directs him or her to avoid.

2. When an injunction granted for less than 4 years expires, the court shall extend the injunction if the petitioner states that an extension is necessary to protect him or her. This extension shall remain in effect until 4 years after the date the court first entered the injunction.

4. Notice need not be given to the respondent before extending an injunction under subd. 2. The petitioner shall notify the respondent after the court extends an injunction under subd. 2.

(4m) NOTICE OF RESTRICTION ON FIREARM POSSESSION; SURRENDER OF FIREARMS. (a) An injunction issued under sub. (4) shall do all of the following:

1. Inform the respondent named in the petition of the requirements and penalties under s. 941.29.

2. Except as provided in par. (ag), require the respondent to surrender any firearms that he or she owns or has in his or her possession to the sheriff of the county in which the action under this section was commenced, to the sheriff of the county in which the respondent resides or to another person designated by the respondent and approved by the judge or circuit court commissioner. The judge or circuit court commissioner shall approve the person designated by the respondent unless the judge or circuit court commissioner finds that the person is inappropriate and places the reasons for the finding on the record. If a firearm is surrendered to a person designated by the respondent and approved by the judge or circuit court commissioner, the judge or circuit court commissioner shall inform the person to whom the firearm is surrendered of the requirements and penalties under s. 941.29 (4).

(ag) If the respondent is a peace officer, an injunction issued under sub. (4) may not require the respondent to surrender a firearm that he or she is required, as a condition of employment, to possess whether or not he or she is on duty.

(am) 1. When a respondent surrenders a firearm under par. (a) 2. to a sheriff, the sheriff who is receiving the firearm shall prepare a receipt for each firearm surrendered to him or her. The receipt shall include the manufacturer, model and serial number of the firearm surrendered to the sheriff and shall be signed by the respondent and by the sheriff to whom the firearm is surrendered.

2. The sheriff shall keep the original of a receipt prepared under subd. 1. and shall provide an exact copy of the receipt to the respondent. When the firearm covered by the receipt is returned to the respondent under par. (b), the sheriff shall surrender to the respondent the original receipt and all of his or her copies of the receipt.

3. A receipt prepared under subd. 1. is conclusive proof that the respondent owns the firearm for purposes of returning the firearm covered by the receipt to the respondent under par. (b).

4. The sheriff may not enter any information contained on a receipt prepared under subd. 1. into any computerized or direct electronic data transfer system in order to store the information or disseminate or provide access to the information.

(aw) A sheriff may store a firearm surrendered to him or her under par. (a) 2. in a warehouse that is operated by a public warehouse keeper licensed under ch. 99. If a sheriff stores a firearm at a warehouse under this paragraph, the respondent shall pay the costs charged by the warehouse for storing that firearm.

(b) A firearm surrendered under par. (a) 2. may not be returned to the respondent until a judge or circuit court commissioner determines all of the following:

1. That the injunction issued under sub. (4) has been vacated or has expired and not been extended.

2. That the person is not prohibited from possessing a firearm under any state or federal law or by the order of any federal court or state court, other than an order from which the judge or circuit court commissioner is competent to grant relief.

(c) If a respondent surrenders a firearm under par. (a) 2. that is owned by a person other than the respondent, the person who owns the firearm may apply for its return to the circuit court for the county in which the person to whom the firearm was surrendered is located. The court shall order such notice as it considers adequate to be given to all persons who have or may have an interest in the firearm and shall hold a hearing to hear all claims to its true ownership. If the right to possession is proved to the court's satisfaction, it shall order the firearm returned. If the court returns a firearm under this paragraph, the court shall inform the person to whom the firearm is returned of the requirements and penalties under s. 941.29 (4).

(5) PETITION. (a) The petition shall allege facts sufficient to show the following:

1. The name of the petitioner and that the petitioner is the alleged victim.

2. The name of the respondent and that the respondent is an adult.

3. That the respondent engaged in, or based on prior conduct of the petitioner and the respondent may engage in, domestic abuse of the petitioner.

4. If the petitioner knows of any other court proceeding in which the petitioner is a person affected by a court order or judgment that includes provisions regarding contact with the respondent, any of the following that are known by the petitioner:

a. The name or type of the court proceeding.

b. The date of the court proceeding.

c. The types of provisions regarding contact between the petitioner and respondent.

(am) The petition shall request that the respondent be restrained from committing acts of domestic abuse against the petitioner, that the respondent be ordered to avoid the petitioner's residence, or that the respondent be ordered to avoid contacting the petitioner or causing any person other than the respondent's attorney to contact the petitioner unless the petitioner consents to the contact in writing, or any combination of these requests.

(b) The clerk of circuit court shall provide the simplified forms provided under s. 49.165 (3) (c) to help a person file a petition.

(c) A judge or circuit court commissioner shall accept any legible petition for a temporary restraining order or injunction.

(d) A petition may be prepared and filed by the person who alleges that he or she has been the subject of domestic abuse or by the guardian of an individual adjudicated incompetent in this state who has been the subject of domestic abuse.

(5g) STIPULATION. If the parties enter into a stipulation to convert a petition under this section to a petition for a temporary restraining order or injunction under s. 813.125, the court may not approve that stipulation unless all of the following occur:

(a) Either or both parties submit an oral request on the record for the conversion explaining why the conversion of the petition is requested.

(b) The court addresses the petitioner personally and determines that the petitioner entered into the stipulation voluntarily and with an understanding of the differences between the orders issued under subs. (4) and (4m) and s. 813.125 (4) and (4m).

(5m) CONFIDENTIALITY OF VICTIM'S ADDRESS. The petition under sub. (5) and the court order under sub. (3) or (4) may not disclose the address of the alleged victim. The petitioner shall provide the clerk of circuit court with the petitioner's address when he or she files a petition under this section. The clerk shall maintain the petitioner's address in a confidential manner.

(6) ENFORCEMENT ASSISTANCE. (a) If an order is issued under this section, upon request by the petitioner the court or circuit court commissioner shall order the sheriff to accompany the petitioner and assist in placing him or her in physical possession of his or her residence or to otherwise assist in executing or serving the temporary restraining order or injunction. The petitioner may, at the petitioner's expense, use a private process server to serve papers on the respondent.

(am) 1. If an injunction is issued or extended under sub. (4) or if a tribal injunction is filed under s. 806.247 (3), the clerk of the circuit court shall notify the department of justice of the injunction and shall provide the department of justice with information concerning the period during which the injunction is in effect and information necessary to identify the respondent for purposes of a firearms restrictions record search under s. 175.35 (2g) (c) or a background check under s. 175.60 (9g) (a).

2. Except as provided in subd. 3., the department of justice may disclose information that it receives under subd. 1. only as part of a firearms restrictions record search under s. 175.35 (2g) (c).

3. The department of justice shall disclose any information that it receives under subd. 1. to a law enforcement agency when the information is needed for law enforcement purposes.

(b) Within one business day after an order or injunction is issued, extended, modified or vacated under this section, the clerk of the circuit court shall send a copy of the order or injunction, or of the order extending, modifying or vacating an order or injunction, to the sheriff or to any other local law enforcement agency which is the central repository for orders and injunctions and which has jurisdiction over the petitioner's premises.

(c) No later than 24 hours after receiving the information under par. (b), the sheriff or other appropriate local law enforcement agency under par. (b) shall enter the information concerning an order or injunction issued, extended, modified or vacated under this section into the transaction information for management of enforcement system. The sheriff or other appropriate local law enforcement agency shall also make available to other law enforcement agencies, through a verification system, information on the existence and status of any order or injunction issued under this section. The information need not be maintained after the order or injunction is no longer in effect.

(d) The issuance of an order under s. 813.12 (3) or (4) is enforceable despite the existence of any other criminal or civil order restricting or prohibiting contact.

(7) ARREST. (am) A law enforcement officer shall arrest and take a person into custody if all of the following occur:

1. A petitioner under sub. (5) presents the law enforcement officer with a copy of a court order issued under sub. (3) or (4), or the law enforcement officer determines that such an order exists through communication with appropriate authorities.

2. The law enforcement officer has probable cause to believe that the person has violated the court order issued under sub. (3) or (4) by any circuit court in this state.

(c) A respondent who does not appear at a hearing at which the court orders an injunction under sub. (4) but who has been served with a copy of the petition and notice of the time for hearing under sub. (4) (a) 2. has constructive knowledge of the existence of the injunction and shall be arrested for violation of the injunction regardless of whether he or she has been served with a copy of the injunction.

(7m) TRANSCRIPTS. The judge or circuit court commissioner shall record the temporary restraining order or injunction hearing upon the request of the petitioner.

(8) PENALTY. (a) Whoever knowingly violates a temporary restraining order or injunction issued under sub. (3) or (4) shall be fined not more than $1,000 or imprisoned for not more than 9 months or both.

NOTE: Par. (a) is amended eff. 1-1-14 by 2011 Wis. Act 266 to read:

(a) Whoever knowingly violates a temporary restraining order or injunction issued under sub. (3) or (4) shall be fined not more than $10,000 or imprisoned for not more than 9 months or both.

(b) The petitioner does not violate the court order under sub. (3) or (4) if he or she admits into his or her residence a person ordered under sub. (3) or (4) to avoid that residence.

(9) NOTICE OF FULL FAITH AND CREDIT. An order or injunction issued under sub. (3) or (4) shall include a statement that the order or injunction may be accorded full faith and credit in every civil or criminal court of the United States, civil or criminal courts of any other state and Indian tribal courts to the extent that such courts may have personal jurisdiction over nontribal members.

History: 1983 a. 204, 540; 1985 a. 29, 135; 1989 a. 193; 1993 a. 319; 1995 a. 71, 306; 1999 a. 162; 2001 a. 61, 109; 2003 a. 321; 2005 a. 387; 2005 a. 443 s. 265; 2007 a. 20, 124; 2009 a. 262; 2011 a. 35, 266.

This section is constitutional. Schramek v. Bohren, 145 Wis. 2d 695, 429 N.W.2d 501 (Ct. App. 1988).

Sub. (3) (am) provides for a limited-term injunction as an alternative to a restraining order under sub. (3) (a) when 3 stated conditions are met. Johnson v. Miller, 157 Wis. 2d 482, 459 N.W.2d 886 (Ct. App. 1990).

A person convicted of violating a harassment injunction may not collaterally attack the validity of the injunction in a criminal prosecution to enforce the injunction. State v. Bouzel, 168 Wis. 2d 642, 484 N.W.2d 362 (Ct. App. 1992).

This section does not authorize granting an injunction without filing a formal petition, thus precluding an injunction against the petitioner. Laluzerne v. Stange, 200 Wis. 2d 179, 546 N.W.2d 182 (Ct. App. 1996), 95-1718.

The definition of "household member" requires a continuous residential living arrangement between the parties. They need not reside in only one place, but must reside together on a continuous basis. Petrowsky v. Krause, 223 Wis. 2d 32, 588 N.W.2d 318 (Ct. App. 1998), 97-2205.

It is error to grant an injunction under this section for other than the length of time requested or to refuse to order the sheriff to place the petitioner in possession of his or her residence. The requirement that the injunction granted be for the length of time requested is constitutional. Hayen v. Hayen, 2000 WI App 29, 232 Wis. 2d 447, 606 N.W.2d 606, 99-1361.

Only a true threat is constitutionally punishable under statutes criminalizing threats. The constitutional boundaries for a true threat apply in domestic abuse injunction cases under this section. Acts underlying an earlier vacated domestic abuse injunction were relevant to a prediction of what the defendant would do if the domestic abuse injunction were not granted, and whether recent threats were true threats. Wittig v. Hoffart, 2005 WI App 198, 287 Wis. 2d 353, 704 N.W.2d 415, 04-1653.

If the initial injunction was for less than 4 years, but expired, and the petitioner states that an extension is necessary to protect him or her, sub. (4) (c) 2. requires the court to extend the injunction for up to 4 years from the date the injunction was first granted. Because the court is required to extend an injunction under the proper circumstances, even after it has expired, it follows that a court has the authority and jurisdiction to grant the extension request after the injunction has expired. Switzer v. Switzer, 2006 WI App 10, 289 Wis. 2d 83, 709 N.W.2d 871, 04-2943.

Applicable law allows electronic transmission of certain confidential case information among clerks of circuit court, county sheriff's offices, and the Department of Justice through electronic interfaces involving the Department of Administration's Office of Justice Assistance, specifically including electronic data messages regarding a domestic abuse protection order issued under this section in an action that the court has ordered sealed. OAG 2-10.

Construing this section to include a requirement of showing imminent danger, it is constitutional. Blazel v. Bradley, 698 F. Supp. 756 (1988).

Using Restraining Orders to Protect Elder Victims. Meuer. Wis. Law. Sept. 2000.

Trouble Ahead: Wisconsin's New Domestic Abuse Laws. Birdsall. Wis. Law. Feb. 2004.

813.122 Child abuse restraining orders and injunctions. (1) DEFINITIONS. In this section:

(a) "Abuse" has the meaning given in s. 48.02 (1) (a) and (b) to (gm) and, in addition, includes a threat to engage in any conduct under s. 48.02 (1), other than conduct under s. 48.02 (1) (am).

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

(c) "Child victim" means the child who is the victim or the alleged victim of abuse.

(d) "Child victim advocate" means any person who counsels child victims, assists child victims in coping with the impact of the crime or otherwise acts in support of child victims.

(2) COMMENCEMENT OF ACTION AND RESPONSE. No action under this section may be commenced by complaint and summons. An action under this section may be commenced only by a petition described under sub. (6) (a). The action commences with service of the petition upon the respondent if a copy of the petition is filed before service or promptly after service. Notwithstanding s. 803.01 (3) (a), the child victim or a parent, stepparent or legal guardian of the child victim may be a petitioner under this section. Section 813.06 does not apply to an action under this section. The respondent may respond to the petition either in writing before or at the hearing on the issuance of the injunction or orally at that hearing. The court shall inform the petitioner in writing that, if the petitioner chooses to have the documents in the action served by the sheriff, the petitioner should contact the sheriff to verify the proof of service of the petition.

(3) GENERAL PROCEDURE. (a) Procedure for an action under this section is in 2 parts. First, if the petitioner requests a temporary restraining order, the court or circuit court commissioner shall issue or refuse to issue that order. Second, the court shall hold a hearing under sub. (5) on whether to issue an injunction, which is the final relief. If the court or circuit court commissioner issues a temporary restraining order, the order shall set forth the date for the hearing on an injunction. If the court or circuit court commissioner does not issue a temporary restraining order, the date for the hearing shall be set upon motion by either party.

(b) The court or circuit court commissioner, on its or his or her own motion or the motion of any party, may order one or more of the following:

1. That a guardian ad litem be appointed for the child victim in accordance with s. 48.235.

2. That all persons, other than the parties, their attorneys, witnesses, child victim advocates, service representatives, as defined in s. 895.45 (1) (c), court personnel and any guardian ad litem, be excluded from any hearing under this section.

3. That access to any record of an action under this section be available only to the parties, their attorneys, any guardian ad litem, court personnel and any applicable court upon appeal.

(bm) The court or circuit court commissioner shall appoint a guardian ad litem if the respondent is a parent of the child.

(c) An action under this section may pertain to more than one child victim.

(4) TEMPORARY RESTRAINING ORDER. (a) A judge or circuit court commissioner shall issue a temporary restraining order ordering the respondent to avoid the child victim's residence or any premises temporarily occupied by the child victim or both, and to avoid contacting or causing any person other than a party's attorney to contact the child victim unless the petitioner consents in writing and the judge or circuit court commissioner agrees that the contact is in the best interests of the child victim, if all of the following occur:

1. The petitioner submits to the judge or circuit court commissioner a petition alleging the elements set forth under sub. (6) (a).

2. The judge or circuit court commissioner finds reasonable grounds to believe that the respondent has engaged in, or based on prior conduct of the child victim and the respondent may engage in, abuse of the child victim.

(b) Notice need not be given to the respondent before issuing a temporary restraining order under this subsection. A temporary restraining order may be entered only against the respondent named in the petition.

(c) The temporary restraining order is in effect until a hearing is held on issuance of an injunction under sub. (5). A judge shall hold a hearing on issuance of an injunction within 14 days after the temporary restraining order is issued, unless the time is extended upon the written consent of the parties or extended once for 14 days upon a finding that the respondent has not been served with a copy of the temporary restraining order although the petitioner has exercised due diligence.

(5) INJUNCTION. (a) A judge may grant an injunction ordering the respondent to avoid the child victim's residence or any premises temporarily occupied by the child victim or both, and to avoid contacting or causing any person other than a party's attorney to contact the child victim unless the petitioner consents to that contact in writing and the judge agrees that the contact is in the best interests of the child victim, if all of the following occur:

1. The petitioner files a petition alleging the elements set forth under sub. (6) (a).

2. The petitioner serves upon the respondent a copy of the petition and notice of the time for hearing on the issuance of the injunction, or the respondent serves upon the petitioner notice of the time for hearing on the issuance of the injunction.

3. After hearing, the judge finds reasonable grounds to believe that the respondent has engaged in, or based upon prior conduct of the child victim and the respondent may engage in, abuse of the child victim.

(b) If the respondent is the parent of the child victim, the judge shall modify the order under par. (a) to provide the parent reasonable visitation rights, unless the judge finds that visitation would endanger the child's physical, mental or emotional health. The judge may provide that any authorized visitation be supervised.

(c) The injunction may be entered only against the respondent named in the petition.

(d) 1. An injunction under this subsection is effective according to its terms, but for not more than 2 years or until the child victim attains 18 years of age, whichever occurs first.

2. When an injunction in effect for less than 6 months expires, the court shall extend the injunction if the petitioner states that an extension is necessary to protect the child victim. This extension shall remain in effect until 6 months after the date the court first entered the injunction or until the child attains 18 years of age, whichever occurs first.

3. If the petitioner states that an extension is necessary to protect the child victim, the court may extend the injunction for not more than 2 years or until the child attains 18 years of age, whichever occurs first.

4. Notice need not be given to the respondent before extending an injunction under subd. 2. or 3. The petitioner shall notify the respondent after the court extends an injunction under subd. 2. or 3.

(e) An injunction under this section may direct the payment of child support using a method of calculation authorized under s. 767.511.

(5m) NOTICE OF RESTRICTION ON FIREARM POSSESSION; SURRENDER OF FIREARMS. (a) An injunction issued under sub. (5) shall do all of the following:

1. Inform the respondent named in the petition of the requirements and penalties under s. 941.29.

2. Except as provided in par. (ag), require the respondent to surrender any firearms that he or she owns or has in his or her possession to the sheriff of the county in which the action under this section was commenced, to the sheriff of the county in which the respondent resides or to another person designated by the respondent and approved by the judge or circuit court commissioner. The judge or circuit court commissioner shall approve the person designated by the respondent unless the judge or circuit court commissioner finds that the person is inappropriate and places the reasons for the finding on the record. If a firearm is surrendered to a person designated by the respondent and approved by the judge or circuit court commissioner, the judge or circuit court commissioner shall inform the person to whom the firearm is surrendered of the requirements and penalties under s. 941.29 (4).

(ag) If the respondent is a peace officer, an injunction issued under sub. (5) may not require the respondent to surrender a firearm that he or she is required, as a condition of employment, to possess whether or not he or she is on duty.

(am) 1. When a respondent surrenders a firearm under par. (a) 2. to a sheriff, the sheriff who is receiving the firearm shall prepare a receipt for each firearm surrendered to him or her. The receipt shall include the manufacturer, model and serial number of the firearm surrendered to the sheriff and shall be signed by the respondent and by the sheriff to whom the firearm is surrendered.

2. The sheriff shall keep the original of a receipt prepared under subd. 1. and shall provide an exact copy of the receipt to the respondent. When the firearm covered by the receipt is returned to the respondent under par. (b), the sheriff shall surrender to the respondent the original receipt and all of his or her copies of the receipt.

3. A receipt prepared under subd. 1. is conclusive proof that the respondent owns the firearm for purposes of returning the firearm covered by the receipt to the respondent under par. (b).

4. The sheriff may not enter any information contained on a receipt prepared under subd. 1. into any computerized or direct electronic data transfer system in order to store the information or disseminate or provide access to the information.

(aw) A sheriff may store a firearm surrendered to him or her under par. (a) 2. in a warehouse that is operated by a public warehouse keeper licensed under ch. 99. If a sheriff stores a firearm at a warehouse under this paragraph, the respondent shall pay the costs charged by the warehouse for storing that firearm.

(b) A firearm surrendered under par. (a) 2. may not be returned to the respondent until a judge or circuit court commissioner determines all of the following:

1. That the injunction issued under sub. (5) has been vacated or has expired and not been extended.

2. That the person is not prohibited from possessing a firearm under any state or federal law or by the order of any federal court or state court, other than an order from which the judge or circuit court commissioner is competent to grant relief.

(c) If a respondent surrenders a firearm under par. (a) 2. that is owned by a person other than the respondent, the person who owns the firearm may apply for its return to the circuit court for the county in which the person to whom the firearm was surrendered is located. The court shall order such notice as it considers adequate to be given to all persons who have or may have an interest in the firearm and shall hold a hearing to hear all claims to its true ownership. If the right to possession is proved to the court's satisfaction, it shall order the firearm returned. If the court returns a firearm under this paragraph, the court shall inform the person to whom the firearm is returned of the requirements and penalties under s. 941.29 (4).

(6) PETITION. (a) The petition shall allege facts sufficient to show the following:

1. The name of the petitioner and the child victim.

2. The name of the respondent.

3. That the respondent engaged in, or based on prior conduct of the respondent and the child victim may engage in, abuse of the child victim.

4. If the payment of child support is requested, that the payment of child support is reasonable or necessary based on criteria provided under s. 767.511.

5. If the petitioner knows of any other court proceeding in which the petitioner is a person affected by a court order or judgment that includes provisions regarding contact with the respondent, any of the following that are known by the petitioner:

a. The name or type of the court proceeding.

b. The date of the court proceeding.

c. The types of provisions regarding contact between the petitioner and respondent.

(b) Upon request, the clerk of circuit court shall provide, without cost, the simplified forms obtained under s. 48.47 (7) (d) to a petitioner.

(7) CONTACT. Any order under this section directing a person to avoid contact with a child victim prohibits the person from knowingly touching, meeting, communicating or being in visual or audio contact with the child victim, except as provided in any modifications of the order under sub. (5) (b).

(9) ENFORCEMENT ASSISTANCE. (a) If an order is issued under this section, upon request by the petitioner, the court or circuit court commissioner, as applicable, shall order the sheriff to assist in executing or serving the temporary restraining order or injunction.

(am) 1. If an injunction is issued or extended under sub. (5), the clerk of the circuit court shall notify the department of justice of the injunction and shall provide the department of justice with information concerning the period during which the injunction is in effect and information necessary to identify the respondent for purposes of a firearms restrictions record search under s. 175.35 (2g) (c) or a background check under s. 175.60 (9g) (a).

2. Except as provided in subd. 3., the department of justice may disclose information that it receives under subd. 1. only as part of a firearms restrictions record search under s. 175.35 (2g) (c).

3. The department of justice shall disclose any information that it receives under subd. 1. to a law enforcement agency when the information is needed for law enforcement purposes.

(b) Within one business day after an order or injunction is issued, extended, modified or vacated under this section, the clerk of the circuit court shall send a copy of the order or injunction, or of the order extending, modifying or vacating an order or injunction, to the sheriff or to any other local law enforcement agency which is the central repository for orders and injunctions and which has jurisdiction over the child victim's premises.

(c) The sheriff or other appropriate local law enforcement agency under par. (b) shall enter the information received under par. (b) concerning an order or injunction issued, extended, modified or vacated under this section into the transaction information for management of enforcement system no later than 24 hours after receiving the information and shall make available to other law enforcement agencies, through a verification system, information on the existence and status of any order or injunction issued under this section. The information need not be maintained after the order or injunction is no longer in effect.

(10) ARREST. (am) A law enforcement officer shall arrest and take a person into custody if all of the following occur:

1. A petitioner under sub. (6) (a) presents the law enforcement officer with a copy of an order issued under sub. (4) or (5), or the law enforcement officer determines that such an order exists through communication with appropriate authorities.

2. The law enforcement officer has probable cause to believe that the person has violated the order issued under sub. (4) or (5).

(c) A respondent who does not appear at a hearing at which the court orders an injunction under sub. (5) but who has been served with a copy of the petition and notice of the time for hearing under sub. (5) (a) 2. has constructive knowledge of the existence of the injunction and shall be arrested for violation of the injunction regardless of whether he or she has been served with a copy of the injunction.

(11) PENALTY. Whoever knowingly violates a temporary restraining order or injunction issued under this section shall be fined not more than $1,000 or imprisoned for not more than 9 months or both.

(12) NOTICE OF FULL FAITH AND CREDIT. An order or injunction issued under sub. (4) or (5) shall include a statement that the order or injunction may be accorded full faith and credit in every civil or criminal court of the United States, civil or criminal courts of any other state and Indian tribal courts to the extent that such courts may have personal jurisdiction over nontribal members.

History: 1985 a. 234; 1987 a. 332 s. 64; Sup. Ct. Order, 151 Wis. 2d xxv (1989); 1991 a. 276; 1993 a. 227, 318; 1995 a. 71, 275, 306, 456; 1997 a. 292; 2001 a. 61; 2005 a. 155, 272; 2005 a. 443 s. 265; 2007 a. 20, 124; 2009 a. 262; 2011 a. 35.

This section implicitly envisions a change of placement and custody if the trial court issues a child abuse injunction against a parent who has custody or placement of a child under a divorce order or judgment. Scott M.H. v. Kathleen M.H. 218 Wis. 2d 605, 581 N.W.2d 564 (Ct. App. 1998), 97-0814.

Applicable law allows electronic transmission of certain confidential case information among clerks of circuit court, county sheriff's offices, and the Department of Justice through electronic interfaces involving the Department of Administration's Office of Justice Assistance, specifically including electronic data messages regarding child abuse protection orders and individual at risk protection orders in actions in which the court has ordered, under subs. (3) (b) 3. and (c) 2., respectively, that access to any record of the case be available only to the individual at risk, parties, their attorneys, any guardian or guardian ad litem, court personnel, and any applicable appellate court. OAG 2-10.

813.123 Restraining orders and injunctions for individuals at risk.

(1) DEFINITIONS. In this section:

(a) "Abuse" has the meaning given in s. 46.90 (1) (a).

(ae) "Adult at risk" has the meaning given in s. 55.01 (1e).

(am) "Adult-at-risk agency" has the meaning given in s. 55.01 (1f).

(b) "Bodily harm" has the meaning given in s. 46.90 (1) (aj).

(br) "Caregiver" has the meaning given in s. 46.90 (1) (an).

(cg) "Elder adult at risk" has the meaning given in s. 46.90 (1) (br).

(d) "False representation" includes a promise that is made with the intent not to fulfill the promise.

(dm) "Financial exploitation" has the meaning given in s. 46.90 (1) (ed).

(e) "Great bodily harm" has the meaning given in s. 939.22 (14).

(eg) "Harassment" has the meaning given in s. 813.125 (1).

(ep) "Individual at risk" means an elder adult at risk or an adult at risk.

(fm) "Mistreatment of an animal" means cruel treatment of any animal owned by or in service to an individual at risk.

(g) "Neglect" has the meaning given in s. 46.90 (1) (f).

(gr) "Self-neglect" has the meaning given in s. 46.90 (1) (g).

(gs) "Stalking" means engaging in a course of conduct, as defined in s. 940.32 (1) (a).

(2) COMMENCEMENT OF ACTION AND RESPONSE. (a) No action under this section may be commenced by complaint and summons. An action under this section may be commenced only by a petition described under sub. (6). The action commences with service of the petition upon the respondent if a

copy of the petition is filed before service or promptly after service. The individual at risk, any person acting on behalf of an individual at risk, an elder-adult-at-risk agency, or an adult-at-risk agency may be a petitioner under this section. If the petition is filed by a person other than the individual at risk, the petitioner shall serve a copy of the petition on the individual at risk. Section 813.06 does not apply to an action under this section. The respondent may respond to the petition either in writing before or at the hearing on the issuance of the injunction or orally at that hearing. The court shall inform the petitioner in writing that, if the petitioner chooses to have the documents in the action served by the sheriff, the petitioner should contact the sheriff to verify the proof of service of the petition.

(b) The court may go forward with a petition filed under sub. (6) if the individual at risk has been adjudicated incompetent under ch. 880, 2003 stats., or ch. 54, notwithstanding an objection by an individual at risk who is the subject of the petition, or an objection by the guardian of the individual at risk.

(3) GENERAL PROCEDURE. (a) Procedure for an action under this section is in 2 parts. First, if the petitioner requests a temporary restraining order, the court or circuit court commissioner shall issue or refuse to issue that order. Second, the court shall hold a hearing under sub. (5) on whether to issue an injunction, which is the final relief. If the court or circuit court commissioner issues a temporary restraining order, the order shall set forth the date for the hearing on an injunction. If the court or circuit court commissioner does not issue a temporary restraining order, the date for the hearing shall be set upon motion by either party.

(b) The court or circuit court commissioner, on its or his or her own motion or the motion of any party, shall order that a guardian ad litem be appointed for the individual at risk, if the petition under sub. (6) was filed by a person other than the individual at risk, and may order that a guardian ad litem be appointed in other instances when justice so requires.

(c) The court or circuit court commissioner, on its or his or her own motion or the motion of any party, may order any of the following:

1. That all persons, other than the individual at risk, the parties, their attorneys, a representative of the adult-at-risk agency or elder-adult-at-risk agency, witnesses, court personnel, and any guardian or any guardian ad litem, be excluded from any hearing under this section.

2. That access to any record of an action under this section be available only to the individual at risk, the parties, their attorneys, any guardian or any guardian ad litem, the adult-at-risk agency or elder-adult-at-risk agency, court personnel, and, upon appeal, any applicable court.

(4) TEMPORARY RESTRAINING ORDER. (a) Unless the individual at risk, guardian, or guardian ad litem consents in writing and the judge or circuit court commissioner agrees that the contact is in the best interests of the individual at risk, a judge or circuit court commissioner shall issue a temporary restraining order, as specified in par. (ar), if all of the following occur:

1. The petitioner submits to the judge or circuit court commissioner a petition alleging the elements set forth under sub. (6).

2. The judge or circuit court commissioner finds reasonable grounds to believe any of the following:

a. That the respondent has interfered with or, based on prior conduct of the respondent, may interfere with an investigation of the individual at risk, the delivery of protective services to or a protective placement of the individual at risk under ch. 55, or the delivery of services to an elder adult at risk under s. 46.90 (5m); and that the interference complained of, if continued, would make it difficult to determine whether abuse, financial exploitation, neglect, or self-neglect has occurred, is occurring, or may recur.

b. That the respondent engaged in or threatened to engage in the abuse, financial exploitation, neglect, harassment, or stalking of an individual at risk or the mistreatment of an animal.

(ar) A temporary restraining order issued under par. (a) shall order the respondent to do one or more of the following:

1. Avoid interference with an investigation of the elder adult at risk under s. 46.90 or the adult at risk under s. 55.043, the delivery of protective services to or a protective placement of the individual at risk under ch. 55, or the delivery of services to the elder adult at risk under s. 46.90 (5m).

2. Cease engaging in or threatening to engage in the abuse, financial exploitation, neglect, harassment, or stalking of an individual at risk or mistreatment of an animal.

3. Avoid the residence of the individual at risk or any other location temporarily occupied by the individual at risk, or both.

4. Avoid contacting or causing any person other than a party's attorney or a law enforcement officer to contact the individual at risk.

5. Engage in any other appropriate remedy not inconsistent with the remedies requested in the petition.

(b) Notice need not be given to the respondent before issuing a temporary restraining order under this subsection. A temporary restraining order may be entered only against the respondent named in the petition.

(c) The temporary restraining order is in effect until a hearing is held on issuance of an injunction under sub. (5). A judge shall hold a hearing on issuance of an injunction within 14 days after the temporary restraining order is issued, unless the time is extended upon the written consent of the parties or extended once for 14 days upon a finding that the respondent has not been served with a copy of the temporary restraining order although the petitioner has exercised due diligence.

(5) INJUNCTION. (a) Unless the individual at risk, guardian, or guardian ad litem consents in writing to a contact and the judge agrees that the contact is in the best interests of the individual at risk, a judge may grant an injunction ordering the respondent as specified in par. (ar), if all of the following occur:

1. The petitioner files a petition alleging the elements set forth under sub. (6).

2. The petitioner serves upon the respondent a copy of the petition and notice of the time for hearing on the issuance of the injunction, or the respondent serves upon the petitioner notice of the time for hearing on the issuance of the injunction.

3. After hearing, the judge finds reasonable cause to believe any of the following:

a. That the respondent has interfered with or, based upon prior conduct of the respondent, may interfere with an investigation of the elder adult at risk under s. 46.90 or the adult at risk under s. 55.043 and that the interference complained of, if continued, would make it difficult to determine if abuse, financial exploitation, neglect, harassment, or stalking of an individual at risk or mistreatment of an animal is occurring or may recur.

b. That the respondent has interfered with the delivery of protective services to or a protective placement of the individual at risk under ch. 55 after the offer of protective services or protective placement has been made and the individual at risk or his or her guardian, if any, has consented to receipt of the protective services or protective placement; or that the respondent has interfered with the delivery of services to an elder adult at risk under s. 46.90 (5m).

c. That the respondent has engaged in or threatened to engage in the abuse, financial exploitation, neglect, harassment, or stalking of an individual at risk or the mistreatment of an animal.

(ar) An injunction granted under par. (a) shall order the respondent to do one or more of the following:

1. Avoid interference with an investigation of the elder adult at risk under s. 46.90 or the adult at risk under s. 55.043, the delivery of protective services to or a protective placement of the individual at risk under ch. 55, or the delivery of services to the elder adult at risk under s. 46.90 (5m).

2. Cease engaging in or threatening to engage in the abuse, financial exploitation, neglect, harassment, or stalking of an individual at risk or the mistreatment of an animal.

3. Avoid the residence of the individual at risk or any other location temporarily occupied by the individual at risk, or both.

4. Avoid contacting or causing any person other than a party's attorney or a law enforcement officer to contact the individual at risk.

5. Any other appropriate remedy not inconsistent with the remedies requested in the petition.

(b) The injunction may be entered only against the respondent named in the petition.

(c) 1. An injunction under this subsection is effective according to its terms, but for not more than 4 years.

2. When an injunction that has been in effect for less than 6 months expires, the court shall extend the injunction if the petitioner states that an extension is necessary to protect the individual at risk. This extension shall remain in effect until 6 months after the date on which the court first entered the injunction.

3. If the petitioner states that an extension is necessary to protect the individual at risk, the court may extend the injunction for not more than 2 years.

4. Notice need not be given to the respondent before extending an injunction under subd. 2. or 3. The petitioner shall notify the respondent after the court extends an injunction under subd. 2. or 3.

(6) PETITION. The petition shall allege facts sufficient to show the following:

(a) The name of the petitioner and the individual at risk.

(b) The name of the respondent and that the respondent is an adult.

(c) That the respondent interfered with or, based on prior conduct of the respondent, may interfere with an investigation of the elder adult at risk under s. 46.90 (5), an investigation of the adult at risk under s. 55.043, the delivery of protective services to or a protective placement of the individual at risk under ch. 55, or the delivery of services to the elder adult at risk under s. 46.90 (5m); or that the respondent engaged in, or threatened to engage in, the abuse, financial exploitation, neglect, stalking, or harassment of an individual at risk or mistreatment of an animal.

(d) If the petitioner knows of any other court proceeding in which the petitioner is a person affected by a court order or judgment that includes provisions regarding contact with the respondent, any of the following that are known by the petitioner:

1. The name or type of the court proceeding.

2. The date of the court proceeding.

3. The type of provisions regarding contact between the petitioner and respondent.

(7) INTERFERENCE ORDER. Any order under sub. (4) (ar) 1. or 2. or (5) (ar) 1. or 2. also shall prohibit the respondent from intentionally preventing a representative or employee of the county protective services agency from meeting, communicating, or being in visual or audio contact with the adult at risk, except as provided in the order.

(8) ENFORCEMENT ASSISTANCE. (a) If an order is issued under this section, upon request by the petitioner, the court or circuit court commissioner shall order the sheriff to assist in executing or serving the temporary restraining order or injunction.

(b) Within one business day after an order or injunction is issued, extended, modified or vacated under this section, the clerk of circuit court shall send a copy of the order or injunction, or of the order extending, modifying or vacating an order or injunction, to the sheriff or to any other local law enforcement agency which is the central repository for orders and injunctions and which has jurisdiction over the vulnerable adult's premises.

(c) The sheriff or other appropriate local law enforcement agency under par. (b) shall enter the information received under par. (b) concerning an order or injunction issued, extended, modified or vacated under this section into the transaction information for management of enforcement system no later than 24 hours after receiving the information and shall make available to other law enforcement agencies, through a verification system, information on the existence and status of any order or injunction issued under this section. The information need not be maintained after the order or injunction is no longer in effect.

(9) ARREST. (am) A law enforcement officer shall arrest and take a person into custody if all of the following occur:

1. A petitioner presents the law enforcement officer with a copy of an order issued under sub. (4) or an injunction issued under sub. (5), or the law enforcement officer determines that such an order exists through communication with appropriate authorities.

2. The law enforcement officer has probable cause to believe that the person has violated the order issued under sub. (4) or the injunction issued under sub. (5).

(c) A respondent who does not appear at a hearing at which the court orders an injunction under sub. (5) but who has been served with a copy of the petition and notice of the time for hearing under sub. (5) (a) 2. has constructive knowledge of the existence of the injunction and may be arrested for violation of the injunction regardless of whether he or she has been served with a copy of the injunction.

(10) PENALTY. Whoever intentionally violates a temporary restraining order or injunction issued under this section shall be fined not more than $1,000 or imprisoned for not more than 9 months or both.

(12) NOTICE OF FULL FAITH AND CREDIT. An order or injunction issued under sub. (4) or (5) shall include a statement that the order or injunction may be accorded full faith and credit in every civil or criminal court of the United States, civil or criminal courts of any other state and Indian tribal courts to the extent that such courts may have personal jurisdiction over nontribal members.

History: 1993 a. 445; 1995 a. 71, 306; 1997 a. 27; 2001 a. 61; 2005 a. 264, 387, 388; 2007 a. 45, 96, 124; 2009 a. 262.

The First 30 Months: Wisconsin's Individual-at-Risk Restraining Order. Abramson, Mansfield, & Raymond. Wis. Law. Nov. 2010.

813.125 Harassment restraining orders and injunctions. (1) DEFINITION. In this section, "harassment" means any of the following:

(a) Striking, shoving, kicking or otherwise subjecting another person to physical contact; engaging in an act that would constitute abuse under s. 48.02 (1), sexual assault under s. 940.225, or stalking under s. 940.32; or attempting or threatening to do the same.

(b) Engaging in a course of conduct or repeatedly committing acts which harass or intimidate another person and which serve no legitimate purpose.

(2) COMMENCEMENT OF ACTION. (a) An action under this section may be commenced by filing a petition described under sub. (5) (a). No action under this section may be commenced by service of summons. The action commences with service of the petition upon the respondent if a copy of the petition is filed before service or promptly after service. If the judge or a circuit court commissioner extends the time for a hearing under sub. (3) (c) and the petitioner files an affidavit with the court stating that personal service by the sheriff or a private server under s. 801.11 (1) (a) or (b) was unsuccessful because the respondent is avoiding service by concealment or otherwise, the judge or circuit court commissioner shall inform the petitioner that he or she may serve the respondent by publication of a summary of the petition as a class 1 notice, under ch. 985, and by mailing or sending a facsimile if the respondent's post-office address or facsimile number is known or can with due diligence be ascertained. The mailing or sending of a facsimile may be omitted if the post-office address or facsimile number cannot be ascertained with due diligence. A summary of the petition published as a class 1 notice shall include the name of the respondent and of the petitioner, notice of the temporary restraining order, and notice of the date, time, and place of the hearing regarding the injunction. The court shall inform the petitioner in writing that, if the petitioner chooses to have the documents in the action served by the sheriff, the petitioner should contact the sheriff to verify the proof of service of the petition. Section 813.06 does not apply to an action under this section.

(b) Notwithstanding s. 803.01 (3) (a), a child, as defined in s. 813.122 (1) (b), or a parent, stepparent, or legal guardian of a child may be a petitioner under this section.

(2g) APPOINTMENT OF GUARDIAN AD LITEM. The court or circuit court commissioner, on its or his or her own motion, or on the motion of any party, may appoint a guardian ad litem for a child who is a party under this section when justice so requires.

(2m) TWO-PART PROCEDURE. If the fee under s. 814.61 (1) for filing a petition under this section is waived under s. 814.61 (1) (e), the procedure for an action under this section is in 2 parts. First, if the petitioner requests a temporary restraining order the court shall issue or refuse to issue that order. Second, the court shall hold a hearing under sub. (4) on whether to issue an injunction, which is the final relief. If the court issues a temporary restraining order, the order shall set forth the date for the hearing on an injunction. If the court does not issue a temporary restraining order, the date for the hearing shall be set upon motion by either party.

(3) TEMPORARY RESTRAINING ORDER. (a) A judge or circuit court commissioner may issue a temporary restraining order ordering the respondent to cease or avoid the harassment of another person, to avoid the petitioner's residence, except as provided in par. (am), or any premises temporarily occupied by the petitioner or both, or any combination of these remedies requested in the petition, if all of the following occur:

1. The petitioner files a petition alleging the elements set forth under sub. (5) (a).

2. The judge or circuit court commissioner finds reasonable grounds to believe that the respondent has engaged in harassment with intent to harass or intimidate the petitioner.

(am) If the petitioner and the respondent are not married, and the respondent owns the premises where the petitioner resides, and the petitioner has no legal interest in the premises, in lieu of ordering the respondent to avoid the petitioner's residence under par. (a) the judge or circuit court commissioner may order the respondent to avoid the premises for a reasonable time until the petitioner relocates and shall order the respondent to avoid the new residence for the duration of the order.

(b) Notice need not be given to the respondent before issuing a temporary restraining order under this subsection. A temporary restraining order may be entered only against the respondent named in the petition.

(c) The temporary restraining order is in effect until a hearing is held on issuance of an injunction under sub. (4). A judge or circuit court commissioner shall hold a hearing on issuance of an injunction within 14 days after the temporary restraining order is issued, unless the time is extended upon the written consent of the parties or extended once for 14 days upon a finding that the respondent has not been served with a copy of the temporary restraining order although the petitioner has exercised due diligence.

(d) The judge or circuit court commissioner shall advise the petitioner of the right to serve the respondent the petition by published notice if with due diligence the respondent cannot be served as provided under s. 801.11 (1) (a) or (b). The clerk of

circuit court shall assist the petitioner with the preparation of the notice and filing of the affidavit of printing.

(e) The judge or circuit court commissioner may not dismiss or deny granting a temporary restraining order because of the existence of a pending action or of any other court order that bars contact between the parties, nor due to the necessity of verifying the terms of an existing court order.

(4) INJUNCTION. (a) A judge or circuit court commissioner may grant an injunction ordering the respondent to cease or avoid the harassment of another person, to avoid the petitioner's residence, except as provided in par. (am), or any premises temporarily occupied by the petitioner or both, or any combination of these remedies requested in the petition, if all of the following occur:

1. The petitioner has filed a petition alleging the elements set forth under sub. (5) (a).

2. The petitioner serves upon the respondent a copy of a restraining order obtained under sub. (3) and notice of the time for the hearing on the issuance of the injunction under sub. (3) (c). The restraining order or notice of hearing served under this subdivision shall inform the respondent that, if the judge or circuit court commissioner issues an injunction, the judge or circuit court commissioner may also order the respondent not to possess a firearm while the injunction is in effect.

3. After hearing, the judge or circuit court commissioner finds reasonable grounds to believe that the respondent has engaged in harassment with intent to harass or intimidate the petitioner.

(aj) The judge or circuit court commissioner may not dismiss or deny granting an injunction because of the existence of a pending action or of any other court order that bars contact between the parties, nor due to the necessity of verifying the terms of an existing court order.

(am) If the petitioner and the respondent are not married, and the respondent owns the premises where the petitioner resides, and the petitioner has no legal interest in the premises, in lieu of ordering the respondent to avoid the petitioner's residence under par. (a) the judge or circuit court commissioner may order the respondent to avoid the premises for a reasonable time until the petitioner relocates and shall order the respondent to avoid the new residence for the duration of the order.

(b) The injunction may be entered only against the respondent named in the petition.

(c) An injunction under this subsection is effective according to its terms, but for not more than 4 years.

(4m) RESTRICTION ON FIREARM POSSESSION; SURRENDER OF FIREARMS. (a) If a judge or circuit court commissioner issues an injunction under sub. (4) and the judge or circuit court commissioner determines, based on clear and convincing evidence presented at the hearing on the issuance of the injunction, that the respondent may use a firearm to cause physical harm to another or to endanger public safety, the judge or circuit court commissioner may prohibit the respondent from possessing a firearm.

(b) An order prohibiting a respondent from possessing a firearm issued under par. (a) remains in effect until the expiration of the injunction issued under sub. (4).

(c) An order issued under par. (a) that prohibits a respondent from possessing a firearm shall do all of the following:

1. Inform the respondent named in the petition of the requirements and penalties under s. 941.29.

2. Except as provided in par. (cg), require the respondent to surrender any firearms that he or she owns or has in his or her possession to the sheriff of the county in which the action under this section was commenced, to the sheriff of the county in which the respondent resides or to another person designated by the respondent and approved by the judge or circuit court commissioner. The judge or circuit court commissioner shall approve the person designated by the respondent unless the judge or circuit court commissioner finds that the person is inappropriate and places the reasons for the finding on the record. If a firearm is surrendered to a person designated by the respondent and approved by the judge or circuit court commissioner, the judge or circuit court commissioner shall inform the person to whom the firearm is surrendered of the requirements and penalties under s. 941.29 (4).

(cg) If the respondent is a peace officer, an order issued under par. (a) may not require the respondent to surrender a firearm that he or she is required, as a condition of employment, to possess whether or not he or she is on duty.

(cm) 1. When a respondent surrenders a firearm under par. (c) 2. to a sheriff, the sheriff who is receiving the firearm shall prepare a receipt for each firearm surrendered to him or her. The receipt shall include the manufacturer, model and serial number of the firearm surrendered to the sheriff and shall be signed by the respondent and by the sheriff to whom the firearm is surrendered.

2. The sheriff shall keep the original of a receipt prepared under subd. 1. and shall provide an exact copy of the receipt to the respondent. When the firearm covered by the receipt is returned to the respondent under par. (d), the sheriff shall surrender to the respondent the original receipt and all of his or her copies of the receipt.

3. A receipt prepared under subd. 1. is conclusive proof that the respondent owns the firearm for purposes of returning the firearm covered by the receipt to the respondent under par. (d).

4. The sheriff may not enter any information contained on a receipt prepared under subd. 1. into any computerized or direct electronic data transfer system in order to store the information or disseminate or provide access to the information.

(cw) A sheriff may store a firearm surrendered to him or her under par. (c) 2. in a warehouse that is operated by a public warehouse keeper licensed under ch. 99. If a sheriff stores a firearm at a warehouse under this paragraph, the respondent shall pay the costs charged by the warehouse for storing that firearm.

(d) A firearm surrendered under par. (c) 2. may not be returned to the respondent until a judge or circuit court commissioner determines all of the following:

1. That the injunction issued under sub. (4) has been vacated or has expired.

2. That the person is not prohibited from possessing a firearm under any state or federal law or by the order of any federal court or state court, other than an order from which the judge or circuit court commissioner is competent to grant relief.

(e) If a respondent surrenders a firearm under par. (c) 2. that is owned by a person other than the respondent, the person who owns the firearm may apply for its return to the circuit court for the county in which the person to whom the firearm was surrendered is located. The court shall order such notice as it considers adequate to be given to all persons who have or may have an interest in the firearm and shall hold a hearing to hear all claims to its true ownership. If the right to possession is proved to the court's satisfaction, it shall order the firearm returned. If the court returns a firearm under this paragraph, the court shall inform the person to whom the firearm is returned of the requirements and penalties under s. 941.29 (4).

(5) PETITION. (a) The petition shall allege facts sufficient to show the following:

1. The name of the person who is the alleged victim.

2. The name of the respondent.

3. That the respondent has engaged in harassment with intent to harass or intimidate the petitioner.

4. If the petitioner knows of any other court proceeding in which the petitioner is a person affected by a court order or judgment that includes provisions regarding contact with the respondent, any of the following that are known by the petitioner:

a. The name or type of the court proceeding.

b. The date of the court proceeding.

c. The type of provisions regarding contact between the petitioner and respondent.

(am) The petition shall inform the respondent that, if the judge or circuit court commissioner issues an injunction, the judge or circuit court commissioner may also order the respondent not to possess a firearm while the injunction is in effect.

(b) The clerk of circuit court shall provide simplified forms.

(5g) ENFORCEMENT ASSISTANCE. (a) Within one business day after an order or injunction is issued, extended, modified or vacated under this section, the clerk of the circuit court shall send a copy of the order or injunction, or of the order extending, modifying or vacating an order or injunction, to the sheriff or to any local law enforcement agency which is the central repository for orders and injunctions and which has jurisdiction over the petitioner's premises.

(b) The sheriff or other appropriate local law enforcement agency under par. (a) shall enter the information received under par. (a) concerning an order or injunction issued, extended, modified or vacated under this section into the transaction information for management of enforcement system no later than 24 hours after receiving the information and shall make available to other law enforcement agencies, through a verification system, information on the existence and status of any order or injunction issued under this section. The information need not be maintained after the order or injunction is no longer in effect.

(c) If an order is issued under this section, upon request by the petitioner the court or circuit court commissioner shall order the sheriff to accompany the petitioner and assist in placing him or her in physical possession of his or her residence or to otherwise assist in executing or serving the temporary restraining order or injunction. The petitioner may, at the petitioner's expense, use a private process server to serve papers on the respondent.

(d) The issuance of an order or injunction under sub. (3) or (4) is enforceable despite the existence of any other criminal or civil order restricting or prohibiting contact.

(5m) CONFIDENTIALITY OF VICTIM'S ADDRESS. The petition under sub. (5) and the court order under sub. (3) or (4) may not disclose the address of the alleged victim. The petitioner shall provide the clerk of circuit court with the petitioner's address when he or she files a petition under this section. The clerk shall maintain the petitioner's address in a confidential manner.

(5r) NOTICE TO DEPARTMENT OF JUSTICE. (a) If an order prohibiting a respondent from possessing a firearm is issued under sub. (4m), the clerk of the circuit court shall notify the department of justice of the existence of the order prohibiting a respondent from possessing a firearm and shall provide the department of justice with information concerning the period during which the order is in effect and information necessary to identify the respondent for purposes of a firearms restrictions record search under s. 175.35 (2g) (c) or a background check under s. 175.60 (9g) (a).

(b) Except as provided in par. (c), the department of justice may disclose information that it receives under par. (a) only as part of a firearms restrictions record search under s. 175.35 (2g) (c).

(c) The department of justice shall disclose any information that it receives under par. (a) to a law enforcement agency when the information is needed for law enforcement purposes.

(6) ARREST. (am) A law enforcement officer shall arrest and take a person into custody if all of the following occur:

1. A person named in a petition under sub. (5) presents the law enforcement officer with a copy of a court order issued under sub. (3) or (4), or the law enforcement officer determines that such an order exists through communication with appropriate authorities.

2. The law enforcement officer has probable cause to believe that the person has violated the court order issued under sub. (3) or (4).

(c) A respondent who does not appear at a hearing at which the court orders an injunction under sub. (4) but who has been served with a copy of the petition and notice of the time for hearing under sub. (4) (a) 2. has constructive knowledge of the existence of the injunction and shall be arrested for violation of the injunction regardless of whether he or she has been served with a copy of the injunction.

(7) PENALTY. Whoever violates a temporary restraining order or injunction issued under this section shall be fined not more than $1,000 or imprisoned not more than 90 days or both.

NOTE: Sub. (7) is amended eff. 1-1-14 by 2011 Wis. Act 266 to read:

(7) PENALTY. Whoever violates a temporary restraining order or injunction issued under this section shall be fined not more than $10,000 or imprisoned not more than 90 days or both.

(8) NOTICE OF FULL FAITH AND CREDIT. An order or injunction issued under sub. (3) or (4) shall include a statement that the order or injunction may be accorded full faith and credit in every civil or criminal court of the United States, civil or criminal courts of any other state and Indian tribal courts to the extent that such courts may have personal jurisdiction over nontribal members.

History: 1983 a. 336; 1991 a. 39, 194; 1995 a. 71, 306; 2001 a. 16, 61, 105; 2003 a. 321; 2005 a. 272; 2007 a. 124; 2009 a. 262; 2011 a. 35, 266.

This section is constitutional. Bachowski v. Salamone, 139 Wis. 2d 397, 407 N.W.2d 533 (1987).

A person convicted of violating a harassment injunction may not collaterally attack the validity of the injunction in a criminal prosecution to enforce the injunction. State v. Bouzel, 168 Wis. 2d 642, 484 N.W.2d 362 (Ct. App. 1992).

A hearing on issuing an injunction initially held within 7 days of the issuance of the temporary restraining order, then continued for seven months at the defendant's request, did not result in the court losing competency to proceed. In re Paternity of C.A.S. & C.D.S. 185 Wis. 2d 468, 518 N.W.2d 285 (Ct. App. 1994).

Proof of intent is discussed. In re Paternity of C.A.S. & C.D.S. 185 Wis. 2d 468, 518 N.W.2d 285 (Ct. App. 1994).

A municipal corporation is a "person" that may bring an action for an injunction under this section. Village of Tigerton v. Minniecheske, 211 Wis. 2d 777, 565 N.W.2d 586 (Ct. App. 1997), 96-1933.

Violating an injunction under this section is a crime and is not a lesser-included offense of harrassment under s. 947.013 (1r). A defendant may be convicted for violating this section and s. 947.013 without violating the prohibition against double jeopardy. Convictions for violating this section may be counted for purposes of determining whether the defendant may be sentenced as a repeat offender under s. 939.62. State v. Sveum, 2002 WI App 105, 254 Wis. 2d 868, 648 N.W.2d 496, 01-0230.

Banishment from a particular place is not a per se violation of the right to travel. There is no exact formula for determining whether a geographic restriction is narrowly tailored. Each case must be analyzed on its own facts, circumstances, and total atmosphere to determine whether the geographic restriction is narrowly drawn. Predick v. O'Connor, 2003 WI App 46, 260 Wis. 2d 323, 660 N.W.2d 1, 02-0503.

A violation of this section may not rest on conduct that serves a legitimate purpose, which is a determination that must of necessity be left to the fact finder, taking into account all the facts and circumstances. The legitimate purpose determination is such that the fact finder must determine if any legitimate purpose was intended at the time of the conduct. Welytok v. Ziolkowski, 2008 WI App 67, 312 Wis. 2d 435, 752 N.W.2d 359, 07-0347.

Applicable law allows electronic transmission of certain confidential case information among clerks of circuit court, county sheriff's offices, and the Department of Justice through electronic interfaces involving the Department of Administration's Office of Justice Assistance, specifically including electronic data messages regarding a harassment protection order issued issued under this section in an action that the court has ordered sealed. OAG 2-10.

For an activity to violate an injunction issued under this section, it must be intentional and devoid of any legitimate purpose. Deputies did not have probable to arrest the subject of an injunction when they knew that the subject had entered a town hall to attend a meeting at which he a had personal interest in an agenda item prior to the persons protected by the injunction, that the persons protected by the injunction wished to attend the meeting, and that they possessed harassment injunctions commanding the subject of the injunction to avoid any premises temporarily occupied by the persons protected. Wagner v. Washington County, 493 F. 3d 833 (2007).

813.128 Foreign protection orders. (1) ENFORCEMENT OF FOREIGN PROTECTION ORDERS. (a) A foreign protection order or modification of the foreign protection order that meets the requirements under s. 806.247 (2) has the same effect as an order issued under s. 813.12, 813.122, 813.123 or 813.125, except that the foreign protection order or modification shall be enforced according to its own terms.

(b) A law enforcement officer shall arrest and take the subject of a foreign protection order into custody if all of the following occur:

1. A person protected under a foreign protection order presents the law enforcement officer with a copy of a foreign protection order issued against the subject, or the law enforcement officer determines that a valid foreign protection order exists against the subject through communication with appropriate authorities. If a law enforcement officer examines a copy of a foreign protection order, the order, with any modification, is presumed to be valid if the order or modification appears to be valid on its face and circumstances suggest that the order and any modification are in effect.

2. The law enforcement officer has probable cause to believe that the person has violated the terms of the foreign protection order or modification of the order.

(2) PENALTY. A person who knowingly violates a condition of a foreign protection order or modification of a foreign protection order that is entitled to full faith and credit under s. 806.247 shall be fined not more than $1,000 or imprisoned for not more than 9 months or both. If a foreign protection order and any modification of that order that is entitled to full faith and credit under s. 806.247 remains current and in effect at the time that a court convicts a person for a violation of that order or modification of that order, but that order or modification has not been filed under s. 806.247, the court shall direct the clerk of circuit court to file the order and any modification of the order.

(3) IMMUNITY. A law enforcement officer, law enforcement agency, prosecuting attorney or clerk of circuit court is immune from civil and criminal liability for his or her acts or omissions arising out of a decision related to the filing of a foreign protection order or modification or to the detention or arrest of an alleged violator of a foreign protection order or modification if the act or omission is done in a good faith effort to comply with this section and s. 806.247.

History: 1995 a. 306.

813.129 Global positioning system tracking. (1) If a person knowingly violates a temporary restraining order or injunction issued under s. 813.12 or 813.125, in addition to other penalties provided in those sections, the court may report the violation to the department of corrections immediately upon the person's conviction and may order the person to submit to global positioning system tracking under s. 301.49.

(2) Before issuing an order under sub. (1), the court must find that the person is more likely than not to cause serious bodily harm to the person who petitioned for the restraining order or injunction, weighing the following factors:

(a) Whether the person has allegedly caused physical injury, intentionally abused pets or damaged property, or committed sexual assault, an act of strangulation or forcible entry to gain access to the petitioner.

(b) Whether the person has threatened any individual, including the petitioner, with harm.

(c) Whether the person has a history of improperly using or threatening to use a firearm or other dangerous weapon.

(d) Whether the person has expressed suicidal ideation.

(e) Whether the person has exhibited obsessive or controlling behavior toward the petitioner or any member of the petitioner's family, including stalking, surveillance, or isolation of the petitioner or any member of the petitioner's family.

(f) The person's mental health history.

(g) Whether the person has a history of abusing alcohol or a controlled substance.

(3) (a) The court may request the department of corrections to provide a validated risk assessment of the person in order to make the findings required in sub. (2).

(b) The court may request a domestic violence prevention or treatment center in the court's county to complete a danger assessment of the person in order to make the findings required in sub. (2).

(4) If a court enters an order under sub. (1), the court shall provide the person who petitioned for the restraining order or injunction with a referral to a domestic violence or sexual assault victim service provider.

(5) If, after weighing the factors set forth under sub. (2), the court determines that a person is more likely than not to cause serious bodily harm to the person who petitioned for the restraining order or injunction, and the court determines that another alternative, including imprisonment, is more likely to protect the person who petitioned for the restraining order or injunction, the court may not enter an order under sub. (1).

NOTE: This section is created eff. 1-1-14 by 2011 Wis. Act 266.
History: 2011 a. 266.

CHAPTER 938

JUVENILE JUSTICE CODE

SUBCHAPTER I

GENERAL PROVISIONS

938.02 Definitions. In this chapter:

(1) "Adult" means a person who is 18 years of age or older, except that for purposes of investigating or prosecuting a person who is alleged to have violated any state or federal criminal law or any civil law or municipal ordinance, "adult" means a person who has attained 17 years of age.

(1m) "Alcoholism" has the meaning given in s. 51.01 (1m).

(1p) "Alcohol or other drug abuse impairment" means a condition of a person which is exhibited by characteristics of habitual lack of self-control in the use of alcohol beverages, controlled substances or controlled substance analogs to the extent that the person's health is substantially affected or endangered or the person's social or economic functioning is substantially disrupted.

(1s) "Approved treatment facility" has the meaning given in s. 51.01 (2).

(2d) "Controlled substance" has the meaning given in s. 961.01 (4).

(2e) "Controlled substance analog" has the meaning given in s. 961.01 (4m).

(2f) "Coordinated services plan of care" has the meaning given in s. 46.56 (1) (cm).

(2g) "County department" means a county department under s. 46.215, 46.22 or 46.23, unless the context requires otherwise.

(2m) "Court", when used without further qualification, means the court assigned to exercise jurisdiction under this chapter and ch. 48 or, when used with reference to a juvenile who is subject to s. 938.183, a court of criminal jurisdiction or, when used with reference to a juvenile who is subject to s. 938.17 (2), a municipal court.

(3) "Court intake worker" means any person designated to provide intake services under s. 938.067.

(3m) "Delinquent" means a juvenile who is 10 years of age or older who has violated any state or federal criminal law, except as provided in ss. 938.17, 938.18 and 938.183, or who has committed a contempt of court, as defined in s. 785.01 (1), as specified in s. 938.355 (6g).

(4) "Department" means the department of corrections.

(5) "Developmental disability" has the meaning given in s. 51.01 (5).

(5g) "Drug dependent" has the meaning given in s. 51.01 (8).

(6) "Foster home" means any facility that is operated by a person required to be licensed by s. 48.62 (1) and that provides care and maintenance for no more than 4 juveniles or, if necessary to enable a sibling group to remain together, for no more than 6 juveniles or, if the department of children and families promulgates rules permitting a different number of juveniles, for the number of juveniles permitted under those rules.

(7) "Group home" means any facility operated by a person required to be licensed by the department of children and families under s. 48.625 for the care and maintenance of 5 to 8 juveniles.

(8) "Guardian" means the person named by the court having the duty and authority of guardianship.

(8b) "Habitual truant" has the meaning given in s. 118.16 (1) (a).

(8d) "Indian" means any person who is a member of an Indian tribe or who is an Alaska native and a member of a regional corporation, as defined in 43 USC 1606.

(8e) "Indian custodian" means an Indian person who has legal custody under tribal law or custom or under state law of an Indian juvenile who is the subject of an Indian juvenile custody proceeding, as defined in s. 938.028 (2) (b), or of an Indian juvenile in need of protection or services under s. 938.13 (4), (6), (6m), or (7) who is the subject of a temporary physical custody proceeding under ss. 938.19 to 938.21 or to whom temporary physical care, custody, and control has been transferred by the parent of that juvenile.

(8g) "Indian juvenile" means an unmarried person who is under 18 years of age and who is affiliated with an Indian tribe in any of the following ways:

(a) As a member of the Indian tribe.

(b) As a person who is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(8m) "Indian juvenile's tribe" means one of the following:

(a) The Indian tribe in which an Indian juvenile is a member or eligible for membership.

(b) In the case of an Indian juvenile who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian juvenile has the more significant contacts.

(8r) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians that is recognized as eligible for the services provided to Indians by the U.S. secretary of the interior because of Indian status, including any Alaska native village, as defined in 43 USC 1602 (c).

(10) "Judge", if used without further qualification, means the judge of the court assigned to exercise jurisdiction under this chapter and ch. 48 or, if used with reference to a juvenile who is subject to s. 938.183, the judge of the court of criminal jurisdiction or, when used with reference to a juvenile who is subject to s. 938.17 (2), the judge of the municipal court.

(10m) "Juvenile", when used without further qualification, means a person who is less than 18 years of age, except that for purposes of investigating or prosecuting a person who is alleged to have violated a state or federal criminal law or any civil law or municipal ordinance, "juvenile" does not include a person who has attained 17 years of age.

(10p) "Juvenile correctional facility" means a correctional institution operated or contracted for by the department of corrections or operated by the department of health services for holding in secure custody persons adjudged delinquent. "Juvenile correctional facility" includes the Mendota juvenile treatment center under s. 46.057 and a facility authorized under s. 938.533 (3) (b), 938.538 (4) (b), or 938.539 (5).

(10r) "Juvenile detention facility" means a locked facility approved by the department under s. 301.36 for the secure, temporary holding in custody of juveniles.

(11) "Legal custodian" means a person, other than a parent or guardian, or an agency to whom legal custody of a juvenile has been transferred by a court, but does not include a person who has only physical custody of the juvenile.

(12) "Legal custody" means a legal status created by the order of a court, which confers the right and duty to protect, train and discipline a juvenile, and to provide food, shelter, legal services, education and ordinary medical and dental care, subject to the rights, duties and responsibilities of the guardian of the juvenile and subject to any residual parental rights and responsibilities and the provisions of any court order.

(12m) "Off-reservation trust land" means land in this state that is held in trust by the federal government for the benefit of an Indian tribe or individual and that is located outside the boundaries of an Indian tribe's reservation.

(13) "Parent" means a biological parent, a husband who has consented to the artificial insemination of his wife under s. 891.40, or a parent by adoption. If the juvenile is a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.803, "parent" includes a person acknowledged under s. 767.805 or a substantially similar law of another state or adjudicated to be the biological father. "Parent" does not include any person whose parental rights have been terminated. For purposes of the application of s. 938.028 and the federal Indian Child Welfare Act, 25 USC 1901 to

1963, "parent" means a biological parent, an Indian husband who has consented to the artificial insemination of his wife under s. 891.40, or an Indian person who has lawfully adopted an Indian juvenile, including an adoption under tribal law or custom, and includes, in the case of a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.803, a person acknowledged under s. 767.805, a substantially similar law of another state, or tribal law or custom to be the biological father or a person adjudicated to be the biological father, but does not include any person whose parental rights have been terminated.

(14) "Physical custody" means actual custody of the person in the absence of a court order granting legal custody to the physical custodian.

(15) "Relative" means a parent, stepparent, brother, sister, stepbrother, stepsister, half brother, half sister, brother-in-law, sister-in-law, first cousin, 2nd cousin, nephew, niece, uncle, aunt, stepuncle, stepaunt, or any person of a preceding generation as denoted by the prefix of grand, great, or great-great, whether by blood, marriage, or legal adoption, or the spouse of any person named in this subsection, even if the marriage is terminated by death or divorce. For purposes of the application of s. 938.028 and the federal Indian Child Welfare Act, 25 USC 1901 to 1963, "relative" includes an extended family member, as defined in s. 938.028 (2) (a), whether by blood, marriage, or adoption, including adoption under tribal law or custom.

(15c) "Reservation," except as otherwise provided in s. 938.028 (2) (e), means land in this state within the boundaries of the reservation of a tribe.

(15d) "Residential care center for children and youth" means a facility operated by a child welfare agency licensed under s. 48.60 for the care, maintenance, and treatment of persons residing in that facility.

(15g) "Secured residential care center for children and youth" means a residential care center for children and youth operated by a child welfare agency that is licensed under s. 48.66 (1) (b) to hold in secure custody persons adjudged delinquent.

(17) "Shelter care facility" means a nonsecure place of temporary care and physical custody for juveniles, including a holdover room, licensed by the department of children and families under s. 48.66 (1) (a).

(17m) "Special treatment or care" means professional services which need to be provided to a juvenile or his or her family to protect the well-being of the juvenile, prevent placement of the juvenile outside the home or meet the special needs of the juvenile. This term includes medical, psychological or psychiatric treatment, alcohol or other drug abuse treatment or other services which the court finds to be necessary and appropriate.

(18) "Trial" means a fact-finding hearing to determine jurisdiction.

(18j) "Tribal court" means a court that has jurisdiction over juvenile custody proceedings, and that is either a court of Indian offenses or a court established and operated under the code or custom of an Indian tribe, or any other administrative body of an Indian tribe that is vested with authority over Indian juvenile custody proceedings.

(18k) "Tribal school" has the meaning given in s. 115.001 (15m).

(18m) "Truancy" has the meaning given in s. 118.16 (1) (c).

(19) "Type 1 juvenile correctional facility" means a juvenile correctional facility, but excludes any correctional institution that meets the criteria under sub. (10p) solely because of its status under s. 938.533 (3) (b), 938.538 (4) (b), or 938.539 (5).

(19r) "Type 2 residential care center for children and youth" means a residential care center for children and youth that is designated by the department to provide care and maintenance for juveniles who have been placed in the residential care center for children and youth under the supervision of a county department under s. 938.34 (4d).

(20) "Type 2 juvenile correctional facility" means a juvenile correctional facility that meets the criteria under sub. (10p) solely because of its status under s. 938.533 (3) (b), 938.538 (4) (b), or 938.539 (5).

(20m) (a) "Victim" means any of the following:

1. A person against whom a delinquent act has been committed.

2. If the person specified in subd. 1. is a child, a parent, guardian or legal custodian of the child.

3. If a person specified in subd. 1. is physically or emotionally unable to exercise the rights granted under this chapter, s. 950.04 or article I, section 9m, of the Wisconsin constitution, a person designated by the person specified in subd. 1. or a family member, as defined in s. 950.02 (3), of the person specified in subd. 1.

4. If a person specified in subd. 1. is deceased, any of the following:

a. A family member, as defined in s. 950.02 (3), of the person who is deceased.

b. A person who resided with the person who is deceased.

5. If a person specified in subd. 1. has been adjudicated incompetent in this state, the guardian of the person appointed for him or her.

(b) "Victim" does not include a juvenile alleged to have committed the delinquent act.

(21) "Victim-witness coordinator" means a person employed or contracted by the county board of supervisors under s. 950.06 to provide services for the victims and witnesses of crimes or a person employed or contracted by the department of justice to provide the services specified in s. 950.08.

History: 1995 a. 77, 216, 352, 448; 1997 a. 27, 35, 181, 191; 1999 a. 9, 162; 2001 a. 16, 59; 2003 a. 33, 284; 2005 a. 232, 344, 387; 2005 a. 443 s. 265; 2007 a. 20 ss. 3780 to 3782, 9121 (6) (a); 2009 a. 28, 94, 302, 334; 2011 a. 32, 258; 2011 a. 260 s. 80.

NOTE: 2003 Wis. Act 284 contains explanatory notes.

SUBCHAPTER III

JURISDICTION

938.12 Jurisdiction over juveniles alleged to be delinquent. **(1)** IN GENERAL. The court has exclusive jurisdiction, except as provided in ss. 938.17, 938.18, and 938.183, over any juvenile 10 years of age or older who is alleged to be delinquent.

(2) SEVENTEEN-YEAR-OLDS. If a petition alleging that a juvenile is delinquent is filed before the juvenile is 17 years of age, but the juvenile becomes 17 years of age before admitting the facts of the petition at the plea hearing or if the juvenile denies the facts, before an adjudication, the court retains jurisdiction over the case.

History: 1995 a. 77; 2005 a. 344.

The state may not delay in charging a child in order to avoid juvenile court jurisdiction. State v. Becker, 74 Wis. 2d 675, 247 N.W.2d 495 (1976).

Notwithstanding s. 48.13 (12), the court had jurisdiction under s. 48.12 (1) over a child who committed a delinquent act before his 12th birthday but was charged after his 12th birthday. In Matter of D. V. 100 Wis. 2d 363, 302 N.W.2d 64 (Ct. App. 1981).

Under the facts of the case, the court retained jurisdiction to determine waiver although the juvenile turned 18 after the proceedings were commenced. In Interest of TDP, 109 Wis. 2d 495, 326 N.W.2d 741 (1982).

A contempt of court allegation did not support a determination of delinquency. In Interest of V.G. 111 Wis. 2d 647, 331 N.W.2d 632 (Ct. App. 1983).

A prior adult proceeding that litigated the question of the respondent's age collaterally estopped the state from relitigating the same question in juvenile court, and the juvenile court had subject matter jurisdiction of the case. In Interest of H.N.T. 125 Wis. 2d 242, 371 N.W.2d 395 (Ct. App. 1985).

Juvenile court proceedings are commenced under sub. (2) upon filing the petition. The child need not appear in juvenile court before reaching age 18 for the court to retain jurisdiction. In Interest of D.W.B. 158 Wis. 2d 398, 462 N.W.2d 520 (1990).

When a juvenile turns 18 during the pendency of proceedings, the filing of a waiver petition prior to a plea hearing is not required for waiver of jurisdiction under sub. (2). In Interest of K.A.P. 159 Wis. 2d 384, 464 N.W.2d 106 (Ct. App. 1990).

The age of the defendant at the time of charging determines juvenile court jurisdiction regardless of the defendant's age at the time of the offense. State v. Annola, 168 Wis. 2d 453, 484 N.W.2d 138 (1992).

Wisconsin courts have jurisdiction over resident juveniles alleged to be delinquent because they violated another state's criminal laws. 70 Atty. Gen. 143.

Greater Jurisdiction Discretion. Schneider & Harrison. Wis. Law. Apr. 1996.

NOTE: The above annotations cite to s. 48.12, the predecessor statute to s. 938.12.

A defendant is not entitled to an evidentiary hearing as a matter of right whenever there is a mere allegation that the state intentionally "manipulated the system" to avoid juvenile court jurisdiction. The standard for determining when a hearing should be granted is articulated. State v. Velez, 224 Wis. 2d 1, 589 N.W.2d 9 (1999), 96-2430.

The state does not have jurisdiction over delinquent acts committed by Menominee tribal members within reservation boundaries, but does have jurisdiction over acts committed off the reservation. State v. Elmer J.K. 224 Wis. 2d 372, 591 N.W.2d 176 (Ct. App. 1999), 98-2067.

938.125 Jurisdiction over juveniles alleged to have violated civil laws or ordinances. The court has exclusive jurisdiction over a juvenile alleged to have violated a law punishable by forfeiture or a county, town, or other municipal ordinance, except as follows:

(1) As provided under s. 938.17.

(2) The court has exclusive jurisdiction over a juvenile alleged to have violated an ordinance enacted under s. 118.163 (2) only if evidence is provided by the school attendance officer that the activities under s. 118.16 (5) have been completed or were not required to be completed as provided in s. 118.16 (5m).

History: 1995 a. 77; 1997 a. 35, 239; 2005 a. 344.

938.13 Jurisdiction over juveniles alleged to be in need of protection or services. Except as provided in s. 938.028 (3), the court has exclusive original jurisdiction over a juvenile alleged to be in need of protection or services which can be ordered by the court if any of the following conditions applies:

(4) UNCONTROLLABLE. The juvenile's parent or guardian signs the petition requesting jurisdiction under this subsection and is unable or needs assistance to control the juvenile.

(6) HABITUALLY TRUANT FROM SCHOOL. Except as provided under s. 938.17 (2), the juvenile is habitually truant from school and evidence is provided by the school attendance officer that the activities under s. 118.16 (5) have been completed or were not required to be completed as provided in s. 118.16 (5m).

(6m) SCHOOL DROPOUT. The juvenile is a school dropout, as defined in s. 118.153 (1) (b).

(7) HABITUALLY TRUANT FROM HOME. The juvenile is habitually truant from home and either the juvenile, a parent or guardian, or a relative in whose home the juvenile resides signs the petition requesting jurisdiction and attests in court that reconciliation efforts have been attempted and have failed.

(12) DELINQUENT ACT BEFORE AGE 10. The juvenile is under 10 years of age and has committed a delinquent act.

(14) NOT RESPONSIBLE OR NOT COMPETENT. The juvenile has been determined, under s. 938.30 (5) (c), to be not responsible for a delinquent act by reason of mental disease or defect or has been determined, under s. 938.30 (5) (d), to be not competent to proceed.

History: 1995 a. 77, 275; 1997 a. 35, 239; 2005 a. 344; 2009 a. 94.

Sub. (6) specifically requires that the school attendance officer provide evidence that the activities under s. 118.16 (5) have been completed or were not required due to an exception under s. 118.16 (5m). Sub. (6) does not state that a protective services order requires a school attendance officer to provide evidence that all of the requirements under s. 118.16 were met. Richland County Health and Human Services v. Brandon L. Y. 2008 WI App 73, 312 Wis. 2d 406, 753 N.W.2d 529, 07-0834.

938.135 Referral of juveniles to proceedings under ch. 51 or 55. **(1)** JUVENILE WITH DEVELOPMENTAL DISABILITY, MENTAL ILLNESS, OR ALCOHOL OR DRUG DEPENDENCY. If a juvenile alleged to be delinquent or in need of protection or services is before the court and appears to have a developmental disability or mental illness or to be drug dependent or suffering from alcoholism, the court may proceed under ch. 51 or 55.

(2) ADMISSIONS, PLACEMENTS, AND COMMITMENTS TO INPATIENT FACILITIES. Any voluntary or involuntary admissions, placements, or commitments of a juvenile made in or to an inpatient facility, as defined in s. 51.01 (10), other than

a commitment under s. 938.34 (6) (am), are governed by ch. 51 or 55.

History: 1995 a. 77; 2005 a. 344.

938.17 Jurisdiction over traffic, boating, snowmobile, all-terrain vehicle, and utility terrain vehicle violations and over civil law and ordinance violations. **(1)** TRAFFIC, BOATING, SNOWMOBILE, ALL-TERRAIN VEHICLE, AND UTILITY TERRAIN VEHICLE VIOLATIONS. Except for violations of ss. 342.06 (2) and 344.48 (1), and violations of ss. 30.67 (1) and 346.67 (1) when death or injury occurs, courts of criminal and civil jurisdiction have exclusive jurisdiction in proceedings against juveniles 16 years of age or older for violations of s. 23.33, of ss. 30.50 to 30.80, of chs. 341 to 351, and of traffic regulations, as defined in s. 345.20, and nonmoving traffic violations, as defined in s. 345.28 (1). A juvenile charged with a traffic, boating, snowmobile, all-terrain vehicle, or utility terrain vehicle offense in a court of criminal or civil jurisdiction shall be treated as an adult before the trial of the proceeding except that the juvenile may be held in secure custody only in a juvenile detention facility. A juvenile convicted of a traffic, boating, snowmobile, all-terrain vehicle, or utility terrain vehicle offense in a court of criminal or civil jurisdiction shall be treated as an adult for sentencing purposes except as follows:

(a) The court may disregard any minimum period of incarceration specified for the offense.

(b) If the court orders the juvenile to serve a period of incarceration of less than 6 months, the juvenile may serve that period of incarceration only in a juvenile detention facility.

(c) If the court of civil or criminal jurisdiction orders the juvenile to serve a period of incarceration of 6 months or more, that court shall petition the court assigned to exercise jurisdiction under this chapter and ch. 48 to order one or more of the dispositions under s. 938.34, including placement of the juvenile in a juvenile correctional facility or a secured residential care center for children and youth, if appropriate.

(2) CIVIL LAW AND ORDINANCE VIOLATIONS. (a) *Concurrent municipal and juvenile court jurisdiction; ordinance violations.* 1. Except as provided in subd. 1m. and sub. (1), municipal courts have concurrent jurisdiction with the court assigned to exercise jurisdiction under this chapter and ch. 48 in proceedings against juveniles 12 years of age or over for violations of county, town, or other municipal ordinances. If evidence is provided by the school attendance officer that the activities under s. 118.16 (5) have been completed or were not required to be completed as provided in s. 118.16 (5m), the municipal court specified in subd. 2. may exercise jurisdiction in proceedings against a juvenile for a violation of an ordinance enacted under s. 118.163 (2) regardless of the juvenile's age and regardless of whether the court assigned to exercise jurisdiction under this chapter and ch. 48 has jurisdiction under s. 938.13 (6).

1m. Except as provided in sub. (1), municipal courts have exclusive jurisdiction in proceedings against juveniles 12 years of age or over for violations of municipal ordinances enacted under ch. 349 that are in conformity with chs. 341 to 349. When a juvenile 12 years of age or over is alleged to have violated a municipal ordinance enacted under ch. 349 that is in conformity with chs. 341 to 349, the juvenile may be issued a citation directing the juvenile to appear in municipal court or make a deposit or stipulation and deposit in lieu of appearance or, if there is no municipal court in the municipality that enacted the ordinance, the juvenile may be issued a citation or referred to intake as provided in par. (b). If a municipal court finds that a juvenile has violated a municipal ordinance enacted under ch. 349 that is in conformity with chs. 341 to 349, the court shall enter any of the dispositional orders permitted under s. 938.343 that are authorized under sub. (2) (cm).

2. a. In this subdivision, "administrative center" means the main administrative offices of a school district.

b. The municipal court that may exercise jurisdiction under subd. 1. is the municipal court that is located in the same municipality as the administrative center of the school district in which the juvenile is enrolled, if that municipality has adopted an ordinance under s. 118.163.

c. If the municipality specified under subd. 2. b. has not adopted an ordinance under s. 118.163, the municipal court that may exercise jurisdiction under subd. 1. is the municipal court that is located in the municipality where the school in which the juvenile is enrolled is located, if that municipality has adopted an ordinance under s. 118.163.

d. If the municipality specified under subd. 2. b. or c. has not adopted an ordinance under s. 118.163, the municipal court that may exercise jurisdiction under subd. 1. is the municipal court that is located in the municipality where the juvenile resides, if that municipality has adopted an ordinance under s. 118.163.

3. Except as provided in subd. 1m., when a juvenile is alleged to have violated a municipal ordinance, one of the following may occur:

a. The juvenile may be issued a citation directing the juvenile to appear in municipal court or make a deposit or stipulation and deposit in lieu of appearance.

b. The juvenile may be issued a citation directing the juvenile to appear in the court assigned to exercise jurisdiction under this chapter and ch. 48 or make a deposit or stipulation and deposit in lieu of appearance as provided in s. 938.237.

c. The juvenile may be referred to intake for a determination whether a petition should be filed in the court assigned to exercise jurisdiction under this chapter and ch. 48 under s. 938.125.

(b) *Juvenile court jurisdiction; civil law and ordinance violations.* When a juvenile 12 years of age or older is alleged to have violated a civil law punishable by a forfeiture or to have violated a municipal ordinance but there is no municipal court in the municipality, one of the following may occur:

1. The juvenile may be issued a citation directing the juvenile to appear in the court assigned to exercise jurisdiction under this chapter and ch. 48 or make a deposit or stipulation and deposit in lieu of appearance as provided in s. 938.237.

2. The juvenile may be referred to intake for a determination whether a petition under s. 938.125 should be filed in the court assigned to exercise jurisdiction under this chapter and ch. 48.

(c) *Citation procedures.* The citation procedures described in ch. 800 govern proceedings involving juveniles in municipal court, except that this chapter governs the taking and holding of a juvenile in custody and par. (cg) governs the issuing of a summons to the juvenile's parent, guardian, or legal custodian. When a juvenile is before the court assigned to exercise

jurisdiction under this chapter and ch. 48 upon a citation alleging that the juvenile violated a civil law or municipal ordinance, the procedures specified in s. 938.237 apply. If a citation is issued to a juvenile, the issuing agency shall notify the juvenile's parent, guardian, and legal custodian within 7 days. The agency issuing a citation to a juvenile who is 12 to 15 years of age for a violation of s. 125.07 (4) (a) or (b), 125.085 (3) (b), 125.09 (2), 961.573 (2), 961.574 (2), or 961.575 (2) or an ordinance conforming to one of those statutes shall send a copy to an intake worker under s. 938.24 for informational purposes only.

(cg) *Summons procedures.* After a citation is issued, unless the juvenile and his or her parent, guardian, and legal custodian voluntarily appear, the municipal court may issue a summons requiring the parent, guardian, or legal custodian of the juvenile to appear personally at any hearing involving the juvenile and, if the court so orders, to bring the juvenile before the court at a time and place stated. Section 938.273 governs the service of a summons under this paragraph, except that the expense of service or publication of a summons and of the travelling expenses and fees of a person summoned allowed in ch. 885 shall be a charge on the municipality of the court issuing the summons when approved by the court. If any person summoned under this paragraph fails without reasonable cause to appear, he or she may be proceeded against for contempt of court under s. 785.06. If a summons cannot be served or if the person served fails to obey the summons or if it appears to the court that the service will be ineffectual, a capias may be issued for the juvenile and for the parent, guardian, or legal custodian.

(cm) *Authorization for dispositions and sanctions.* A city, village, or town may adopt an ordinance or bylaw specifying which of the dispositions under ss. 938.343 and 938.344 and sanctions under s. 938.355 (6) (d) and (6m) the municipal court of that city, village, or town is authorized to impose or to petition the court assigned to exercise jurisdiction under this chapter and ch. 48 to impose. The use by the court of those dispositions and sanctions is subject to any ordinance or bylaw adopted under this paragraph.

(d) *Disposition; ordinance violations generally.* 1. If a municipal court finds that the juvenile violated a municipal ordinance other than an ordinance enacted under s. 118.163 or an ordinance that conforms to s. 125.07 (4) (a) or (b), 125.085 (3) (b), 125.09 (2), 961.573 (2), 961.574 (2), or 961.575 (2), the court shall enter any of the dispositional orders permitted under s. 938.343 that are authorized under par. (cm). If a juvenile fails to pay the forfeiture imposed by the municipal court, the court may not impose a jail sentence but may suspend any license issued under ch. 29 for not less than 30 days nor more than 5 years, or suspend the juvenile's operating privilege, as defined in s. 340.01 (40), for not more than 2 years.

2. If a court suspends a license or privilege under subd. 1., the court shall immediately take possession of the applicable license if issued under ch. 29 or, if the license is issued under ch. 343, the court may take possession of, and if possession is taken, shall destroy, the license. The court shall forward to the department that issued the license the notice of suspension stating that the suspension is for failure to pay a forfeiture imposed by the court, together with any license issued under ch. 29 of which the court takes possession. If the forfeiture is paid during the period of suspension, the court shall immediately notify the department, which shall then, if the license is issued under ch. 29, return the license to the person.

(e) *Disposition; alcohol and drug ordinance violations.* If a municipal court finds that a juvenile violated a municipal ordinance that conforms to s. 125.07 (4) (a) or (b), 125.085 (3) (b), 125.09 (2), 961.573 (2), 961.574 (2) or 961.575 (2), the court shall enter a dispositional order under s. 938.344 that is authorized under par. (cm).

(f) *Notice to victims.* If the act the juvenile committed resulted in personal injury or damage to or loss of the property of another, the municipal court shall, to the extent possible, provide each known victim of the act with the information contained in the notice required under s. 938.346.

(g) *Disposition; truancy or school dropout ordinance violations.* If the municipal court finds that a juvenile violated a municipal ordinance enacted under s. 118.163 (1m), it shall enter a dispositional order under s. 938.342 (1d). If a municipal court finds that a juvenile violated a municipal ordinance enacted under s. 118.163 (2), it shall enter a dispositional order under s. 938.342 (1g), and may enter a dispositional order under s. 938.342 (1m) (a), that is consistent with the municipal ordinance. If a municipal court finds that a juvenile violated a municipal ordinance enacted under s. 118.163 (2m), it shall enter a dispositional order under s. 938.342 (2) that is consistent with the municipal ordinance.

(h) *Sanctions; dispositional order violations generally.* 1. If a juvenile who has violated a municipal ordinance, other than an ordinance enacted under s. 118.163 (1m) or (2), violates a condition of his or her dispositional order, the municipal court may impose on the juvenile any of the sanctions specified in s. 938.355 (6) (d) 2. to 5. that are authorized under par. (cm) except for monitoring by an electronic monitoring system. The municipal court may also petition the court assigned to exercise jurisdiction under this chapter and ch. 48 to impose on the juvenile the sanction specified in s. 938.355 (6) (d) 1. or home detention with monitoring by an electronic monitoring system as specified in s. 938.355 (6) (d) 3., if authorized under par. (cm). A sanction may be imposed under this subdivision only if at the time of judgment the court explained the conditions to the juvenile and informed the juvenile of the possible sanctions under s. 938.355 (6) (d) that are authorized under par. (cm) for a violation or if before the violation the juvenile has acknowledged in writing that he or she has read, or has had read to him or her, those conditions and possible sanctions and that he or she understands those conditions and possible sanctions.

2. A motion requesting the municipal court to impose or petition for a sanction may be brought by the person or agency primarily responsible for the provision of dispositional services, the municipal attorney, or the court that entered the dispositional order. If the court initiates the motion, that court may not hold a hearing on the motion. Notice of the motion shall be given to the juvenile and the juvenile's parent, guardian, or legal custodian.

3. Before imposing any sanction, the court shall hold a hearing, at which the juvenile may present evidence. Except as provided in s. 901.05, neither common law nor statutory rules of evidence are binding at a hearing under this subdivision.

4. If the court assigned to exercise jurisdiction under this chapter and ch. 48 imposes the sanction specified in s. 938.355

(6) (d) 1. or home detention with monitoring by an electronic monitoring system as specified in s. 938.355 (6) (d) 3., on a petition described in subd. 1., that court shall order the municipality of the municipal court that filed the petition to pay to the county the cost of providing the sanction imposed under s. 938.355 (6) (d) 1. or 3.

(i) *Sanctions; truancy or school dropout dispositional order violations.* 1. If a juvenile who has violated a municipal ordinance enacted under s. 118.163 (1m) violates a condition of his or her dispositional order, the municipal court may impose on the juvenile any of the sanctions specified in s. 938.355 (6m) (ag). A sanction may be imposed under this subdivision only if at the time of judgment the court explained the conditions to the juvenile and informed the juvenile of those possible sanctions or if before the violation the juvenile has acknowledged in writing that he or she has read, or has had read to him or her, those conditions and possible sanctions and that he or she understands those conditions and possible sanctions.

2m. If a juvenile who has violated a municipal ordinance enacted under s. 118.163 (2) violates a condition of his or her dispositional order, the municipal court may impose on the juvenile any of the sanctions specified in s. 938.355 (6m) (a) that are authorized under par. (cm) except for the sanction specified in s. 938.355 (6m) (a) 1g. The municipal court may also petition the court assigned to exercise jurisdiction under this chapter and ch. 48 to impose on the juvenile the sanction specified in s. 938.355 (6m) (a) 1g., if authorized under par. (cm). A sanction may be imposed under this subdivision only if at the time of judgment the court explained the conditions to the juvenile and informed the juvenile of the possible sanctions under s. 938.355 (6m) (a) that are authorized under par. (cm) for a violation or if before the violation the juvenile has acknowledged in writing that he or she has read, or has had read to him or her, those conditions and possible sanctions and that he or she understands those conditions and possible sanctions.

3g. A motion requesting the municipal court to impose or petition for a sanction may be brought by the person or agency primarily responsible for the provision of dispositional services, the municipal attorney, or the court that entered the dispositional order. If the court initiates the motion, that court may not hold a hearing on the motion. Notice of the motion shall be given to the juvenile and the juvenile's parent, guardian, or legal custodian.

4. Before imposing any sanction, the court shall hold a hearing, at which the juvenile may present evidence. Except as provided in s. 901.05, neither common law nor statutory rules of evidence are binding at a hearing under this subdivision.

4m. If the court assigned to exercise jurisdiction under this chapter and ch. 48 imposes the sanction specified in s. 938.355 (6m) (a) 1g., on a petition described in subd. 2m., that court shall order the municipality of the municipal court that filed the petition to pay to the county the cost of providing the sanction imposed under s. 938.355 (6m) (a) 1g.

(3) SAFETY AT SPORTING EVENTS. Notwithstanding sub. (2), courts of criminal or civil jurisdiction have exclusive jurisdiction in proceedings against juveniles under s. 167.32 or under a local ordinance strictly conforming to s. 167.32. A juvenile convicted of a violation under s. 167.32 or under a local ordinance strictly conforming to s. 167.32 shall be treated as an adult for sentencing purposes.

History: 1995 a. 77, 352, 448; 1997 a. 205, 239, 258; 1999 a. 9; 2001 a. 16; 2005 a. 190, 344; 2007 a. 97; 2009 a. 103, 208.

938.18 Jurisdiction for criminal proceedings for juveniles 14 or older; waiver hearing. (1) WAIVER OF JUVENILE COURT JURISDICTION; CONDITIONS FOR. Subject to s. 938.183, a petition requesting the court to waive its jurisdiction under this chapter may be filed if the juvenile meets any of the following conditions:

(a) The juvenile is alleged to have violated s. 940.03, 940.06, 940.225 (1) or (2), 940.305, 940.31, 943.10 (2), 943.32 (2), 943.87 or 961.41 (1) on or after the juvenile's 14th birthday.

(b) The juvenile is alleged to have committed a violation on or after the juvenile's 14th birthday at the request of or for the benefit of a criminal gang, as defined in s. 939.22 (9), that would constitute a felony under chs. 939 to 948 or 961 if committed by an adult.

(c) The juvenile is alleged to have violated any state criminal law on or after the juvenile's 15th birthday.

(2) PETITION. The petition for waiver of jurisdiction may be filed by the district attorney or the juvenile or may be initiated by the court and shall contain a brief statement of the facts supporting the request for waiver. The petition for waiver of jurisdiction shall be accompanied by or filed after the filing of a petition alleging delinquency and shall be filed prior to the plea hearing, except that if the juvenile denies the facts of the petition and becomes 17 years of age before an adjudication, the petition for waiver of jurisdiction may be filed at any time prior to the adjudication. If the court initiates the petition for waiver of jurisdiction, the judge shall disqualify himself or herself from any future proceedings on the case.

(2m) AGENCY REPORT. The court may designate an agency, as defined in s. 938.38 (1) (a), to submit a report analyzing the criteria specified in sub. (5). The agency shall file the report with the court and the court shall cause copies of the report to be given to the juvenile, any parent, guardian or legal custodian of the juvenile and counsel at least 3 days before the hearing. The court may rely on facts stated in the report in making its findings with respect to the criteria under sub. (5).

(3) RIGHTS OF JUVENILE. All of the following apply at a waiver hearing under this section:

(a) The juvenile shall be represented by counsel. Written notice of the time, place, and purpose of the hearing shall be given to the juvenile, any parent, guardian, or legal custodian, and counsel at least 3 days prior to the hearing. The notice shall contain a statement of the requirements of s. 938.29 (2) with regard to substitution of the judge. If parents entitled to notice have the same address, notice to one constitutes notice to the other. Counsel for the juvenile shall have access to the social records and other reports under s. 938.293.

(b) The juvenile has the right to present testimony on his or her own behalf including expert testimony and has the right to cross-examine witnesses.

(c) The juvenile does not have the right to a jury.

(4) PROSECUTIVE MERIT; CONTESTED OR UNCONTESTED PETITION. (a) The court shall determine whether the matter has prosecutive merit before proceeding to determine if it should waive jurisdiction. If the court determines that the matter does not have prosecutive merit, the court shall deny the petition for waiver.

(b) If a petition for waiver of jurisdiction is contested, the district attorney shall present relevant testimony and the court, after taking that testimony and considering other relevant evidence, shall base its decision whether to waive jurisdiction on the criteria specified in sub. (5).

(c) If a petition for waiver of jurisdiction is uncontested, the court shall inquire into the capacity of the juvenile to knowingly, intelligently and voluntarily decide not to contest the waiver of jurisdiction. If the court is satisfied that the decision not to contest the waiver of jurisdiction is knowingly, intelligently and voluntarily made, no testimony need be taken and the court, after considering the petition for waiver of jurisdiction and other relevant evidence in the record before the court, shall base its decision whether to waive jurisdiction on the criteria specified in sub. (5).

(5) CRITERIA FOR WAIVER. If prosecutive merit is found, the court shall base its decision whether to waive jurisdiction on the following criteria:

(a) The personality of the juvenile, including whether the juvenile has a mental illness or developmental disability, the juvenile's physical and mental maturity, and the juvenile's pattern of living, prior treatment history, and apparent potential for responding to future treatment.

(am) The prior record of the juvenile, including whether the court has previously waived its jurisdiction over the juvenile, whether the juvenile has been previously convicted following a waiver of the court's jurisdiction or has been previously found delinquent, whether such conviction or delinquency involved the infliction of serious bodily injury, the juvenile's motives and attitudes, and the juvenile's prior offenses.

(b) The type and seriousness of the offense, including whether it was against persons or property and the extent to which it was committed in a violent, aggressive, premeditated or willful manner.

(c) The adequacy and suitability of facilities, services and procedures available for treatment of the juvenile and protection of the public within the juvenile justice system, and, where applicable, the mental health system and the suitability of the juvenile for placement in the serious juvenile offender program under s. 938.538 or the adult intensive sanctions program under s. 301.048.

(d) The desirability of trial and disposition of the entire offense in one court if the juvenile was allegedly associated in the offense with persons who will be charged with a crime in the court of criminal jurisdiction.

(6) DECISION ON WAIVER. After considering the criteria under sub. (5), the court shall state its finding with respect to the criteria on the record, and, if the court determines on the record that there is clear and convincing evidence that it is contrary to the best interests of the juvenile or of the public to hear the case, the court shall enter an order waiving jurisdiction and referring the matter to the district attorney for appropriate proceedings in the court of criminal jurisdiction. After the order, the court of criminal jurisdiction has exclusive jurisdiction.

(7) JUVENILE WHO ABSCONDS. If the juvenile absconds and does not appear at the waiver hearing, the court may proceed with the waiver hearing as provided in subs. (4) to (6) in the juvenile's absence. If the waiver is granted, the juvenile may contest that waiver when the juvenile is apprehended by showing the court of criminal jurisdiction good cause for his or her failure to appear. If the court of criminal jurisdiction finds good cause for the juvenile's failure to appear, that court shall transfer jurisdiction to the court assigned to exercise jurisdiction under this chapter and ch. 48 for the purpose of holding the waiver hearing.

(8) TRANSFER TO ADULT FACILITY; BAIL. When waiver is granted, the juvenile, if held in secure custody, shall be transferred to an appropriate officer or adult facility and shall be eligible for bail in accordance with chs. 968 and 969.

(9) CRIMINAL CHARGE. If waiver is granted, sub. (1) does not restrict the authority of the district attorney to charge the offense he or she deems is appropriate and does not restrict the authority of any court or jury to convict the juvenile in regard to any offense.

History: 1995 a. 77, 352, 448; 1997 a. 35; 2005 a. 212, 344; 2007 a. 97.

Since juveniles receive the same Miranda warnings as adults, a confession made by a juvenile during custodial interrogation prior to a waiver into adult court was admissible in later adult proceedings. Theriault v. State, 66 Wis. 2d 33, 223 N.W.2d 850 (1974).

The state may not delay charging a child in order to avoid juvenile court jurisdiction. State v. Becker, 74 Wis. 2d 675, 247 N.W.2d 495 (1976).

An order waiving jurisdiction over a juvenile is appealable under s. 808.03 (2). A.E. v. Green Lake County Cir. Ct. 94 Wis. 2d 98, 288 N.W.2d 125 (1980).

A motion to suppress evidence on the ground of inadmissibility at trial is premature when brought at a waiver hearing. In Interest of D.E.D. 101 Wis. 2d 193, 304 N.W.2d 133 (Ct. App. 1981).

Even though a juvenile does not contest waiver, sub. (5) requires the state to present testimony on the issue of waiver. The determination of prosecutive merit under sub. (4) is discussed. In Interest of T.R.B. 109 Wis. 2d 179, 325 N.W.2d 329 (1982).

An involuntary confession, if reliable and trustworthy, may be used to determine prosecutive merit; it would not be admissible at trial. If a juvenile does not meet the burden of showing unreliability of the confession, no evidentiary hearing is required. In Interest of J.G. 119 Wis. 2d 748, 350 N.W.2d 668 (1984).

In certain contested cases, the state may establish prosecutive merit on the basis of reliable information provided in delinquency and waiver petitions alone. In Interest of P.A.K. 119 Wis. 2d 871, 350 N.W.2d 677 (1984).

The trial court did not abuse its discretion in declining to convene in camera proceedings to determine whether the state had complied with discovery orders. In Interest of G.B.K. 126 Wis. 2d 253, 376 N.W.2d 385 (Ct. App. 1985).

A waiver petition under sub. (2) that referred only to facts of the underlying charge and not to facts to be presented under sub. (5) was insufficient. In Interest of J.V.R. 127 Wis. 2d 192, 378 N.W.2d 266 (1985).

The court may consider a waiver investigation report containing information not included in a waiver petition. In Interest of S.N. 139 Wis. 2d 270, 407 N.W.2d 562 (Ct. App. 1987).

A juvenile court improperly denied a waiver based on the belief that the adult court would improperly sentence the juvenile. In Interest of C.W. 142 Wis. 2d 763, 419 N.W.2d 327 (Ct. App. 1987).

If the state shows that delay in charging an offense committed by an adult defendant while still a juvenile was not with manipulative intent, due process does not require dismissal. State v. Montgomery, 148 Wis. 2d 593, 436 N.W.2d 303 (1989).

Sub. (9) permits the state to charge an offense related to a homicide after waiver under sub. (1) is completed. State v. Karow, 154 Wis. 2d 375, 453 N.W.2d 181 (Ct. App. 1990).

By pleading guilty to criminal charges, a defendant waives the right to challenge a waiver proceeding. State v. Kraemer, 156 Wis. 2d 761, 457 N.W.2d 562 (Ct. App. 1990).

When a juvenile turns 18 during the pendency of proceedings, the filing of a waiver petition under s. 48.18 prior to a plea hearing is not required for waiver of jurisdiction under s. 48.12 (2). Interest of K.A.P. 159 Wis. 2d 384, 464 N.W.2d 106 (Ct. App. 1990).

Delinquency and waiver petitions must both be filed to bring about a waiver hearing. The trial court may not proceed with a waiver hearing if the time limits under s. 48.25 for a delinquency petition are not complied with. In Interest of Michael J.L. 174 Wis. 2d 131, 496 N.W.2d 758 (Ct. App. 1993).

A hearing to determine whether the state improperly delayed filing criminal charges to avoid juvenile jurisdiction addresses a potential constitutional violation, not the court's subject matter jurisdiction, and is waived if not requested prior to the entry of a guilty plea. State v. Schroeder, 224 Wis. 2d 706, 593 N.W.2d 76 (Ct. App. 1999), 98-1420.

The department has exclusive authority to detain and release a child who has violated conditions of probation imposed by a court of criminal jurisdiction. A child can be held in an adult section of a county jail. 72 Atty. Gen. 104.

A person who commits a crime while under age 18, but is charged after attaining age of 18, is not constitutionally entitled to juvenile jurisdiction where delay in filing the charges was not the result of a deliberate effort to avoid juvenile jurisdiction or of prosecutorial negligence. Bendler v. Percy, 481 F. Supp. 813 (1979).

Juvenile waiver statute; delegation of legislative power to judiciary. Zekas, 1973 WLR 259.

Wisconsin's new juvenile waiver statute: when should we wave goodbye to juvenile court protections? 1979 WLR 190.

NOTE: The above annotations cite to s. 48.18, the predecessor statute to s. 938.18.

Sub. (2) allows waiver into adult court in certain cases although the conditions of sub. (1) are not met. When a person becomes 17 years old and adjudication has not been accomplished because of of some unlawful action by the person, waiver into adult court is appropriate. Interest of Pablo R. 2000 WI App 242, 239 Wis. 2d 479, 620 N.W.2d 423, 00-0697.

After the filing of a criminal complaint and the criminal court's assumption of jurisdiction, so long as the criminal court retains jurisdiction the juvenile court may not reconsider its waiver order under sub. (6). The juvenile court retains jurisdiction and may reconsider its waiver order until a criminal complaint is filed. A juvenile may seek review of a waiver order after commencement of criminal proceedings by seeking an interlocutory appeal or by filing a motion asking the criminal court to relinquish jurisdiction. State v. Vairin M. 2002 WI 96, 255 Wis. 2d 137, 647 N.W.2d 208, 01-0656.

There is no bright-line rule precluding an agency that under sub. (2m) is a preparing waiver investigation report from communicating directly with the state or the juvenile for purposes of preparing the report. Rather, the agency is free to compile information for a waiver investigation report in the manner it deems most beneficial to the circuit court. However, it may be a better practice for the agency to invite both parties, or neither party, to participate. State v. Tyler T. 2012 WI 52, 341 Wis. 2d 1, 814 N.W.2d 192, 10-0784.

938.183 Original adult court jurisdiction for criminal proceedings.

(1) JUVENILES UNDER ADULT COURT JURISDICTION. Notwithstanding ss. 938.12 (1) and 938.18, courts of criminal jurisdiction have exclusive original jurisdiction over all of the following:

(a) A juvenile who has been adjudicated delinquent and who is alleged to have violated s. 940.20 (1) or 946.43 while placed in a juvenile correctional facility, a juvenile detention facility, or a secured residential care center for children and youth or who has been adjudicated delinquent and who is alleged to have committed a violation of s. 940.20 (2m).

(am) A juvenile who is alleged to have attempted or committed a violation of s. 940.01 or to have committed a violation of s. 940.02 or 940.05 on or after the juvenile's 10th birthday.

(ar) A juvenile specified in par. (a) or (am) who is alleged to have attempted or committed a violation of any state criminal law in addition to the violation alleged under par. (a) or (am) if the violation alleged under this paragraph and the violation alleged under par. (a) or (am) may be joined under s. 971.12 (1).

(b) A juvenile who is alleged to have violated any state criminal law if the juvenile has been convicted of a previous violation following waiver of jurisdiction under s. 48.18, 1993 stats., or s. 938.18 by the court assigned to exercise jurisdiction under this chapter and ch. 48 or if the court assigned to exercise jurisdiction under this chapter and ch. 48 has waived its jurisdiction over the juvenile for a previous violation and criminal proceedings on that previous violation are still pending.

(c) A juvenile who is alleged to have violated any state criminal law if the juvenile has been convicted of a previous violation over which the court of criminal jurisdiction had original jurisdiction under this section or if proceedings on a previous violation over which the court of criminal jurisdiction has original jurisdiction under this section are still pending.

(1m) CRIMINAL PENALTIES AND PROCEDURES. Notwithstanding subchs. IV to VI, a juvenile described in sub. (1) is subject to the procedures specified in chs. 967 to 979 and the criminal penalties for the crime that the juvenile is alleged to have committed except as follows:

(a) If the juvenile is under 15 years of age, the juvenile may be held in secure custody only in a juvenile detention facility or in the juvenile portion of a county jail.

(b) If a court of criminal jurisdiction transfers jurisdiction under s. 970.032 or 971.31 (13) to a court assigned to exercise jurisdiction under this chapter and ch. 48, the juvenile is subject to the procedures and dispositions specified in subch. IV to VI.

(c) If the juvenile is found to have committed a lesser offense than the offense alleged under sub. (1) (a), (am), (ar), (b) or (c) or is found to have committed the offense alleged under sub. (1) (ar), but not the offense under sub. (1) (a) or (am) to which the offense alleged under sub. (1) (ar) is joined, and if any of the following conditions applies, the court of criminal jurisdiction shall, in lieu of convicting the juvenile, adjudge the juvenile to be delinquent and impose a disposition specified in s. 938.34:

1. Except as provided in subd. 3., the court of criminal jurisdiction finds that the juvenile has committed a lesser offense or a joined offense that is not a violation of s. 940.20 (1) or (2m) or 946.43 under the circumstances described in sub. (1) (a), that is not an attempt to violate s. 940.01 under the circumstances described in sub. (1) (am), that is not a violation of s. 940.02 or 940.05 under the circumstances described in sub. (1) (am), and that is not an offense for which the court assigned to exercise jurisdiction under this chapter and ch. 48 may waive its jurisdiction over the juvenile under s. 938.18.

2. Except as provided in subd. 3., the court of criminal jurisdiction finds that the juvenile has committed a lesser offense or a joined offense that is a violation of s. 940.20 (1) or

(2m) or 946.43 under the circumstances described in sub. (1) (a), that is an attempt to violate s. 940.01 under the circumstances described in sub. (1) (am), that is a violation of s. 940.02 or 940.05 under the circumstances described in sub. (1) (am), or that is an offense for which the court assigned to exercise jurisdiction under this chapter and ch. 48 may waive its jurisdiction over the juvenile under s. 938.18 and the court of criminal jurisdiction, after considering the criteria specified in s. 938.18 (5), determines that the juvenile has proved by clear and convincing evidence that it would be in the best interests of the juvenile and of the public to adjudge the juvenile to be delinquent and impose a disposition specified in s. 938.34.

3. For a juvenile who is alleged to have attempted or committed a violation of s. 940.01 or to have committed a violation of s. 940.02 or 940.05 on or after the juvenile's 15th birthday, the court of criminal jurisdiction finds that the juvenile has not attempted to commit a violation of s. 940.01 or committed a violation of s. 940.01, 940.02, or 940.05, and the court of criminal jurisdiction, after considering the criteria under s. 938.18 (5), determines that the juvenile has proved by clear and convincing evidence that it would be in the best interests of the juvenile and of the public to adjudge the juvenile to be delinquent and impose a disposition under s. 938.34.

(3) PLACEMENT IN STATE PRISON; PAROLE. When a juvenile who is subject to a criminal penalty under sub. (1m) or s. 938.183 (2), 2003 stats., attains the age of 17 years, the department may place the juvenile in a state prison named in s. 302.01, except that the department may not place any person under the age of 18 years in the correctional institution authorized in s. 301.16 (1n). A juvenile who is subject to a criminal penalty under sub. (1m) or under s. 938.183 (2), 2003 stats., for an act committed before December 31, 1999, is eligible for parole under s. 304.06.

(4) CHILD SUPPORT. If the juvenile is placed outside the juvenile's home under this section, the order shall contain a designation of the amount of support, if any, to be paid by the juvenile's parent, guardian or trustee, specifying that the support obligation begins on the date of the placement, or a referral to the county child support agency under s. 59.53 (5) for establishment of child support.

History: 1995 a. 77, 216, 352; 1997 a. 27, 35, 205, 252, 283; 1999 a. 9, 32; 2001 a. 16; 2005 a. 344; 2007 a. 97.

There is no constitutionally protected right that a juvenile's name not be released prior to a reverse waiver hearing under s. 48.183 [now s. 938.183]. State v. Hazen, 198 Wis. 2d 554, 543 N.W.2d 503 (Ct. App. 1995), 95-1379.

SUBCHAPTER IV

HOLDING A JUVENILE IN CUSTODY

938.19 Taking a juvenile into custody. (1) CRITERIA. A juvenile may be taken into custody under any of the following:

(a) A warrant.

(b) A capias issued by a court under s. 938.28.

(c) A court order if there is a showing that the welfare of the juvenile demands that the juvenile be immediately removed from his or her present custody. The order shall specify that the juvenile be held in custody under s. 938.207.

(d) Circumstances in which a law enforcement officer believes on reasonable grounds that any of the following conditions exists:

1. A capias or a warrant for the juvenile's apprehension has been issued in this state, or the juvenile is a fugitive from justice.

2. A capias or a warrant for the juvenile's apprehension has been issued in another state.

3. The juvenile is committing or has committed an act which is a violation of a state or federal criminal law.

4. The juvenile has run away from his or her parents, guardian or legal or physical custodian.

5. The juvenile is suffering from illness or injury or is in immediate danger from his or her surroundings and removal from those surroundings is necessary.

6. The juvenile has violated a condition of court-ordered supervision or aftercare supervision administered by the department or a county department, a condition of the juvenile's placement in a Type 2 juvenile correctional facility or a Type 2 residential care center for children and youth, or a condition of the juvenile's participation in the intensive supervision program under s. 938.534.

7. The juvenile has violated the conditions of an order under s. 938.21 (4) or of an order for temporary physical custody issued by an intake worker.

8. The juvenile has violated a civil law or a local ordinance punishable by a forfeiture, except that in that case the juvenile shall be released immediately under s. 938.20 (2) (ag) or as soon as reasonably possible under s. 938.20 (2) (b) to (g).

10. The juvenile is absent from school without an acceptable excuse under s. 118.15.

(1m) TRUANCY. A juvenile who is absent from school without an acceptable excuse under s. 118.15 may be taken into custody by an individual designated under s. 118.16 (2m) (a) if the school attendance officer of the school district in which the juvenile resides, or the juvenile's parent, guardian, or legal custodian, requests that the juvenile be taken into custody. The request shall specifically identify the juvenile.

(2) NOTIFICATION OF PARENT, GUARDIAN, LEGAL CUSTODIAN, INDIAN CUSTODIAN. When a juvenile is taken into physical custody under this section, the person taking the juvenile into custody shall immediately attempt to notify the parent, guardian, legal custodian, and Indian custodian of the juvenile by the most practical means. The person taking the juvenile into custody shall continue such attempt until the parent, guardian, legal custodian, and Indian custodian of the juvenile are notified, or the juvenile is delivered to an intake worker under s. 938.20 (3), whichever occurs first. If the juvenile is delivered to the intake worker before the parent, guardian, legal custodian, and Indian custodian are notified, the intake worker, or another person at his or her direction, shall continue the attempt to notify until the parent, guardian, legal custodian, and Indian custodian of the juvenile are notified.

(3) NOT AN ARREST. Taking into custody is not an arrest except for the purpose of determining whether the taking into custody or the obtaining of any evidence is lawful.

History: 1995 a. 77; 2001 a. 16; 2005 a. 344; 2009 a. 94.

A juvenile may not be taken into custody under sub. (1) (d) 8. for violating an ordinance that does not impose a forfeiture although a forfeiture may be imposed

under s. 48.343 (2) [now s. 938.343]. In Interest of J.F.F. 164 Wis. 2d 10, 473 N.W.2d 546 (Ct. App. 1991).

NOTE: The above annotation cites to s. 48.19, the predecessor statute to s. 938.19.

938.195 Recording custodial interrogations. (1) DEFINITIONS. In this section:

(a) "Custodial interrogation" has the meaning given in s. 968.073 (1) (a).

(b) "Law enforcement agency" has the meaning given in s. 165.83 (1) (b).

(c) "Place of detention" means a juvenile detention facility, jail, municipal lockup facility, or juvenile correctional facility, or a police or sheriff's office or other building under the control of a law enforcement agency, at which juveniles are held in custody in connection with an investigation of a delinquent act.

(2) WHEN REQUIRED. (a) A law enforcement agency shall make an audio or audio and visual recording of any custodial interrogation of a juvenile that is conducted at a place of detention unless a condition under s. 938.31 (3) (c) 1. to 5. applies.

(b) If feasible, a law enforcement agency shall make an audio or audio and visual recording of any custodial interrogation of a juvenile that is conducted at a place other than a place of detention unless a condition under s. 938.31 (3) (c) 1. to 5. applies.

(3) NOTICE NOT REQUIRED. A law enforcement officer or agent of a law enforcement agency conducting a custodial interrogation is not required to inform the subject of the interrogation that the officer or agent is making an audio or audio and visual recording of the interrogation.

History: 2005 a. 60; 2007 a. 97; s. 35.17 correction in (1) (a).

938.20 Release or delivery from custody. (2) RELEASE OF JUVENILE. (ag) Except as provided in pars. (b) to (g), a person taking a juvenile into custody shall make every effort to release the juvenile immediately to the juvenile's parent, guardian, legal custodian, or Indian custodian.

(b) If the juvenile's parent, guardian, legal custodian, or Indian custodian is unavailable, unwilling, or unable to provide supervision for the juvenile, the person who took the juvenile into custody may release the juvenile to a responsible adult after counseling or warning the juvenile as may be appropriate.

(c) If the juvenile is 15 years of age or older, the person who took the juvenile into custody may release the juvenile without immediate adult supervision after counseling or warning the juvenile as may be appropriate.

(cm) If the juvenile has violated a condition of aftercare supervision administered by the department or a county department, a condition of the juvenile's placement in a Type 2 juvenile correctional facility or a Type 2 residential care center for children and youth, or a condition of the juvenile's participation in the intensive supervision program under s. 938.534, the person who took the juvenile into custody may release the juvenile to the department or county department, whichever has supervision over the juvenile.

(d) If the juvenile is a runaway, the person who took the juvenile into custody may release the juvenile to a home under s. 48.227.

(e) If a juvenile is taken into custody under s. 938.19 (1) (d) 10., the law enforcement officer who took the juvenile into custody may release the juvenile under par. (ag) or (b) or, if the school board of the school district in which the juvenile resides has established a youth service center under s. 118.16 (4) (e), may deliver that juvenile to that youth service center. If the juvenile is delivered to a youth service center, personnel of the youth service center may release the juvenile to the juvenile's parent, guardian or legal custodian, or release the juvenile to the juvenile's school, after counseling the juvenile as may be appropriate. If the juvenile is released to the juvenile's school, personnel of the youth service center shall immediately notify the juvenile's parent, guardian and legal custodian that the juvenile was taken into custody under s. 938.19 (1) (d) 10. and released to the juvenile's school.

(f) If a juvenile is taken into custody under s. 938.19 (1m), the person who took the juvenile into custody may release the juvenile under par. (ag), (b) or (e) or to the juvenile's school administrator, as defined in s. 125.09 (2) (a) 3., or a school employee designated by the school administrator. If a juvenile is released to a school administrator or the school administrator's designee under this paragraph, the school administrator or designee shall do all of the following:

1. Immediately notify the juvenile's parent, guardian or legal custodian that the juvenile was taken into custody under s. 938.19 (1m) and released to the school administrator or his or her designee.

2. Make a determination of whether the juvenile is a child at risk, as defined in s. 118.153 (1) (a), unless that determination has been made within the current school semester. If a juvenile is determined to be a child at risk under this subdivision, the school administrator shall provide a program for the juvenile according to the plan developed under s. 118.153 (2) (a).

3. Provide the juvenile and his or her parent or guardian with an opportunity for educational counseling to determine whether a change in the juvenile's program or curriculum, including any of the modifications specified in s. 118.15 (1) (d), would resolve the juvenile's truancy problem, unless the juvenile and his or her parent or guardian have been provided with an opportunity for educational counseling within the current school semester.

(g) If a juvenile is taken into custody under s. 938.19 (1) (d) 10. and is not released under par. (ag), (b) or (e) or if a juvenile is taken into custody under s. 938.19 (1m) and is not released under par. (ag), (b), (e) or (f), the person who took the juvenile into custody shall release the juvenile without immediate adult supervision after counseling or warning the juvenile as may be appropriate.

(3) NOTIFICATION TO PARENT, GUARDIAN, LEGAL CUSTODIAN, INDIAN CUSTODIAN OF RELEASE. If the juvenile is released under sub. (2) (b) to (d) or (g), the person who took the juvenile into custody shall immediately notify the juvenile's parent, guardian, legal custodian, and Indian custodian of the time and circumstances of the release and the person, if any, to whom the juvenile was released. If the juvenile is not released under sub. (2), the person who took the juvenile into custody shall arrange in a manner determined by the court and law enforcement agencies for the juvenile to be interviewed by the intake worker under s. 938.067 (2). The person who took the juvenile into custody shall make a statement in writing with supporting facts of the reasons why the juvenile was taken into physical custody and shall give a copy of the statement to the intake worker and to any juvenile 10 years of age or older. If the intake interview

is not done in person, the report may be read to the intake worker.

(4) DELIVERY TO HOSPITAL OR PHYSICIAN. If the juvenile is believed to be suffering from a serious physical condition which requires either prompt diagnosis or prompt treatment, the person taking the juvenile into physical custody, the intake worker or other appropriate person shall deliver the juvenile to a hospital as defined in s. 50.33 (2) (a) and (c) or physician's office.

(5) EMERGENCY DETENTION OF JUVENILE. If the juvenile is believed to have a mental illness or developmental disability or to be drug dependent and exhibits conduct that constitutes a substantial probability of physical harm to the juvenile or to others, or a very substantial probability of physical impairment or injury to the juvenile exists due to the impaired judgment of the juvenile and if the standards of s. 51.15 are met, the person taking the juvenile into physical custody, the intake worker, or other appropriate person shall proceed under s. 51.15.

(6) DELIVERY OF INTOXICATED JUVENILE. If the juvenile is believed to be an intoxicated person who has threatened, attempted or inflicted physical harm on himself or herself or on another and is likely to inflict such physical harm unless committed, or is incapacitated by alcohol, the person taking the juvenile into physical custody, the intake worker or other appropriate person shall proceed under s. 51.45 (11).

(7) DUTIES OF INTAKE WORKER. (a) When a juvenile who is possibly involved in a delinquent act is interviewed by an intake worker, the intake worker shall inform the juvenile of his or her right to counsel and the right against self-incrimination.

(b) The intake worker shall review the need to hold the juvenile in custody and shall make every effort to release the juvenile from custody as provided in par. (c). The intake worker shall base his or her decision as to whether to release the juvenile or to continue to hold the juvenile in custody on the criteria under s. 938.205 and criteria established under s. 938.06 (1) or (2).

(c) The intake worker may release the juvenile as follows:

1. To a parent, guardian, legal custodian, or Indian custodian, or to a responsible adult if the parent, guardian, legal custodian, or Indian custodian is unavailable, unwilling, or unable to provide supervision for the juvenile, counseling or warning the juvenile as may be appropriate; or, if the juvenile is 15 years of age or older, without immediate adult supervision, counseling or warning the juvenile as may be appropriate.

1m. In the case of a juvenile who has violated a condition of aftercare supervision administered by the department or a county department, a condition of the juvenile's placement in a Type 2 juvenile correctional facility or a Type 2 residential care center for children and youth, or a condition of the juvenile's participation in the intensive supervision program under s. 938.534, to the department or county department, whichever has supervision of the juvenile.

2. In the case of a runaway juvenile, to a home under s. 48.227.

(d) If the juvenile is released from custody, the intake worker shall immediately notify the juvenile's parent, guardian, legal custodian, and Indian custodian of the time and circumstances of the release and the person, if any, to whom the juvenile was released.

(8) NOTIFICATION THAT HELD IN CUSTODY. (a) If a juvenile is held in custody, the intake worker shall notify the juvenile's parent, guardian, legal custodian, and Indian custodian of the reasons for holding the juvenile in custody and of the juvenile's whereabouts unless there is reason to believe that notice would present imminent danger to the juvenile. The parent, guardian, legal custodian, and Indian custodian shall also be notified of the time and place of the detention hearing required under s. 938.21, the nature and possible consequences of the hearing, the right to present and cross-examine witnesses at the hearing, and, in the case of a parent or Indian custodian of an Indian juvenile who is the subject of an Indian juvenile custody proceeding, as defined in s. 938.028 (2) (b), the right to counsel under s. 938.028 (4) (b). If the parent, guardian, legal custodian, or Indian custodian is not immediately available, the intake worker or another person designated by the court shall provide notice as soon as possible.

(b) If the juvenile is alleged to have committed a delinquent act, the juvenile shall receive the same notice about the detention hearing as the parent, guardian, or legal custodian. The intake worker shall notify both the juvenile and the juvenile's parent, guardian, or legal custodian.

(c) If a juvenile who has violated a condition of aftercare supervision administered by the department or a county department, a condition of the juvenile's placement in a Type 2 juvenile correctional facility or a Type 2 residential care center for children and youth, or a condition of the juvenile's participation in the intensive supervision program under s. 938.534 is held in custody, the intake worker shall also notify the department or county department, whichever has supervision over the juvenile, of the reasons for holding the juvenile in custody, of the juvenile's whereabouts, and of the time and place of the detention hearing required under s. 938.21.

History: 1995 a. 77; 1997 a. 35; 2001 a. 16; 2005 a. 344; 2009 a. 94.

938.205 Criteria for holding a juvenile in physical custody. (1) CRITERIA. A juvenile may be held under s. 938.207, 938.208, or 938.209 (1) if the intake worker determines that there is probable cause to believe the juvenile is within the jurisdiction of the court and if probable cause exists to believe any of the following:

(a) That the juvenile will commit injury to the person or property of others if not held.

(b) That the parent, guardian, or legal custodian of the juvenile or other responsible adult is neglecting, refusing, unable, or unavailable to provide adequate supervision and care and that services to ensure the juvenile's safety and well-being are not available or would be inadequate.

(c) That the juvenile will run away or be taken away so as to be unavailable for proceedings of the court or its officers, proceedings of the division of hearings and appeals in the department of administration for revocation of aftercare supervision, or action by the department or county department relating to a violation of a condition of the juvenile's placement in a Type 2 juvenile correctional facility or a Type 2 residential care center for children and youth or a condition of the juvenile's participation in the intensive supervision program under s. 938.534.

(2) APPLICABILITY. The criteria for holding a juvenile in custody under this section govern the decision of all persons responsible for determining whether the action is appropriate.

History: 1995 a. 77, 275; 1997 a. 35, 296; 1999 a. 32; 2001 a. 16; 2005 a. 344.

938.207 Places where a juvenile may be held in nonsecure custody. (1) WHERE MAY BE HELD. A juvenile held in physical custody under s. 938.205 may be held in any of the following places:

(a) The home of a parent or guardian, except that a juvenile may not be held in the home of a parent or guardian if the parent or guardian has been convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of a parent of the juvenile, and the conviction has not been reversed, set aside or vacated, unless the person making the custody decision determines by clear and convincing evidence that the placement would be in the best interests of the juvenile. The person making the custody decision shall consider the wishes of the juvenile in making that determination.

(b) The home of a relative, except that a juvenile may not be held in the home of a relative if the relative has been convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of a parent of the juvenile, and the conviction has not been reversed, set aside or vacated, unless the person making the custody decision determines by clear and convincing evidence that the placement would be in the best interests of the juvenile. The person making the custody decision shall consider the wishes of the juvenile in making that determination.

(c) A licensed foster home if the placement does not violate the conditions of the license.

(cm) A licensed group home if the placement does not violate the conditions of the license.

(d) A nonsecure facility operated by a licensed child welfare agency.

(e) A licensed private or public shelter care facility.

(f) The home of a person not a relative if the person has not had a license under s. 48.62 refused, revoked, or suspended within the previous 2 years. A placement under this paragraph may not exceed 30 days, unless the placement is extended by the court for cause for an additional 30 days.

(g) A hospital as defined in s. 50.33 (2) (a) and (c) or physician's office if the juvenile is held under s. 938.20 (4).

(h) A place listed in s. 51.15 (2) if the juvenile is held under s. 938.20 (5).

(i) An approved public treatment facility for emergency treatment if the juvenile is held under s. 938.20 (6).

(k) A facility under s. 48.58.

(1g) INDIAN JUVENILE; PLACEMENT PREFERENCES. An Indian juvenile in need of protection or services under s. 938.13 (4), (6), (6m), or (7) who is held in physical custody under s. 938.205 (1) shall be placed in compliance with s. 938.028 (6) (a) or, if applicable, s. 938.028 (6) (b), unless the person responsible for determining the placement finds good cause, as described in s. 938.028 (6) (d), for departing from the order of placement preference under s. 938.028 (6) (a) or finds that emergency conditions necessitate departing from that order. When the reason for departing from that order is resolved, the Indian juvenile shall be placed in compliance with the order of placement preference under s. 938.028 (6) (a) or, if applicable, s. 938.028 (6) (b).

(2) PAYMENT. If a facility listed in sub. (1) (b) to (k) is used to hold a juvenile in custody, or if supervisory services of a home detention program are provided to a juvenile held under sub. (1) (a), the county shall pay the facility's authorized rate for the care of the juvenile. If no authorized rate has been established, the court shall fix a reasonable sum to be paid by the county for the supervision or care of the juvenile.

History: 1995 a. 77; 1999 a. 9; 2005 a. 344; 2009 a. 28, 94.

938.208 Criteria for holding a juvenile in a juvenile detention facility. A juvenile may be held in a juvenile detention facility if the intake worker determines that any of the following conditions applies:

(1) DELINQUENT ACT AND RISK OF HARM OR RUNNING AWAY. Probable cause exists to believe that the juvenile has committed a delinquent act and either presents a substantial risk of physical harm to another person or a substantial risk of running away so as to be unavailable for a court hearing, a revocation of aftercare supervision hearing, or action by the department or county department relating to a violation of a condition of the juvenile's placement in a Type 2 juvenile correctional facility or a Type 2 residential care center for children and youth or a condition of the juvenile's participation in the intensive supervision program under s. 938.534. For juveniles who have been adjudged delinquent, the delinquent act referred to in this section may be the act for which the juvenile was adjudged delinquent. If the intake worker determines that any of the following conditions applies, the juvenile is considered to present a substantial risk of physical harm to another person:

(a) Probable cause exists to believe that the juvenile has committed a delinquent act that would be a felony under s. 940.01, 940.02, 940.03, 940.05, 940.19 (2) to (6), 940.21, 940.225 (1), 940.31, 941.20 (3), 943.02 (1), 943.23 (1g), 943.32 (2), 947.013 (1t), (1v) or (1x), 948.02 (1) or (2), 948.025, 948.03, or 948.085 (2), if committed by an adult.

(b) Probable cause exists to believe that the juvenile possessed, used or threatened to use a handgun, as defined in s. 175.35 (1) (b), short-barreled rifle, as defined in s. 941.28 (1) (b), or short-barreled shotgun, as defined in s. 941.28 (1) (c), while committing a delinquent act that would be a felony under ch. 940 if committed by an adult.

(c) Probable cause exists to believe that the juvenile has possessed or gone armed with a short-barreled rifle or a short-barreled shotgun in violation of s. 941.28, or has possessed or gone armed with a handgun in violation of s. 948.60.

(2) RUNAWAY FROM ANOTHER STATE OR SECURE CUSTODY. Probable cause exists to believe that the juvenile is a fugitive from another state or has run away from a juvenile correctional facility or a secured residential care center for children and youth and there has been no reasonable opportunity to return the juvenile.

(3) PROTECTIVE CUSTODY. The juvenile consents in writing to being held in order to protect him or her from an imminent physical threat from another and such secure custody is ordered by the court in a protective order.

(4) RUNAWAY FROM NONSECURE CUSTODY. Probable cause exists to believe that the juvenile, having been placed in nonsecure custody by an intake worker under s. 938.207 or by the court under s. 938.21 (4), has run away or committed a delinquent act and no other suitable alternative exists.

(5) RUNAWAY FROM ANOTHER COUNTY. Probable cause exists to believe that the juvenile has been adjudged or alleged to be delinquent and has run away from another county and would run away from nonsecure custody pending his or her return. A juvenile may be held in secure custody under this subsection for no more than 24 hours after the end of the day that the decision to hold the juvenile was made unless an extension of those 24 hours is ordered by the court for good cause shown. Only one extension may be ordered.

(6) SUBJECT TO JURISDICTION OF ADULT COURT. Probable cause exists to believe that the juvenile is subject to the jurisdiction of the court of criminal jurisdiction under s. 938.183 (1) and is under 15 years of age.

History: 1995 a. 77, 352; 1999 a. 9; 2001 a. 16, 61, 109; 2005 a. 277, 344; 2007 a. 97.

938.209 Criteria for holding a juvenile in a county jail or a municipal lockup facility. (1) COUNTY JAIL. Subject to s. 938.208, a county jail may be used as a juvenile detention facility if the criteria under either par. (a) or (b) are met:

(a) There is no other juvenile detention facility approved by the department or a county which is available and all of the following conditions are met:

1. The jail meets the standards for juvenile detention facilities established by the department.

2. The juvenile is held in a room separated and removed from incarcerated adults.

3. The juvenile is not held in a cell designed for the administrative or disciplinary segregation of adults.

4. Adequate supervision is provided.

5. The court reviews the status of the juvenile every 3 days.

(b) The juvenile presents a substantial risk of physical harm to other persons in the juvenile detention facility, as evidenced by previous acts or attempts, which can only be avoided by transfer to the jail. The conditions of par. (a) 1. to 5. shall be met. The juvenile shall be given a hearing and may be transferred only upon a court order.

(2m) MUNICIPAL LOCKUP. (a) A juvenile who is alleged to have committed a delinquent act may be held in a municipal lockup facility if all of the following criteria are met:

1. The department has approved the municipal lockup facility as a suitable place for holding juveniles in custody.

2. The juvenile is held in the municipal lockup facility for not more than 6 hours while awaiting his or her hearing under s. 938.21 (1) (a).

3. There is sight and sound separation between the juvenile and any adult who is being held in the municipal lockup facility.

4. The juvenile is held for investigative purposes only.

(b) The department shall promulgate rules establishing minimum requirements for the approval of a municipal lockup facility as a suitable place for holding juveniles in custody and for the operation of such a facility. The rules shall be designed to protect the health, safety and welfare of the juveniles held in those facilities.

(3) JUVENILES UNDER ADULT COURT JURISDICTION. The restrictions of this section do not apply to the use of jail for a juvenile who has been waived to adult court under s. 938.18 or who is under the jurisdiction of an adult court under s. 938.183, unless the juvenile is under the jurisdiction of an adult court under s. 938.183 (1) and is under 15 years of age.

History: 1995 a. 77, 352; 1997 a. 35, 296; 2005 a. 344; 2007 a. 97.

938.21 Hearing for juvenile in custody. (1) HEARING; WHEN HELD. (a) If a juvenile who has been taken into custody is not released under s. 938.20, a hearing to determine whether to continue to hold the juvenile in custody under the criteria of ss. 938.205 to 938.209 (1) shall be conducted by the court within 24 hours after the end of the day on which the decision to hold the juvenile was made, excluding Saturdays, Sundays, and legal holidays. By the time of the hearing a petition under s. 938.25 or a request for a change in placement under s. 938.357, a request for a revision of the dispositional order under s. 938.363, or a request for an extension of a dispositional order under s. 938.365 shall be filed, except that no petition or request need be filed if a juvenile is taken into custody under s. 938.19 (1) (b) or (d) 2., 6., or 7. or if the juvenile is a runaway from another state, in which case a written statement of the reasons for holding a juvenile in custody shall be substituted if the petition is not filed. If no hearing has been held within 24 hours or if no petition, request, or statement has been filed at the time of the hearing, the juvenile shall be released except as provided in par. (b). The court shall grant a rehearing upon request of a parent not present at the hearing for good cause shown.

(b) If no petition or request has been filed by the time of the hearing, a juvenile may be held in custody with the approval of the court for an additional 48 hours from the time of the hearing only if, as a result of the facts brought forth at the hearing, the court determines that probable cause exists to believe that the juvenile is an imminent danger to himself or herself or to others, or that probable cause exists to believe that the parent, guardian, or legal custodian of the juvenile or other responsible adult is neglecting, refusing, unable, or unavailable to provide adequate supervision and care. The extension may be granted only once for any petition. If a petition or request is not filed within the 48-hour extension period under this paragraph, the court shall order the juvenile's immediate release from custody.

(2) PROCEEDINGS CONCERNING DELINQUENT JUVENILES. (ag) Proceedings concerning a juvenile who comes within the jurisdiction of the court under s. 938.12 or 938.13 (12) or (14) shall be conducted according to this subsection.

(am) A juvenile held in a nonsecure place of custody may waive in writing his or her right to participate in the hearing under this section. After any waiver, a rehearing shall be granted upon the request of the juvenile or any other interested party for good cause shown. Any juvenile transferred to a juvenile detention facility shall thereafter have a rehearing under this section.

(b) A copy of the petition or request shall be given to the juvenile at or prior to the time of the hearing. Prior notice of the hearing shall be given to the juvenile's parent, guardian, and legal custodian and to the juvenile under s. 938.20 (8).

(c) Prior to the commencement of the hearing, the court shall inform the juvenile of the allegations that have been or may be made, the nature and possible consequences of this hearing as compared to possible future hearings, the provisions of s. 938.18 if applicable, the right to counsel under s. 938.23 regardless of ability to pay if the juvenile is not yet represented

by counsel, the right to remain silent, the fact that the silence may not be adversely considered by the court, the right to confront and cross-examine witnesses, and the right to present witnesses.

(d) If the juvenile is not represented by counsel at the hearing and the juvenile is continued in custody as a result of the hearing, the juvenile may request through counsel subsequently appointed or retained or through a guardian ad litem that the order to hold in custody be reheard. If the request is made, a rehearing shall take place as soon as possible. An order to hold the juvenile in custody shall be reheard for good cause whether or not counsel was present.

(e) If present at the hearing, the parent shall be requested to provide the names and other identifying information of 3 relatives of the juvenile or other individuals 18 years of age or over whose homes the parent requests the court to consider as placements for the juvenile. If the parent does not provide that information at the hearing, the county department or agency primarily responsible for providing services to the juvenile under the custody order shall permit the parent to provide that information at a later date.

(3) PROCEEDINGS CONCERNING JUVENILES IN NEED OF PROTECTION OR SERVICES. (ag) Proceedings concerning a juvenile who comes within the jurisdiction of the court under s. 938.13 (4), (6), (6m), or (7) shall be conducted according to this subsection.

(am) The parent, guardian, legal custodian, or Indian custodian may waive his or her right to participate in the hearing under this section. After any waiver, a rehearing shall be granted at the request of the parent, guardian, legal custodian, Indian custodian, or any other interested party for good cause shown.

(b) If present at the hearing, a copy of the petition or request shall be given to the parent, guardian, legal custodian, or Indian custodian, and to the juvenile if he or she is 12 years of age or older, before the hearing begins. Prior notice of the hearing shall be given to the juvenile's parent, guardian, legal custodian, and Indian custodian and to the juvenile if he or she is 12 years of age or older under s. 938.20 (8).

(d) Prior to the commencement of the hearing, the court shall inform the parent, guardian, legal custodian, or Indian custodian of the allegations that have been made or may be made, the nature and possible consequences of this hearing as compared to possible future hearings, the right to present, confront, and cross-examine witnesses and, in the case of a parent or Indian custodian of an Indian juvenile who is the subject of an Indian juvenile custody proceeding, as defined in s. 938.028 (2) (b), the right to counsel under s. 938.028 (4) (b).

(e) If the parent, guardian, legal custodian, Indian custodian, or juvenile is not represented by counsel at the hearing and if the juvenile is continued in custody as a result of the hearing, the parent, guardian, legal custodian, Indian custodian, or juvenile may request through counsel subsequently appointed or retained or through a guardian ad litem that the order to hold the juvenile in custody be reheard. If the request is made, a rehearing shall take place as soon as possible. An order to hold the juvenile in custody shall be reheard for good cause, whether or not counsel was present.

(f) If present at the hearing, the parent shall be requested to provide the names and other identifying information of 3 relatives of the juvenile or other individuals 18 years of age or over whose homes the parent requests the court to consider as placements for the juvenile. If the parent does not provide that information at the hearing, the county department or agency primarily responsible for providing services to the juvenile under the custody order shall permit the parent to provide that information at a later date.

(3m) PARENTAL NOTICE REQUIRED. If the juvenile has been taken into custody because he or she committed an act which resulted in personal injury or damage to or loss of the property of another, the court, prior to the commencement of any hearing under this section, shall attempt to notify the juvenile's parents of the possibility of disclosure of the identity of the juvenile and the parents, of the juvenile's police records and of the outcome of proceedings against the juvenile for use in civil actions for damages against the juvenile or the parents and of the parents' potential liability for acts of their juveniles. If the court is unable to provide the notice before commencement of the hearing, it shall provide the juvenile's parents with the specified information in writing as soon as possible after the hearing.

(4) ORDER TO CONTINUE IN CUSTODY. If the court finds that the juvenile should be continued in custody under the criteria of s. 938.205, the court shall enter one of the following orders:

(a) Place the juvenile with a parent, guardian, legal custodian, or other responsible person and may impose reasonable restrictions on the juvenile's travel, association with other persons, or places of abode during the period of placement, including a condition requiring the juvenile to return to other custody as requested; or subject the juvenile to the supervision of an agency agreeing to supervise the juvenile. Reasonable restrictions may be placed upon the conduct of the parent, guardian, legal custodian, or other responsible person which may be necessary to ensure the safety of the juvenile.

(b) Order the juvenile held in an appropriate manner under s. 938.207, 938.208 or 938.209 (1).

(4m) ELECTRONIC MONITORING. An order under sub. (4) (a) or (b) may include a condition that the juvenile be monitored by an electronic monitoring system.

(5) ORDERS IN WRITING. (a) All orders to hold in custody shall be in writing, listing the reasons and criteria forming the basis for the decision.

(b) An order relating to a juvenile held in custody outside of his or her home shall also include all of the following:

1. a. A finding that continued placement of the juvenile in his or her home would be contrary to the welfare of the juvenile.

b. A finding as to whether the person who took the juvenile into custody and the intake worker have made reasonable efforts to prevent the removal of the juvenile from the home, while assuring that the juvenile's health and safety are the paramount concerns, unless the court finds that any of the circumstances specified in s. 938.355 (2d) (b) 1. to 4. applies.

c. A finding as to whether the person who took the juvenile into custody and the intake worker have made reasonable efforts to make it possible for the juvenile to return safely home.

d. If the juvenile is under the supervision of the county department, an order ordering the juvenile into the placement and care responsibility of the county department as required

under 42 USC 672 (a) (2) and assigning the county department primary responsibility for providing services to the juvenile.

1m. If for good cause shown sufficient information is not available for the court to make a finding as to whether reasonable efforts were made to prevent the removal of the juvenile from the home, while assuring that the juvenile's health and safety are the paramount concerns, a finding as to whether reasonable efforts were made to make it possible for the juvenile to return safely home and an order for the county department or agency primarily responsible for providing services to the juvenile under the custody order to file with the court sufficient information for the court to make a finding as to whether those reasonable efforts were made to prevent the removal of the juvenile from the home by no later than 5 days, excluding Saturdays, Sundays, and legal holidays, after the date on which the order is granted.

2. If the juvenile is held in custody outside the home in a placement recommended by the intake worker, a statement that the court approves the placement recommended by the intake worker or, if the juvenile is placed outside the home in a placement other than a placement recommended by the intake worker, a statement that the court has given bona fide consideration to the recommendations made by the intake worker and all parties relating to the placement of the juvenile.

2m. If the juvenile has one or more siblings, as defined in s. 938.38 (4) (br) 1., who have also been removed from the home, a finding as to whether the intake worker has made reasonable efforts to place the juvenile in a placement that enables the sibling group to remain together, unless the court determines that a joint placement would be contrary to the safety or well-being of the juvenile or any of those siblings, in which case the court shall order the county department or agency primarily responsible for providing services to the juvenile under the custody order to make reasonable efforts to provide for frequent visitation or other ongoing interaction between the juvenile and the siblings, unless the court determines that such visitation or interaction would be contrary to the safety or well-being of the juvenile or any of those siblings.

3. If the court finds that any of the circumstances specified in s. 938.355 (2d) (b) 1. to 4. applies with respect to a parent, a determination that the county department or agency primarily responsible for providing services under the custody order is not required to make reasonable efforts with respect to the parent to make it possible for the juvenile to return safely to his or her home.

(c) The court shall make the findings specified in par. (b) 1., 1m., and 3. on a case-by-case basis based on circumstances specific to the juvenile and shall document or reference the specific information on which those findings are based in the custody order. A custody order that merely references par. (b) 1., 1m., or 3. without documenting or referencing that specific information in the custody order or an amended custody order that retroactively corrects an earlier custody order that does not comply with this paragraph is not sufficient to comply with this paragraph.

(d) If the court finds that any of the circumstances specified in s. 938.355 (2d) (b) 1. to 4. applies with respect to a parent, the court shall hold a hearing under s. 938.38 (4m) within 30 days after the date of that finding to determine the permanency goal and, if applicable, any concurrent permanency goals for the juvenile.

(e) 1. In this paragraph, "adult relative" means a grandparent, great-grandparent, aunt, uncle, brother, sister, half brother, or half sister of a juvenile, whether by blood, marriage, or legal adoption, who has attained 18 years of age.

2. The court shall order the county department or agency primarily responsible for providing services to the juvenile under the custody order to conduct a diligent search in order to locate and provide notice of the information specified in this subdivision to all relatives of the juvenile named under sub. (2) (e) or (3) (f) and to all adult relatives of the juvenile within 30 days after the juvenile is removed from the custody of the juvenile's parent unless the juvenile is returned to his or her home within that period. The court may also order the county department or agency to conduct a diligent search in order to locate and provide notice of the information specified in this subdivision to all other adult individuals named under sub. (2) (e) or (3) (f) within 30 days after the juvenile is removed from the custody of the juvenile's parent unless the juvenile is returned to his or her home within that period. The county department or agency may not provide that notice to a person named under sub. (2) (e) or (3) (f) or to an adult relative if the county department or agency has reason to believe that it would be dangerous to the juvenile or to the parent if the juvenile were placed with that person or adult relative. The notice shall include all of the following:

a. A statement that the juvenile has been removed from the custody of the juvenile's parent.

b. A statement that explains the options that the person provided with the notice has under state or federal law to participate in the care and placement of the juvenile, including any options that may be lost by failing to respond to the notice.

c. A description of the requirements to obtain a foster home license under s. 48.62 or to receive kinship care or long-term kinship care payments under s. 48.57 (3m) or (3n) and of the additional services and supports that are available for juveniles placed in a foster home or in the home of a person receiving those payments.

d. A statement advising the person provided with the notice that he or she may incur additional expenses if the juvenile is placed in his or her home and that reimbursement for some of those expenses may be available.

e. The name and contact information of the agency that removed the juvenile from the custody of the juvenile's parent.

(6) AMENDMENT OF ORDER. An order under sub. (4) (a) may be amended at any time, with notice, so as to place the juvenile in another form of custody for failure to conform to the conditions originally imposed. A juvenile may be transferred to secure custody if he or she meets the criteria of s. 938.208.

(7) DEFERRED PROSECUTION. If the court determines that the best interests of the juvenile and the public are served, the court may enter a consent decree under s. 938.32 or dismiss the petition and refer the matter to the intake worker for deferred prosecution in accordance with s. 938.245.

History: 1995 a. 77, 275; 1997 a. 35, 237, 296; 2001 a. 16, 61, 109; 2005 a. 344; 2007 a. 20, 97; 2009 a. 28, 79, 94, 180; 2011 a. 181.

When a district attorney receives notice of a deferred prosecution agreement from an intake worker under s. 938.24 (5), the 20 days during which the district attorney may terminate the agreement under s. 938.245 (6) begins. When a court orders a deferred prosecution agreement under sub. (7), the intake worker need not

notify the district attorney and nothing triggers a district attorney's authority to terminate the agreement under s. 938.245 (6). An order under sub. (7) dismissing a petition and referring for deferred prosecution does not require district attorney consent. The district attorney may not override the order by filing a new petition with the same charges and facts. State v. Lindsey A.F. 2002 WI App 223, 257 Wis. 2d 650, 653 N.W.2d 116, 01-0081. Affirmed. 2003 WI 63, 262 Wis. 2d 200, 663 N.W.2d 757, 01-0081.

Deferred prosecutions under sub. (7) are not limited to situations in which the child is in custody. State v. Lindsey A.F. 2003 WI 63, 262 Wis. 2d 200, 663 N.W.2d 757, 01-0081.

938.22 County and private juvenile facilities. (1) ESTABLISHMENT AND POLICIES. (a) Subject to s. 48.66 (1) (b), the county board of supervisors of a county may establish a juvenile detention facility in accordance with ss. 301.36 and 301.37 or the county boards of supervisors for 2 or more counties may jointly establish a juvenile detention facility in accordance with ss. 46.20, 301.36, and 301.37. The county board of supervisors of a county may establish a shelter care facility in accordance with ss. 48.576 and 48.578 or the county boards of supervisors for 2 or more counties may jointly establish a shelter care facility in accordance with ss. 46.20, 48.576, and 48.578. A private entity may establish a juvenile detention facility in accordance with ss. 301.36 and 301.37 and contract with one or more county boards of supervisors under s. 938.222 to hold juveniles in the private juvenile detention facility.

(b) Subject to sub. (3) (ar), in counties having a population of less than 500,000, the nonjudicial operational policies of a public juvenile detention facility or shelter care facility shall be determined by the county board of supervisors or, in the case of a public juvenile detention facility or shelter care facility established by 2 or more counties, by the county boards of supervisors for the 2 or more counties jointly. Those policies shall be executed by the superintendent appointed under sub. (3) (a).

(c) In counties having a population of 500,000 or more, the nonjudicial operational policies of a public juvenile detention facility and the detention section of the children's court center shall be established by the county board of supervisors, and the policies shall be executed by the director of the children's court center.

(d) The nonjudicial operational policies of a private juvenile detention facility shall be established by the private entity operating the juvenile detention facility. Those policies shall be executed by the superintendent appointed under sub. (3) (bm).

(2) PLANS AND REQUIREMENTS. (a) Counties shall submit plans for a juvenile detention facility or juvenile portion of the county jail to the department of corrections and submit plans for a shelter care facility to the department of children and families. A private entity that proposes to establish a juvenile detention facility shall submit plans for the facility to the department of corrections. The applicable department shall review the submitted plans. A county or a private entity may not implement a plan unless the applicable department has approved the plan. The department of corrections shall promulgate rules establishing minimum requirements for the approval and operation of juvenile detention facilities and the juvenile portion of county jails. The plans and rules shall be designed to protect the health, safety, and welfare of the juveniles placed in those facilities.

(b) If the department approves, a juvenile detention facility or a holdover room may be located in a public building in which there is a jail or other facility for the detention of adults if the juvenile detention facility or holdover room is physically segregated from the jail or other facility so that juveniles may enter the juvenile detention facility or holdover room without passing through areas where adults are confined and juveniles detained in the juvenile detention facility or holdover room cannot communicate with or view adults confined in the jail or other facility.

(c) A shelter care facility shall be used for the temporary care of juveniles. A shelter care facility, other than a holdover room, may not be in the same building as a facility for the detention of adults.

(3) SUPERVISION OF FACILITY. (a) In counties having a population of less than 500,000, public juvenile detention facilities and public shelter care facilities shall be in the charge of a superintendent. The county board of supervisors or, where 2 or more counties operate joint public juvenile detention facilities or shelter care facilities, the county boards of supervisors for the 2 or more counties jointly shall appoint the superintendent and other necessary personnel for the care and education of the juveniles placed in those facilities, subject to par. (am) and to civil service regulations in counties having civil service.

(am) If a juvenile detention facility or holdover room is part of a public building in which there is a jail or other facility for the detention of adults, the sheriff or other keeper of the jail or other facility for the detention of adults may nominate persons for the position of superintendent of the juvenile detention facility or holdover room. Nominees under this paragraph shall have demonstrated administrative abilities and interest in juvenile justice and the welfare of juveniles.

(ar) Notwithstanding sub. (1) (b), if a juvenile detention facility or holdover room is located in a public building in which there is a jail or other facility for the detention of adults, the sheriff or other keeper of the jail or other facility for the detention of adults shall determine the security and emergency response policies of that juvenile detention facility or holdover room and the procedures for implementing those policies.

(b) In counties having a population of 500,000 or more, the director of the children's court center shall be in charge of and responsible for public juvenile detention facilities, the juvenile detention section of the center, and the personnel assigned to this section, including a detention supervisor or superintendent. The director of the children's court center may also serve as superintendent of detention if the county board of supervisors so determines.

(bm) A private juvenile detention facility shall be in the charge of a superintendent appointed by the private entity operating the juvenile detention facility.

(c) A superintendent appointed under par. (a), (b), or (bm) after May 1, 1992, shall, within one year after that appointment, successfully complete an administrative training program approved or provided by the department of justice.

(5) COUNTY CONTRACTS WITH PRIVATE FACILITIES. A county board of supervisors, or 2 or more county boards of supervisors jointly, may contract with privately operated juvenile detention facilities, shelter care facilities, or home detention programs for purchase of services. A county board

of supervisors may delegate this authority to its county department.

(7) LICENSING OF SHELTER CARE FACILITIES. (a) No person may establish a shelter care facility without first obtaining a license under s. 48.66 (1) (a). To obtain a license under s. 48.66 (1) (a) to operate a shelter care facility, a person must meet the minimum requirements for a license established by the department of children and families under s. 48.67, meet the requirements specified in s. 48.685, and pay the license fee under par. (b). A license issued under s. 48.66 (1) (a) to operate a shelter care facility is valid until revoked or suspended, but shall be reviewed every 2 years as provided in s. 48.66 (5).

(b) Except as provided in par. (d), before the department of children and families may issue a license under s. 48.66 (1) (a) to operate a shelter care facility, the shelter care facility shall pay to that department a biennial fee of $60.50, plus a biennial fee of $18.15 per juvenile, based on the number of juveniles that the shelter care facility is licensed to serve. A shelter care facility that wishes to continue a license issued under s. 48.66 (1) (a) shall pay the fee by the continuation date of the license. A new shelter care facility shall pay the fee by no later than 30 days before the opening of the shelter care facility.

(c) A shelter care facility that wishes to continue a license issued under s. 48.66 (1) (a) and that fails to pay the fee under par. (b) by the continuation date of the license or a new shelter care facility that fails to pay the fee under par. (b) by 30 days before the opening of the shelter care facility shall pay an additional fee of $5 per day for every day after the deadline that the facility fails to pay the fee.

(d) An individual who is eligible for a fee waiver under the veterans fee waiver program under s. 45.44 is not required to pay the fee under par. (b) for a license to operate a shelter care facility.

History: 1995 a. 27 s. 9126 (19); 1995 a. 77, 352; 1997 a. 27, 35, 252; 1999 a. 9; 2005 a. 344; 2007 a. 20, 97; 2011 a. 209.

938.23 Right to counsel. (1g) DEFINITION. In this section, "counsel" means an attorney acting as adversary counsel.

(1j) DUTIES OF COUNSEL. Counsel shall advance and protect the legal rights of the party represented. Counsel may not act as guardian ad litem for any party in the same proceeding.

(1m) RIGHT OF JUVENILES TO LEGAL REPRESENTATION. Juveniles subject to proceedings under this chapter shall be afforded legal representation as follows:

(a) A juvenile alleged to be delinquent under s. 938.12 or held in a juvenile detention facility shall be represented by counsel at all stages of the proceedings. A juvenile 15 years of age or older may waive counsel if the court is satisfied that the waiver is knowingly and voluntarily made and the court accepts the waiver. If the waiver is accepted, the court may not place the juvenile in a juvenile correctional facility or a secured residential care center for children and youth, transfer supervision of the juvenile to the department for participation in the serious juvenile offender program, or transfer jurisdiction over the juvenile to adult court.

(am) A juvenile subject to a sanction under s. 938.355 (6) (a) is entitled to representation by counsel at the hearing under s. 938.355 (6) (c).

(ar) A juvenile subject to proceedings under s. 938.357 (3) or (5) shall be afforded legal representation as provided in those subsections.

(b) 1. If a juvenile is alleged to be in need of protection or services under s. 938.13, the juvenile may be represented by counsel at the discretion of the court. Except as provided in subd. 2., a juvenile 15 years of age or older may waive counsel if the court is satisfied such waiver is knowingly and voluntarily made and the court accepts the waiver.

2. If the petition is contested, the court may not place the juvenile outside his or her home unless the juvenile is represented by counsel at the fact-finding hearing and subsequent proceedings. If the petition is not contested, the court may not place the juvenile outside his or her home unless the juvenile is represented by counsel at the hearing at which the placement is made. For a juvenile under 12 years of age, the court may appoint a guardian ad litem instead of counsel.

(2g) RIGHT OF INDIAN JUVENILE'S PARENT OR INDIAN CUSTODIAN TO COUNSEL. Whenever an Indian juvenile is the subject of a proceeding under s. 938.13 (4), (6), (6m), or (7) involving the removal of the Indian juvenile from the home of his or her parent or Indian custodian or the placement of the Indian juvenile in an out-of-home care placement, the Indian juvenile's parent or Indian custodian shall have the right to be represented by counsel as provided in sub. (4).

(3) POWER OF THE COURT TO APPOINT COUNSEL. Except as provided in this subsection, at any time, upon request or on its own motion, the court may appoint counsel for the juvenile or any party, unless the juvenile or the party has or wishes to retain counsel of his or her own choosing. Except as provided in sub. (2g), the court may not appoint counsel for any party other than the juvenile in a proceeding under s. 938.13.

(4) PROVIDING COUNSEL. If a juvenile has a right to be represented by counsel or is provided counsel at the discretion of the court under this section and counsel is not knowingly and voluntarily waived, the court shall refer the juvenile to the state public defender and counsel shall be appointed by the state public defender under s. 977.08 without a determination of indigency. In any situation under sub. (2g) in which a parent 18 years of age or over is entitled to representation by counsel; counsel is not knowingly and voluntarily waived; and it appears that the parent is unable to afford counsel in full, or the parent so indicates; the court shall refer the parent to the authority for indigency determinations specified under s. 977.07 (1). In any other situation under this section in which a person has a right to be represented by counsel or is provided counsel at the discretion of the court, competent and independent counsel shall be provided and reimbursed in any manner suitable to the court regardless of the person's ability to pay, except that the court may not order a person who files a petition under s. 813.122 or 813.125 to reimburse counsel for the juvenile who is named as the respondent in that petition.

(5) COUNSEL OF OWN CHOOSING. Notwithstanding subs. (3) and (4), any party is entitled to retain counsel of his or her own choosing at his or her own expense in any proceeding under this chapter.

History: 1995 a. 77; 1999 a. 9; 2001 a. 103; 2005 a. 344; 2009 a. 94.

The right to be represented by counsel includes the right to effective counsel. In Interest of M.D.(S), 168 Wis. 2d 996, 485 N.W.2d 52 (1992).

938.237 Civil law and ordinance proceedings initiated by citation in the court assigned to exercise jurisdiction under this chapter and ch. 48. (1) CITATION FORM. The citation forms under s. 23.54, 66.0113, 778.25, 778.26 or 800.02 may be used to commence an action for a violation of civil laws and ordinances in the court.

(2) PROCEDURES. The procedures for issuance and filing of a citation, and for forfeitures, stipulations, and deposits in ss. 23.50 to 23.67, 23.75 (3) and (4), 66.0113, 778.25, 778.26, and 800.01 to 800.035 except s. 800.035 (7) (b), when the citation is issued by a law enforcement officer, shall be used as appropriate, except that this chapter shall govern taking and holding a juvenile in custody, s. 938.37 shall govern costs, fees, and surcharges imposed under ch. 814, and a capias shall be substituted for an arrest warrant. Sections 66.0113 (3) (c) and (d), 66.0114 (1), and 778.10 as they relate to collection of forfeitures do not apply.

(3) DISPOSITION. If a juvenile to whom a citation has been issued does not submit a deposit or a stipulation and deposit, the juvenile shall appear in the court for a plea hearing under s. 938.30 at the date, time and place for the court appearance specified on the citation. If the juvenile does not submit a stipulation and deposit or if the court refuses to accept a deposit unaccompanied by a stipulation, the juvenile may be summoned to appear and the procedures that govern petitions for civil law or ordinance violations under s. 938.125 shall govern all proceedings initiated by a citation, except that the citation shall not be referred to the court intake worker for an intake inquiry. If the court finds that a juvenile violated a municipal ordinance or a civil law punishable by a forfeiture under this section, the court shall enter a dispositional order under s. 938.344, if applicable, or if s. 938.344 does not apply, the court may enter any of the dispositional orders under s. 938.343.

History: 1995 a. 77; 1999 a. 150 s. 672; 2001 a. 30 s. 108; 2003 a. 139; 2005 a. 344; 2009 a. 402.

SUBCHAPTER V

PROCEDURE

938.24 Receipt of jurisdictional information; intake inquiry. (1) REFERRAL OF INFORMATION TO INTAKE WORKER; INQUIRY. Except when a citation has been issued under s. 938.17 (2), information indicating that a juvenile should be referred to the court as delinquent, in need of protection or services, or in violation of a civil law or a county, town, or municipal ordinance shall be referred to an intake worker. The intake worker shall conduct an intake inquiry on behalf of the court to determine whether the available facts establish prima facie jurisdiction and to determine the best interests of the juvenile and of the public with regard to any action to be taken.

(1m) COUNSELING. As part of the intake inquiry, the intake worker shall inform the juvenile and the juvenile's parent, guardian and legal custodian that they may request counseling from a person designated by the court to provide dispositional services under s. 938.069.

(2) MULTIDISCIPLINARY SCREENS; INTAKE CONFERENCES. (a) As part of the intake inquiry the intake worker, after providing notice to the juvenile, parent, guardian, and legal custodian, may conduct multidisciplinary screens and intake conferences. If sub. (2m) applies and if the juvenile has not refused to participate under par. (b), the intake worker shall conduct a multidisciplinary screen under s. 938.547.

(b) No juvenile or other person may be compelled by an intake worker to appear at any conference, participate in a multidisciplinary screen, produce any papers, or visit any place.

(2m) MULTIDISCIPLINARY SCREEN; PILOT PROGRAM. (a) In counties that have a pilot program under s. 938.547, a multidisciplinary screen shall be conducted for a juvenile who is or does any of the following:

1. Alleged to have committed a violation specified under ch. 961.

2. Alleged to be delinquent or in need of protection and services and has at least 2 prior adjudications for a violation of s. 125.07 (4) (a) or (b), 125.085 (3) (b), or 125.09 (2) or a local ordinance that strictly conforms to any of those sections.

3. Alleged to have committed any offense that appears to the intake worker to be directly motivated by the juvenile's need to purchase or otherwise obtain alcohol beverages, controlled substances, or controlled substance analogs.

4. Twelve years of age or older and requests and consents to a multidisciplinary screen.

5. Consents to a multidisciplinary screen requested by his or her parents.

(b) The multidisciplinary screen may be conducted by an intake worker for any reason other than those specified in par. (a).

(2r) INDIAN JUVENILE; NOTIFICATION OF TRIBAL COURT. (a) If the intake worker determines as a result of the intake inquiry that the juvenile is an Indian juvenile who has allegedly committed a delinquent act and that all of the following circumstances apply, the intake worker shall promptly notify the clerk of the tribal court under subd. 1., a person who serves as the tribal juvenile intake worker, or a tribal prosecuting attorney that the juvenile has allegedly committed a delinquent act under those circumstances:

1. At the time of the delinquent act the juvenile was under an order of a tribal court, other than a tribal court order relating to adoption, physical placement or visitation with the juvenile's parent, or permanent guardianship.

2. At the time of the delinquent act the juvenile was physically outside the boundaries of s the reservation of the Indian tribe of the tribal court and any off-reservation trust land of either that Indian tribe or a member of that Indian tribe as a direct consequence of a tribal court order under subd. 1., including a tribal court order placing the juvenile in the home of a relative of the juvenile who on or after the date of the tribal court order resides physically outside the boundaries of a reservation and off-reservation trust land.

(b) If the intake worker is notified by an official of the Indian tribe that a petition relating to the delinquent act has been or may be filed in tribal court, the intake worker shall consult with tribal officials, unless the intake worker determines under sub. (4) that the case should be closed. After the consultation, the intake worker shall determine whether the best interests of the juvenile and of the public would be served by having the matter proceed solely in tribal court. If the intake worker determines that the best interests of the juvenile and of the public would be served by having the matter proceed solely in tribal court, the intake worker shall close the case. If the intake worker determines that the best interests of the juvenile and of

the public would not be served by having the matter proceed solely in tribal court, the intake worker shall proceed under sub. (3) or (4).

(3) REQUEST FOR PETITION. If the intake worker determines as a result of the intake inquiry that the juvenile should be referred to the court, the intake worker shall request that the district attorney, corporation counsel or other official specified in s. 938.09 file a petition.

(4) DEFERRED PROSECUTION AGREEMENT OR CASE CLOSURE. If the intake worker determines as a result of the intake inquiry that the case should be subject to a deferred prosecution agreement, or should be closed, the intake worker shall so proceed. If a petition has been filed, a deferred prosecution agreement may not be entered into or a case may not be closed unless the petition is withdrawn by the district attorney, corporation counsel or other official specified in s. 938.09, or is dismissed by the court.

(5) REQUEST FOR PETITION, DEFERRED PROSECUTION, OR CASE CLOSURE; TIME PERIODS. The intake worker shall request that a petition be filed, enter into a deferred prosecution agreement, or close the case within 40 days after receipt of referral information. Before entering into a deferred prosecution agreement, the intake worker shall comply with s. 938.245 (1m), if applicable. If the case is closed or a deferred prosecution agreement is entered into, the district attorney, corporation counsel, or other official under s. 938.09 shall receive written notice of that action. If the case is closed, the known victims of the juvenile's alleged act shall receive notice as provided under sub. (5m), if applicable. A notice of deferred prosecution of an alleged delinquency case shall include a summary of the facts surrounding the allegation and a list of the juvenile's prior intake referrals and dispositions. If a law enforcement officer has made a recommendation concerning the juvenile, the intake worker shall forward the recommendation to the district attorney under s. 938.09. Notwithstanding the requirements of this section, the district attorney may initiate a delinquency petition under s. 938.25 within 20 days after notice that the case has been closed or that a deferred prosecution agreement has been entered into. The court shall grant appropriate relief as provided in s. 938.315 (3) with respect to any petition that is not referred or filed within the time period specified in this subsection. Failure to object to the fact that a petition is not referred or filed within a time period specified in this subsection waives any challenge to the court's competency to act on the petition.

(5m) CASE CLOSURE; INFORMATION TO VICTIMS. If a juvenile is alleged to be delinquent under s. 938.12 or to be in need of protection or services under s. 938.13 (12) and the intake worker decides to close the case, the intake worker shall make a reasonable attempt to inform all of the known victims of the juvenile's act that the case is being closed at that time.

(6) WRITTEN POLICIES. The intake worker shall perform his or her responsibilities under this section under general written policies promulgated under s. 938.06 (1) or (2).

(7) NO INTAKE INQUIRY OR REVIEW FOR CITATIONS. If a citation is issued to a juvenile, the citation is not subject to an inquiry or a review by an intake worker for the purpose of recommending deferred prosecution.

History: 1995 a. 77, 275, 352, 448; 1997 a. 181; 1999 a. 9; 2003 a. 284; 2005 a. 344; 2007 a. 199; 2009 a. 94.

NOTE: 2003 Wis. Act 284 contains explanatory notes.

Under the facts of the case, sub. (5) did not mandate dismissal although referral was not made within 40 days. In re J.L.W. 143 Wis. 2d 126, 420 N.W.2d 398 (Ct. App. 1988).

Under sub. (1), "information indicating that a child should be referred to the court as delinquent" is that quantum of information that would allow a reasonable intake worker to evaluate the appropriate disposition of the matter. In Interest of J.W.T. 159 Wis. 2d 754, 465 N.W.2d 520 (Ct. App. 1990).

Sub. (5), when read in conjunction with sub. (3), requires that an intake worker request the district attorney to file a delinquency petition and does not require the intake worker to make a recommendation that a petition be filed. Interest of Antonio M.C. 182 Wis. 2d 301, 513 N.W.2d 662 (Ct. App. 1994).

Procedural Changes. Plum. Wis. Law. Apr. 1996.

NOTE: The above annotations cite to s. 48.24, the predecessor statute to s. 938.24.

When a district attorney receives notice of a deferred prosecution agreement from an intake worker under sub. (5), the 20 days during which the district attorney may terminate the agreement under s. 938.245 (6) begins. When a court orders a deferred prosecution agreement under s. 938.21 (7), the intake worker need not notify the district attorney and nothing triggers a district attorney's authority to terminate the agreement under s. 938.245 (6). An order under s. 938.21 (7) dismissing a petition and referring for deferred prosecution does not require district attorney consent. The district attorney may not override the order by filing a new petition with the same charges and facts. State v. Lindsey A.F. 2002 WI App 223, 257 Wis. 2d 650, 653 N.W.2d 116, 01-0081. Affirmed. 2003 WI 63, 262 Wis. 2d 200, 663 N.W.2d 757, 01-0081.

938.243 Basic rights: duty of intake worker.

(1) INFORMATION TO JUVENILE AND PARENTS; BASIC RIGHTS. Before conferring with the parent or juvenile during the intake inquiry, the intake worker shall personally inform a juvenile alleged to have committed a delinquent act, a juvenile 10 years of age or older who is the focus of an inquiry regarding the need for protection or services under s. 938.13 (4), (6), (6m), or (7), and the parents of those juveniles of all of the following:

(ag) That the referral may result in a petition to the court.

(am) What allegations may be in the petition to the court.

(b) The nature and possible consequences of the proceedings including the provisions of ss. 938.17 and 938.18 if applicable.

(c) The right to remain silent, the fact that in a delinquency proceeding the silence of the juvenile is not to be adversely considered by the court, and the fact that in a nondelinquency proceeding the silence of any party may be relevant in the proceeding.

(d) The right to confront and cross-examine those appearing against them.

(e) The right to counsel under s. 938.23.

(f) The right to present and subpoena witnesses.

(h) The right to have the allegations of the petition proved by clear and convincing evidence unless the juvenile is within the court's jurisdiction under s. 938.12 or 938.13 (12), in which case the standard of proof is beyond a reasonable doubt.

(1m) DISCLOSURE OF INFORMATION FOR USE IN CIVIL DAMAGES ACTION. If the juvenile who is the subject of the intake inquiry is alleged to have committed an act that resulted in personal injury or damage to or loss of the property of another, the intake worker shall inform the juvenile's parents in writing of all of the following:

(a) The possibility of disclosure of the identity of the juvenile and the parents, of the juvenile's police records, and of the outcome of proceedings against the juvenile for use in civil actions for damages against the juvenile or the parents.

(b) The parents' liability for acts of their juveniles.

(3) INFORMATION WHEN JUVENILE NOT AT INTAKE CONFERENCE OR HAS NOT HAD CUSTODY HEARING. If the

juvenile has not had a hearing under s. 938.21 and was not present at an intake conference under s. 938.24, the intake worker shall notify the juvenile, parent, guardian, and legal custodian as appropriate of their basic rights under this section. The notice shall be given verbally, either in person or by telephone, and in writing. The notice shall be given in sufficient time to allow the juvenile, parent, guardian, or legal custodian to prepare for the plea hearing. This subsection does not apply to cases of deferred prosecution under s. 938.245.

(4) APPLICABILITY. This section does not apply if the juvenile was present at a hearing under s. 938.21.

History: 1995 a. 77; 1997 a. 35; 2005 a. 344; 2009 a. 94.

938.245 Deferred prosecution. (1) WHEN AVAILABLE. An intake worker may enter into a written deferred prosecution agreement with all parties as provided in this section if all of the following apply:

(a) The intake worker has determined that neither the interests of the juvenile nor of the public require filing of a petition for circumstances relating to s. 938.12, 938.125, 938.13, or 938.14.

(b) The facts persuade the intake worker that the jurisdiction of the court, if sought, would exist.

(c) The juvenile, parent, guardian and legal custodian consent.

(1m) VICTIMS; RIGHT TO CONFER WITH INTAKE WORKER. If a juvenile is alleged to be delinquent under s. 938.12 or to be in need of protection or services under s. 938.13 (12), an intake worker shall, as soon as practicable but before entering into a deferred prosecution agreement under sub. (1), offer all of the victims of the juvenile's alleged act who have so requested an opportunity to confer with the intake worker concerning the proposed deferred prosecution agreement. The duty to offer an opportunity to confer under this subsection does not limit the obligation of the intake worker to perform his or her responsibilities under this section.

(2) CONTENTS OF AGREEMENT. (a) *Specific conditions.* A deferred prosecution agreement may provide for any one or more of the following:

1. 'Counseling.' That the juvenile and the juvenile's parent, guardian or legal custodian participate in individual, family or group counseling and that the parent, guardian or legal custodian participate in parenting skills training.

2. 'Compliance with obligations.' That the juvenile and a parent, guardian, or legal custodian abide by such obligations, including supervision, curfews, and school attendance requirements, as will tend to ensure the juvenile's rehabilitation, protection, or care.

3. 'Alcohol and other drug abuse assessment.' That the juvenile submit to an alcohol and other drug abuse assessment that meets the criteria under s. 938.547 (4) and that is conducted by an approved treatment facility for an examination of the juvenile's use of alcohol beverages, controlled substances, or controlled substance analogs and any medical, personal, family, or social effects caused by its use, if the multidisciplinary screen under s. 938.24 (2) shows that the juvenile is at risk of having needs and problems related to the use of alcohol beverages, controlled substances, or controlled substance analogs and its medical, personal, family, or social effects.

4. 'Alcohol and other drug abuse treatment and education.' That the juvenile participate in an alcohol and other drug abuse outpatient treatment program or a court-approved alcohol or other drug abuse education program, if an alcohol and other drug abuse assessment under subd. 3. recommends outpatient treatment, intervention, or education.

5. 'Restitution.' a. That the juvenile participate in a restitution project if the act for which the agreement is being entered into resulted in damage to the property of another, or in actual physical injury to another excluding pain and suffering. Subject to subd. 5. c., the agreement may require the juvenile to repair the damage to property or to make reasonable restitution for the damage or injury, either in the form of cash payments or, if the victim agrees, the performance of services for the victim, or both, if the intake worker, after taking into consideration the well-being and needs of the victim, considers it beneficial to the well-being and behavior of the juvenile. The agreement shall include a determination that the juvenile alone is financially able to pay or physically able to perform the services, may allow up to the date of the expiration of the agreement for the payment or for the completion of the services, and may include a schedule for the performance and completion of the services. Any recovery under this subd. 5. a. shall be reduced by the amount recovered for the same act under subd. 5. am.

am. That the parent who has custody, as defined in s. 895.035 (1), of the juvenile make reasonable restitution for any damage to the property of another, or for any actual physical injury to another excluding pain and suffering, resulting from the act for which the agreement is being entered into. Except for recovery for retail theft under s. 943.51, the maximum amount of any restitution ordered under this subd. 5. am. for damage or injury resulting from any one act of a juvenile or from the same act committed by 2 or more juveniles in the custody of the same parent may not exceed $5,000. Any order under this subd. 5. am. shall include a finding that the parent is financially able to pay the amount ordered and may allow up to the date of the expiration of the agreement for the payment. Any recovery under this subd. 5. am. shall be reduced by the amount recovered for the same act under subd. 5. a.

b. In addition to any other employment or duties permitted under ch. 103 or any rule or order under ch. 103, a juvenile under 14 years of age who is participating in a restitution project provided by the county or who is performing services for the victim as restitution may, for the purpose of making restitution, be employed or perform any duties under any circumstances in which a juvenile 14 or 15 years of age is permitted to be employed or to perform duties under ch. 103 or any rule or order under ch. 103. A juvenile who is participating in a restitution project provided by the county or who is performing services for the victim as restitution is exempt from the permit requirement under s. 103.70 (1).

c. An agreement under this subdivision may require a juvenile who is under 14 years of age to make not more than $250 in restitution or to perform not more than 40 total hours of services for the victim as total restitution.

6. 'Supervised work program.' That the juvenile participate in a supervised work program or other community service work in accordance with s. 938.34 (5g).

7. 'Volunteers in probation.' That the juvenile be placed with a volunteers in probation program under conditions the

intake worker determines are reasonable and appropriate, if the juvenile is alleged to have committed an act that would constitute a misdemeanor if committed by an adult, if the chief judge of the judicial administrative district has approved under s. 973.11 (2) a volunteers in probation program established in the juvenile's county of residence, and if the intake worker determines that volunteer supervision under that program will likely benefit the juvenile and the community. The conditions an intake worker may establish under this subdivision may include a request to a volunteer to be a role model for the juvenile, informal counseling, general monitoring, monitoring of the conditions established by the intake worker, or any combination of these functions, and any other deferred prosecution condition that the intake worker may establish under this paragraph.

8. 'Teen court program.' That the juvenile be placed in a teen court program if all of the following conditions apply:

a. The chief judge of the judicial administrative district has approved a teen court program established in the juvenile's county of residence and the intake worker determines that participation in the teen court program will likely benefit the juvenile and the community.

b. The juvenile is alleged to have committed a delinquent act that would be a misdemeanor if committed by an adult or a civil law or ordinance violation.

c. The juvenile admits to the intake worker, in the presence of the juvenile's parent, guardian, or legal custodian, that the juvenile committed the alleged delinquent act or civil law or ordinance violation.

d. The juvenile has not successfully completed participation in a teen court program during the 2 years before the date of the alleged delinquent act or civil law or ordinance violation.

9m. 'Youth report center.' That the juvenile report to a youth report center after school, in the evening, on weekends, on other nonschool days, or at any other time that the juvenile is not under immediate adult supervision, for participation in the social, behavioral, academic, community service, and other programming of the center. Section 938.34 (5g) applies to any community service work performed by a juvenile under this subdivision.

(b) *No out-of-home placement; term of agreement.* A deferred prosecution agreement may not include any form of out-of-home placement and may not exceed one year.

(c) *Alcohol or other drug abuse treatment; informed consent.* If the deferred prosecution agreement provides for alcohol and other drug abuse outpatient treatment under par. (a) 4., the juvenile and the juvenile's parent, guardian or legal custodian shall execute an informed consent form that indicates that they are voluntarily and knowingly entering into a deferred prosecution agreement for the provision of alcohol and other drug abuse outpatient treatment.

(2g) GRAFFITI VIOLATION. If the deferred prosecution agreement is based on an allegation that the juvenile violated s. 943.017 and the juvenile has attained 10 years of age, the agreement may require that the juvenile participate for not less than 10 hours nor more than 100 hours in a supervised work program under s. 938.34 (5g) or perform not less than 10 hours nor more than 100 hours of other community service work, except that if the juvenile has not attained 14 years of age the maximum number of hours is 40.

(2v) HABITUAL TRUANCY VIOLATION. If the deferred prosecution agreement is based on an allegation that the juvenile has violated a municipal ordinance enacted under s. 118.163 (2), the agreement may require that the juvenile's parent, guardian, or legal custodian attend school with the juvenile.

(3) OBLIGATIONS IN WRITING. The obligations imposed under a deferred prosecution agreement and its effective date shall be set forth in writing. The intake worker shall provide a copy of the agreement and order to the juvenile, to the juvenile's parent, guardian, and legal custodian, and to any agency providing services under the agreement.

(4) RIGHT TO TERMINATE OR OBJECT TO AGREEMENT. The intake worker shall inform the juvenile and the juvenile's parent, guardian, and legal custodian in writing of their right to terminate the deferred prosecution agreement at any time or to object at any time to the fact or terms of the agreement. If there is an objection, the intake worker may alter the terms of the agreement or request the district attorney or corporation counsel to file a petition. If the agreement is terminated the intake worker may request the district attorney or corporation counsel to file a petition.

(5) TERMINATION UPON REQUEST. A deferred prosecution agreement may be terminated upon the request of the juvenile, parent, guardian, or legal custodian.

(6) TERMINATION IF DELINQUENCY PETITION FILED. A deferred prosecution agreement arising out of an alleged delinquent act is terminated if the district attorney files a delinquency petition within 20 days after receipt of notice of the deferred prosecution agreement under s. 938.24 (5). If a petition is filed, statements made to the intake worker during the intake inquiry are inadmissible.

(7) CANCELLATION BY INTAKE WORKER. (a) If at any time during the period of a deferred prosecution agreement the intake worker determines that the obligations imposed under it are not being met, the intake worker may cancel the agreement. Within 10 days after the agreement is cancelled, the intake worker shall notify the district attorney, corporation counsel, or other official under s. 938.09 of the cancellation and may request that a petition be filed. In delinquency cases, the district attorney may initiate a petition within 20 days after the date of the notice regardless of whether the intake worker has requested that a petition be filed. The court shall grant appropriate relief as provided in s. 938.315 (3) with respect to any petition that is not filed within the time period specified in this paragraph. Failure to object to the fact that a petition is not filed within the time period specified in this paragraph waives any challenge to the court's competency to act on the petition.

(b) In addition to the action taken under par. (a), if the intake worker cancels a deferred prosecution agreement based on a determination that the juvenile's parent, guardian, or legal custodian is not meeting the obligations imposed under the agreement, the intake worker shall request the district attorney, corporation counsel, or other official under s. 938.09 to file a petition requesting the court to order the juvenile's parent, guardian, or legal custodian to show good cause for not meeting the obligations. If a petition under this paragraph is filed and if the court finds prosecutive merit for the petition, the court shall

grant an order directing the parent, guardian, or legal custodian to show good cause, at a time and place fixed by the court, for not meeting the obligations. If the parent, guardian or legal custodian does not show good cause, the court may impose a forfeiture not to exceed $1,000.

(8) WHEN OBLIGATIONS MET. If the obligations imposed under the deferred prosecution agreement are met, the intake worker shall so inform the juvenile and a parent, guardian, and legal custodian in writing. No petition may be filed or citation issued on the charges that brought about the agreement and the charges may not be the sole basis for a petition under s. 48.13, 48.133, 48.14, 938.13, or 938.14.

(9) WRITTEN POLICIES. The intake worker shall perform his or her responsibilities under this section under general written policies promulgated under s. 938.06 (1) or (2).

History: 1995 a. 77, 352, 448; 1997 a. 80, 181, 183, 205, 239, 292; 1999 a. 9, 32; 2001 a. 16; 2003 a. 138; 2005 a. 344; 2007 a. 199; 2011 a. 32.

When a district attorney receives notice of a deferred prosecution agreement from an intake worker under s. 938.24 (5), the 20 days during which the district attorney may terminate the agreement under sub. (6) begins. When a court orders a deferred prosecution agreement under s. 938.21 (7), the intake worker need not notify the district attorney and nothing triggers a district attorney's authority to terminate the agreement under sub. (6). An order under s. 938.21 (7) dismissing a petition and referring for deferred prosecution does not require district attorney consent. The district attorney may not override the order by filing a new petition with the same charges and facts. State v. Lindsey A.F. 2002 WI App 223, 257 Wis. 2d 650, 653 N.W.2d 116, 01-0081. Affirmed. 2003 WI 63, 262 Wis. 2d 200, 663 N.W.2d 757, 01-0081.

938.265 Consultation with victims. In a case in which the juvenile is alleged to be delinquent under s. 938.12 or to be in need of protection or services under s. 938.13 (12), the district attorney or corporation counsel shall, as soon as practicable but before the plea hearing under s. 938.30, offer all of the victims of the juvenile's alleged act who have so requested an opportunity to confer with the district attorney or corporation counsel concerning the possible outcomes of the proceeding against the juvenile, including potential plea agreements and recommendations that the district attorney or corporation counsel may make concerning dispositions under s. 938.34 or 938.345. The duty to offer an opportunity to confer under this section does not limit the obligation of the district attorney or corporation counsel to exercise his or her discretion concerning the handling of the proceeding against the juvenile.

History: 1997 a. 181; 2005 a. 344.

938.27 Notice; summons. (1) SUMMONS; WHEN ISSUED. After a citation is issued or a petition has been filed relating to facts concerning a situation specified under s. 938.12, 938.125 or 938.13, unless the parties under sub. (3) voluntarily appear, the court may issue a summons requiring the parent, guardian and legal custodian of the juvenile to appear personally at any hearing involving the juvenile, and, if the court so orders, to bring the juvenile before the court at a time and place stated.

(2) SUMMONS; NECESSARY PERSONS. Summons may be issued requiring the appearance of any other person whose presence, in the opinion of the court, is necessary.

(3) NOTICE OF HEARINGS. (a) 1. The court shall notify, under s. 938.273, the juvenile, any parent, guardian, and legal custodian of the juvenile, any foster parent or other physical custodian described in s. 48.62 (2) of the juvenile, and any person specified in par. (b) or (d), if applicable, of all hearings involving the juvenile under this subchapter, except hearings on motions for which notice must be provided only to the juvenile and his or her counsel. If parents entitled to notice have the same place of residence, notice to one constitutes notice to the other. The first notice to any interested party, foster parent, or other physical custodian described in s. 48.62 (2) shall be in writing and may have a copy of the petition attached to it. Notices of subsequent hearings may be given by telephone at least 72 hours before the time of the hearing. The person giving telephone notice shall place in the case file a signed statement of the date and time notice was given and the person to whom he or she spoke.

1m. The court shall give a foster parent or other physical custodian described in s. 48.62 (2) who is notified of a hearing under subd. 1. a right to be heard at the hearing by permitting the foster parent or other physical custodian to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issues to be determined at the hearing. A foster parent or other physical custodian described in s. 48.62 (2) who receives a notice of a hearing under subd. 1. and a right to be heard under this subdivision does not become a party to the proceeding on which the hearing is held solely on the basis of receiving that notice and right to be heard.

2. Failure to give notice under subd. 1. to a foster parent or other physical custodian described in s. 48.62 (2) does not deprive the court of jurisdiction in the action or proceeding. If a foster parent or other physical custodian described in s. 48.62 (2) is not given notice of a hearing under subd. 1., that person may request a rehearing on the matter during the pendency of an order resulting from the hearing. If the request is made, the court shall order a rehearing.

(b) 1. Except as provided in subd. 2., if the petition that was filed relates to facts concerning a situation under s. 938.13 and if the juvenile is a nonmarital child who is not adopted or whose parents do not subsequently intermarry as provided under s. 767.803 and if paternity has not been established, the court shall notify, under s. 938.273, all of the following persons:

a. A person who has filed a declaration of paternal interest under s. 48.025.

b. A person alleged to the court to be the father of the juvenile or who may, based on the statements of the mother or other information presented to the court, be the father of the juvenile.

2. A court is not required to provide notice, under subd. 1., to any person who may be the father of a juvenile conceived as a result of a sexual assault if a physician attests to his or her belief that there was a sexual assault of the juvenile's mother that may have resulted in the juvenile's conception.

(d) If the petition that was filed relates to facts concerning a situation under s. 938.13 (4), (6), (6m), or (7) involving an Indian juvenile who has been removed from the home of his or her parent or Indian custodian, the court shall notify, under s. 938.273, the Indian juvenile's Indian custodian and tribe and that Indian custodian or tribe may intervene at any point in the proceeding.

(4) CONTENTS OF NOTICE. The notice shall:

(a) Contain the name of the juvenile, and the nature, location, date and time of the hearing.

(b) Advise the juvenile and any other party, if applicable, of his or her right to legal counsel regardless of ability to pay.

(4m) NOTICE TO VICTIMS. The district attorney or corporation counsel shall make a reasonable attempt to contact any known victim or alleged victim of a juvenile's act or alleged act to inform them of the right to receive notice of any hearing under this chapter involving the juvenile. If a victim or alleged victim indicates that he or she wishes to receive that notice, the district attorney or corporation counsel shall make a reasonable attempt to notify, under s. 938.273, that victim or alleged victim of any hearing under this chapter involving the juvenile. Failure to comply with this subsection is not a ground for an appeal of a judgment or dispositional order or for any court to reverse or modify a judgment or dispositional order.

(5) NOTICE TO BIOLOGICAL FATHERS. Subject to sub. (3) (b), the court shall make reasonable efforts to identify and notify any person who has filed a declaration of paternal interest under s. 48.025, any person who has acknowledged paternity of the child under s. 767.805 (1), and any person who has been adjudged to be the father of the juvenile in a judicial proceeding unless the person's parental rights have been terminated.

(6) INTERSTATE COMPACT PROCEEDINGS; NOTICE AND SUMMONS. When a proceeding is initiated under s. 938.14, all interested parties shall receive notice and appropriate summons shall be issued in a manner specified by the court. If the juvenile who is the subject of the proceeding is in the care of a foster parent or other physical custodian described in s. 48.62 (2), the court shall give the foster parent or other physical custodian notice and a right to be heard as provided in sub. (3) (a).

(7) CITATIONS AS NOTICE. When a citation has been issued under s. 938.17 (2) and the juvenile's parent, guardian and legal custodian have been notified of the citation, subs. (3) and (4) do not apply.

(8) REIMBURSE LEGAL COUNSEL COSTS IN CERTAIN CASES; NOTICE. When a petition is filed under s. 938.12 or 938.13, the court shall notify, in writing, the juvenile's parents or guardian that they may be ordered to reimburse this state or the county for the costs of legal counsel provided for the juvenile, as provided under s. 938.275 (2).

History: 1995 a. 77, 275; 1997 a. 80, 181, 237; 2005 a. 293, 344; 2005 a. 443 s. 265; 2007 a. 96; 2009 a. 28, 79, 94.

938.273 Service of summons or notice; expense. **(1)** METHODS OF SERVICE; CONTINUANCE. (a) Except as provided in pars. (ag), (ar), and (b), service of summons or notice required by s. 938.27 may be made by mailing a copy of the summons or notice to the person summoned or notified.

(ag) In a situation described in s. 938.27 (3) (d), service of summons or notice required by s. 938.27 to an Indian juvenile's parent, Indian custodian, or tribe shall be made as provided in s. 938.028 (4) (a).

(ar) Except as provided in par. (b), if the person, other than a person specified in s. 938.27 (4m), fails to appear at the hearing or otherwise to acknowledge service, a continuance shall be granted, and service shall be made personally by delivering to the person a copy of the summons or notice; except that if the court determines that it is impracticable to serve the summons or notice personally, the court may order service by certified mail addressed to the last-known address of the person.

(b) The court may refuse to grant a continuance when the juvenile is being held in secure custody, but if the court so refuses, the court shall order that service of notice of the next hearing be made personally or by certified mail to the last-known address of the person who failed to appear at the hearing.

(c) Personal service shall be made at least 72 hours before the hearing. Mail shall be sent at least 7 days before the hearing, except as follows:

1. When the petition is filed under s. 938.13 and the person to be notified lives outside the state, the mail shall be sent at least 14 days before the hearing.

2. When a petition under s. 938.13 (4), (6), (6m), or (7) involves an Indian juvenile who has been removed from the home of his or her parent or Indian custodian and the person to be notified is the Indian juvenile's parent, Indian custodian, or tribe, the mail shall be sent so that it is received by the person to be notified at least 10 days before the hearing or, if the identity or location of the person to be notified cannot be determined by the U.S. secretary of the interior at least 15 days before the hearing.

(2) BY WHOM MADE. Service of summons or notice required by this chapter may be made by any suitable person under the direction of the court. Notification of the victim or alleged victim of a juvenile's act under s. 938.27 (4m) shall be made by the district attorney or corporation counsel.

(3) EXPENSES; CHARGE ON COUNTY. The expenses of service of summons or notice or of the publication of summons or notice and the traveling expenses and fees as allowed in ch. 885 incurred by any person summoned or required to appear at the hearing of any case coming within the jurisdiction of the court under s. 938.12, 938.125, 938.13 or 938.14 shall be a charge on the county when approved by the court.

History: 1995 a. 77; 1997 a. 35, 181; 1999 a. 32; 2005 a. 344; 2009 a. 94.

Failure to follow the statutory requirements for service defeated the state's assertion of personal jurisdiction and required the juvenile court to vacate its waiver order and the circuit court to dismiss criminal charges without prejudice. Personal jurisdiction depends on compliance with the procedures in sub. (1). The state's assertion that proper documents had been mailed to various addresses and not returned and that the juvenile had actual notice did not establish personal jurisdiction, nor does personal jurisdiction attach when a delinquency petition is filed. State v. Aufderhaar, 2005 WI 108, 283 Wis. 2d 336, 700 N.W.2d 4, 03-2820.

938.28 Failure to obey summons; capias. If any person summoned under this chapter fails without reasonable cause to appear, he or she may be proceeded against for contempt of court under ch. 785. If the summons cannot be served, if the parties served fail to respond to the summons, or if it appears to the court that the service will be ineffectual, a capias may be issued for the parent, guardian, and legal custodian or for the juvenile. Subchapter IV governs the taking and holding of a juvenile in custody.

History: 1995 a. 77; 1997 a. 35; 2005 a. 344.

The issuance of a capias to secure the physical attendance of a juvenile prior to the service of the summons and petition on the juvenile was error but did not deny the court personal jurisdiction. Interest of Jermaine T.J. 181 Wis. 2d 82, 510 N.W.2d 735 (Ct. App. 1993).

NOTE: The above annotation cites to s. 48.28, the predecessor statute to s. 938.28.

938.295 Physical, psychological, mental or developmental examination. (1) EXAMINATION OR ASSESSMENT OF JUVENILE OR PARENT. (a) After the filing of a petition and upon a finding by the court that reasonable cause exists to warrant a physical, psychological, mental, or developmental examination or an alcohol and other drug abuse assessment that conforms to the criteria under s. 938.547 (4), the court may order a juvenile within its jurisdiction to be examined as an outpatient by personnel in an approved treatment facility for alcohol and other drug abuse, by a physician, psychiatrist, or licensed psychologist, or by another expert appointed by the court holding at least a master's degree in social work or another related field of child development, in order that the juvenile's physical, psychological, alcohol or other drug dependency, mental, or developmental condition may be considered. The court may also order an examination or an alcohol and other drug abuse assessment that conforms to the criteria under s. 938.547 (4) of a parent, guardian, or legal custodian whose ability to care for a juvenile is at issue before the court.

(b) The court shall hear any objections by the juvenile and the juvenile's parents, guardian, or legal custodian to the request under par. (a) for an examination or assessment before ordering the examination or assessment.

(c) The expenses of an examination, if approved by the court, shall be paid by the county of the court ordering the examination. The payment for an alcohol and other drug abuse assessment shall be in accordance with s. 938.361.

(1c) REASONABLE CAUSE FOR ASSESSMENT; WHEN. Reasonable cause exists to warrant an alcohol and other drug abuse assessment under sub. (1) if any of the following applies:

(a) The multidisciplinary screen procedure conducted under s. 938.24 (2) indicates that the juvenile is at risk of having needs and problems related to alcohol or other drug abuse.

(b) The juvenile was adjudicated delinquent on the basis of an offense specified in ch. 961.

(c) The greater weight of the evidence at the fact-finding hearing indicates that any offense which formed the basis for the adjudication was motivated by the juvenile's need to purchase or otherwise obtain alcohol beverages, controlled substances or controlled substance analogs.

(1g) REPORT OF RESULTS AND RECOMMENDATIONS. If the court orders an alcohol or other drug abuse assessment under sub. (1), the approved treatment facility shall, within 14 days after the order, report the results of the assessment to the court, except that, if requested by the facility and if the juvenile is not held in secure or nonsecure custody, the court may extend the period for assessment for not more than 20 additional working days. The report shall include a recommendation as to whether the juvenile is in need of treatment, intervention, or education relating to the use or abuse of alcohol beverages, controlled substances, or controlled substance analogs and, if so, shall recommend a service plan and appropriate treatment from an approved treatment facility or education from a court-approved alcohol or other drug abuse education program.

(2) NOT COMPETENT OR NOT RESPONSIBLE. (a) If there is probable cause to believe that the juvenile has committed the alleged offense and if there is reason to doubt the juvenile's competency to proceed, or upon entry of a plea under s. 938.30 (4) (c), the court shall order the juvenile to be examined by a psychiatrist or licensed psychologist. If the cost of the examination is approved by the court, the cost shall be paid by the county of the court ordering the examination, and the county may recover that cost from the juvenile's parent or guardian as provided in par. (c). Evaluation shall be made on an outpatient basis unless the juvenile presents a substantial risk of physical harm to the juvenile or others; or the juvenile, parent, or guardian, and legal counsel or guardian ad litem, consent to an inpatient evaluation. An inpatient evaluation shall be completed in a specified period that is no longer than necessary.

(b) 1. The examiner shall file a report of the examination with the court by the date specified in the order. The court shall cause copies to be transmitted to the district attorney or corporation counsel and to the juvenile's counsel or guardian ad litem. The report shall describe the nature of the examination, identify the persons interviewed, the particular records reviewed, and any tests administered to the juvenile and state in reasonable detail the facts and reasoning upon which the examiner's opinions are based.

2. If the examination is ordered following a plea under s. 938.30 (4) (c), the report shall also contain an opinion regarding whether the juvenile suffered from mental disease or defect at the time of the commission of the act alleged in the petition and, if so, whether this caused the juvenile to lack substantial capacity to appreciate the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of the law.

3. If the examination is ordered following a finding that there is probable cause to believe that the juvenile has committed the alleged offense and that there is reason to doubt the juvenile's competency to proceed, the report shall also contain an opinion regarding the juvenile's present mental capacity to understand the proceedings and assist in his or her defense and, if the examiner reports that the juvenile lacks competency to proceed, the examiner's opinion regarding the likelihood that the juvenile, if provided treatment, may be restored to competency within the time specified in s. 938.30 (5) (e) 1.

(c) A county that pays the cost of an examination under par. (a) may recover a reasonable contribution toward that cost from the juvenile's parent or guardian, based on the ability of the parent or guardian to pay. If the examination is provided or otherwise funded by the county department under s. 46.215, 46.22, or 46.23, the county department shall collect the contribution of the parent or guardian as provided in s. 301.03 (18). If the examination is provided or otherwise funded by the county department under s. 51.42 or 51.437, the county department shall collect the contribution of the parent or guardian as provided in s. 46.03 (18).

(3) OBJECTION TO A PARTICULAR PROFESSIONAL. If the juvenile or a parent objects to a particular physician, psychiatrist, licensed psychologist, or other expert, the court shall appoint a different physician, psychiatrist, psychologist or other expert.

(4) TELEPHONE OR LIVE AUDIOVISUAL PROCEEDING. Motions or objections under this section may be heard under s. 807.13.

History: 1995 a. 77, 448; 2001 a. 109; 2005 a. 344; 2011 a. 32.

938.296 Testing for HIV infection and certain diseases. (1) DEFINITIONS. In this section:

(a) "Health care professional" has the meaning given in s. 252.15 (1) (am).

(b) "HIV" has the meaning given in s. 252.01 (1m).

(bm) "HIV test" has the meaning given in s. 252.01 (2m).

(c) "Sexually transmitted disease" has the meaning given in s. 252.11 (1).

(d) "Significant exposure" has the meaning given in s. 252.15 (1) (em).

(e) "Victim" has the meaning given in s. 938.02 (20m) (a) 1.

(2) SEXUALLY TRANSMITTED DISEASE AND HIV TESTING. In a proceeding under s. 938.12 or 938.13 (12) in which the juvenile is alleged to have violated s. 940.225, 948.02, 948.025, 948.05, 948.06, or 948.085 (2), the district attorney or corporation counsel shall apply to the court for an order requiring the juvenile to submit to an HIV test and a test or a series of tests to detect the presence of a sexually transmitted disease, each of which tests shall be administered by a health care professional, and to disclose the results of those tests as specified in sub. (4) (a) to (e), if all of the following apply:

(a) The victim or alleged victim, if an adult, or the parent, guardian or legal custodian of the victim or alleged victim, if the victim or alleged victim is a child, requests the district attorney or corporation counsel to apply for that order.

(b) The district attorney or corporation counsel has probable cause to believe that the victim or alleged victim has had contact with body fluid of the juvenile that constitutes a significant exposure. If the juvenile is adjudicated delinquent, is found to be in need of protection or services or is found not responsible by reason of mental disease or defect under s. 938.30 (5), this paragraph does not apply.

(2m) COMMUNICABLE DISEASE TESTING. In a proceeding under s. 938.12 or 938.13 (12) in which the juvenile is alleged to have violated s. 946.43 (2m), the district attorney or corporation counsel shall apply to the court for an order requiring the juvenile to submit to a test or a series of tests administered by a health care professional to detect the presence of communicable diseases and to disclose the results of the test or tests as specified in sub. (5) (a) to (e), if all of the following apply:

(a) The victim or alleged victim, if an adult, or the parent, guardian or legal custodian of the victim or alleged victim, if the victim or alleged victim is a child, requests the district attorney or corporation counsel to apply for the order.

(b) The district attorney or corporation counsel has probable cause to believe that the act or alleged act of the juvenile that constitutes a violation of s. 946.43 (2m) carried a potential for transmitting a communicable disease to the victim or alleged victim and involved the juvenile's blood, semen, vomit, saliva, urine, feces, or other bodily substance.

(3) WHEN ORDER MAY BE SOUGHT. The district attorney or corporation counsel may apply for an order under sub. (2) or (2m) at any of the following times:

(a) At or after the plea hearing and before a dispositional order is entered.

(b) At any time after the juvenile is adjudicated delinquent or found to be in need of protection or services.

(c) At any time after the juvenile is found not responsible by reason of mental disease or defect under s. 938.30 (5).

(d) If the court has determined that the juvenile is not competent to proceed under s. 938.30 (5) and has suspended proceedings on the petition, at any time after the determination that the juvenile is not competent to proceed.

(4) DISCLOSURE OF SEXUALLY TRANSMITTED DISEASE AND HIV TEST RESULTS. On receipt of an application for an order under sub. (2), the court shall set a time for a hearing on the application. If the juvenile has been found not competent to proceed under s. 938.30 (5), the court may hold a hearing under this subsection only if the court first determines that the probable cause finding can be fairly made without the personal participation of the juvenile. If, after hearing, the court finds probable cause to believe that the victim or alleged victim has had contact with body fluid of the juvenile that constitutes a significant exposure, the court shall order the juvenile to submit to an HIV test and a test or series of tests to detect the presence of a sexually transmitted disease. The tests shall be administered by a health care professional. The court shall require the health care professional who performs the tests to refrain from making the test results part of the juvenile's permanent medical record and to disclose the results of the tests to any of the following:

(a) The parent, guardian or legal custodian of the juvenile.

(b) The victim or alleged victim, if the victim or alleged victim is an adult.

(c) The parent, guardian or legal custodian of the victim or alleged victim, if the victim or alleged victim is a child.

(d) The health care professional that provides care for the juvenile, upon request by the parent, guardian or legal custodian of the juvenile.

(e) The health care professional that provides care for the victim or alleged victim, upon request by the victim or alleged victim or, if the victim or alleged victim is a child, upon request by the parent, guardian or legal custodian of the victim or alleged victim.

(5) DISCLOSURE OF COMMUNICABLE DISEASE TEST RESULTS. On receipt of an application for an order under sub. (2m), the court shall set a time for a hearing on the application. If the juvenile has been found not competent to proceed under s. 938.30 (5), the court may hold a hearing under this subsection only if the court first determines that the probable cause finding can be fairly made without the personal participation of the juvenile. If, after hearing, the court finds probable cause to believe that the act or alleged act of the juvenile that constitutes a violation of s. 946.43 (2m) carried a potential for transmitting a communicable disease to the victim or alleged victim and involved the juvenile's blood, semen, vomit, saliva, urine or feces or other bodily substance of the juvenile, the court shall order the juvenile to submit to a test or a series of tests administered by a health care professional to detect the presence of any communicable disease that was potentially transmitted by the act or alleged act of the juvenile. The court shall require the health care professional who performs the test or series of tests to refrain from making the test results part of the juvenile's permanent medical record and to disclose the results of the test to any of the following:

(a) The parent, guardian or legal custodian of the juvenile.

(b) The victim or alleged victim, if the victim or alleged victim is an adult.

(c) The parent, guardian or legal custodian of the victim or alleged victim, if the victim or alleged victim is a child.

(d) The health care professional that provides care for the juvenile, upon request by the parent, guardian or legal custodian of the juvenile.

(e) The health care professional that provides care for the victim or alleged victim, upon request by the victim or alleged victim or, if the victim or alleged victim is a child, upon request by the parent, guardian or legal custodian of the victim or alleged victim.

(6) PAYMENT FOR TEST COSTS. The court may order the county to pay for the cost of a test or series of tests ordered under sub. (4) or (5). This subsection does not prevent recovery of reasonable contribution toward the cost of that test or series of tests from the parent or guardian of the juvenile as the court may order based on the ability of the parent or guardian to pay. This subsection is subject to s. 301.03 (18).

History: 1995 a. 77; 1997 a. 181, 182, 237; 1999 a. 188; 2005 a. 277, 344; 2009 a. 209.

SUBCHAPTER VI

DISPOSITION

938.33 Court reports. (1) REPORT REQUIRED. Before the disposition of a juvenile adjudged to be delinquent or in need of protection or services, the court shall designate an agency, as defined in s. 938.38 (1) (a), to submit a report that contains all of the following:

(a) The social history of the juvenile.

(b) A recommended plan of rehabilitation or treatment and care for the juvenile, based on the investigation conducted by the agency and any report resulting from an examination or assessment under s. 938.295, that employs the most effective means available to accomplish the objectives of the plan.

(c) A description of the specific services or continuum of services that the agency is recommending the court to order for the juvenile or family, the persons or agencies that would be primarily responsible for providing those services, and the identity of the person or agency that would provide case management or coordination of services, if any, and whether or not the juvenile should receive a coordinated services plan of care.

(d) A statement of the objectives of the plan, including any desired behavior changes and the academic, social and vocational skills needed by the juvenile.

(e) A plan for the provision of educational services to the juvenile, prepared after consultation with the staff of the school in which the juvenile is enrolled or the last school in which the juvenile was enrolled.

(f) If the agency is recommending that the court order the juvenile's parent, guardian, or legal custodian to participate in mental health treatment, anger management, individual or family counseling, or parent training and education, a statement as to the availability of those services and the availability of funding for those services.

(2) HOME PLACEMENT REPORTS. A report recommending that the juvenile remain in his or her home may be presented orally at the dispositional hearing if all parties consent. A report that is presented orally shall be transcribed and made a part of the court record.

(3) CORRECTIONAL PLACEMENT REPORTS. A report recommending placement of a juvenile in a juvenile correctional facility or a secured residential care center for children and youth shall be in writing, except that the report may be presented orally at the dispositional hearing if the juvenile and the juvenile's counsel consent. A report that is presented orally shall be transcribed and made a part of the court record. In addition to the information specified under sub. (1) (a) to (d), the report shall include all of the following:

(a) A description of any less restrictive alternatives that are available and that have been considered, and why they have been determined to be inappropriate. If the court has found that any of the conditions specified in s. 938.34 (4m) (b) 1., 2., or 3. applies, the report shall indicate that a less restrictive alternative than placement in a juvenile correctional facility or a secured residential care center for children and youth is not appropriate.

(b) A recommendation for an amount of child support to be paid by either or both of the juvenile's parents or for referral to the county child support agency under s. 59.53 (5) for the establishment of child support.

(3r) SERIOUS JUVENILE OFFENDER REPORT. If a juvenile has been adjudicated delinquent for committing a violation for which the juvenile may be placed in the serious juvenile offender program under s. 938.34 (4h) (a), the report shall be in writing and, in addition to the information specified in sub. (1) and in sub. (3) or (4), if applicable, shall include an analysis of the juvenile's suitability for placement in the serious juvenile offender program under s. 938.34 (4h) or in a juvenile correctional facility under s. 938.34 (4m), a placement specified in s. 938.34 (3), or placement in the juvenile's home with supervision and community-based programming and a recommendation as to the type of placement for which the juvenile is best suited.

(4) OTHER OUT-OF-HOME PLACEMENTS. A report recommending placement in a foster home, group home, or nonsecured residential care center for children and youth, in the home of a relative other than a parent, or in the home of a guardian under s. 48.977 (2) shall be in writing, except that the report may be presented orally at the dispositional hearing if all parties consent. A report that is presented orally shall be transcribed and made a part of the court record. The report shall include all of the following:

(a) A permanency plan prepared under s. 938.38.

(b) A recommendation for an amount of child support to be paid by either or both of the juvenile's parents or for referral to the county child support agency under s. 59.53 (5) for the establishment of child support.

(c) Specific information showing that continued placement of the juvenile in his or her home would be contrary to the welfare of the juvenile, specific information showing that the county department or the agency primarily responsible for providing services to the juvenile has made reasonable efforts to prevent the removal of the juvenile from the home, while assuring that the juvenile's health and safety are the paramount concerns, unless any of the circumstances specified in s. 938.355 (2d) (b) 1. to 4. applies, and, if a permanency plan has previously been prepared for the juvenile, specific information

showing that the county department or agency has made reasonable efforts to achieve the permanency goal of the juvenile's permanency plan, including, if appropriate, through an out-of-state placement.

NOTE: Par. (c) is shown as affected by 2011 Wis. Acts 181 and 258 and as merged by the legislative reference bureau under s. 13.92 (2) (i).

(d) 1. If the juvenile has one or more siblings, as defined in s. 938.38 (4) (br) 1., who have been removed from the home or for whom an out-of-home placement is recommended, specific information showing that the county department or agency primarily responsible for providing services to the juvenile has made reasonable efforts to place the juvenile in a placement that enables the sibling group to remain together, unless the county department or agency recommends that the juvenile and his or her siblings not be placed in a joint placement, in which case the report shall include specific information showing that a joint placement would be contrary to the safety or well-being of the juvenile or any of those siblings and the specific information required under subd. 2.

2. If a recommendation is made that the juvenile and his or her siblings not be placed in a joint placement, specific information showing that the county department or agency has made reasonable efforts to provide for frequent visitation or other ongoing interaction between the juvenile and the siblings, unless the county department or agency recommends that such visitation or interaction not be provided, in which case the report shall include specific information showing that such visitation or interaction would be contrary to the safety or well-being of the juvenile or any of those siblings.

(dm) In the case of a proceeding under s. 938.13 (4), (6), (6m), or (7), if the agency knows or has reason to know that the juvenile is an Indian juvenile who is being removed from the home of his or her parent or Indian custodian, a description of any efforts undertaken to determine whether the juvenile is an Indian juvenile; specific information showing that continued custody of the juvenile by the parent or Indian custodian is likely to result in serious emotional or physical damage to the juvenile, under s. 938.028 (4) (d) 1.; specific information showing that active efforts under s. 938.028 (4) (d) 2. have been made to prevent the breakup of the Indian juvenile's family and that those efforts have proved unsuccessful; a statement as to whether the out-of-home care placement recommended is in compliance with the order of placement preference under s. 938.028 (6) (a) or, if applicable, s. 938.028 (6) (b); and, if the recommended placement is not in compliance with that order, specific information showing good cause, as described in s. 938.028 (6) (d), for departing from that order.

(4m) SUPPORT RECOMMENDATIONS; INFORMATION TO PARENTS. In making a recommendation for an amount of child support under sub. (3) or (4), the agency shall consider the factors under s. 301.12 (14) (c). At or before the dispositional hearing under s. 938.335, the agency shall provide the juvenile's parent with all of the following:

(a) Its recommendation for child support.

(b) A written explanation of how the parent may request that the court modify the amount of child support under s. 301.12 (14) (c).

(c) A written explanation of how the parent may request a revision under s. 938.363 in the amount of child support ordered by the court under s. 938.355 (2) (b) 4.

(5) IDENTITY OF FOSTER PARENT; CONFIDENTIALITY. If the report recommends placement in a foster home, and the name of the foster parent is not available at the time the report is filed, the agency shall provide the court and the juvenile's parent or guardian with the name and address of the foster parent within 21 days after the dispositional order is entered, except that the court may order the information withheld from the juvenile's parent or guardian if the court finds that disclosure would result in imminent danger to the juvenile or to the foster parent. After notifying the juvenile's parent or guardian, the court shall hold a hearing prior to ordering the information withheld.

History: 1995 a. 77, 417; 1997 a. 27, 35, 237, 252; 1999 a. 9; 2001 a. 59, 109; 2005 a. 25, 344; 2009 a. 28, 79, 94, 185, 334; 2011 a. 181, 258; 2011 a. 260 s. 80; s. 13.92 (2) (i).

Cross-reference: See also s. DOC 397.04, Wis. adm. code.

938.331 Court reports; effect on victim. If the delinquent act would constitute a felony if committed by an adult, the person preparing the report under s. 938.33 (1) shall attempt to determine the economic, physical and psychological effect of the delinquent act on the victim, as defined in s. 938.02 (20m) (a) 1. and 4. The person preparing the report may ask any appropriate person for information. This section does not preclude the person who prepares the report from including any information for the court concerning the impact of a delinquent act on the victim. If the delinquent act would not constitute a felony but a victim, as defined in s. 938.02 (20m) (a) 1., has suffered bodily harm or the act involved theft or damage to property, the person preparing the report is encouraged to seek the information described in this section.

History: 1995 a. 77; 1997 a. 181.

938.335 Dispositional hearings. (1) WHEN REQUIRED. The court shall conduct a hearing to determine the disposition of a case in which a juvenile is adjudged to be delinquent under s. 938.12, to have violated a civil law or ordinance under s. 938.125, or to be in need of protection or services under s. 938.13, except that the court shall proceed under s. 938.237 (2) if a citation is issued and the juvenile fails to contest the citation.

(3) EVIDENCE AND RECOMMENDATIONS. At hearings under this section, any party may present evidence relevant to the issue of disposition, including expert testimony, and may make alternative dispositional recommendations.

(3g) REASONABLE EFFORTS FINDING. At hearings under this section, if the agency, as defined in s. 938.38 (1) (a), is recommending placement of the juvenile in a foster home, group home, or residential care center for children and youth, or in the home of a relative other than a parent, the agency shall present as evidence specific information showing all of the following:

(a) That continued placement of the juvenile in his or her home would be contrary to the welfare of the juvenile.

(b) That the county department or the agency primarily responsible for providing services to the juvenile has made reasonable efforts to prevent the removal of the juvenile from the home, while assuring that the juvenile's health and safety are the paramount concerns, unless any of the circumstances specified in s. 938.355 (2d) (b) 1. to 4. applies.

(c) That, if a permanency plan has previously been prepared for the juvenile, the county department or agency has made reasonable efforts to achieve the permanency goal of the

juvenile's permanency plan, including, if appropriate, through an out-of-state placement.

NOTE: Par. (c) is shown as affected by 2011 Wis. Acts 181 and 258 and as merged by the legislative reference bureau under s. 13.92 (2) (i).

(d) 1. If the juvenile has one or more siblings, as defined in s. 938.38 (4) (br) 1., who have been removed from the home or for whom an out-of-home placement is recommended, that the county department or agency has made reasonable efforts to place the juvenile in a placement that enables the sibling group to remain together, unless the county department or agency recommends that the juvenile and his or her siblings not be placed in a joint placement, in which case the county department or agency shall present as evidence specific information showing that a joint placement would be contrary to the safety or well-being of the juvenile or any of those siblings and the specific information required under subd. 2.

2. If a recommendation is made that the juvenile and his or her siblings not be placed in a joint placement, that the county department or agency has made reasonable efforts to provide for frequent visitation or other ongoing interaction between the juvenile and the siblings, unless the county department or agency recommends that such visitation or interaction not be provided, in which case the county department or agency shall present as evidence specific information showing that such visitation or interaction would be contrary to the safety or well-being of the juvenile or any of those siblings.

(3j) INDIAN JUVENILE; ACTIVE EFFORTS FINDING. At hearings under this section involving an Indian juvenile who is the subject of a proceeding under s. 938.13 (4), (6), (6m), or (7), if the agency, as defined in s. 938.38 (1) (a), is recommending removal of the Indian juvenile from the home of his or her parent or Indian custodian and placement of the Indian juvenile in a foster home, group home, or residential care center for children and youth or in the home of a relative other than a parent, the agency shall present as evidence specific information showing all of the following:

(a) That continued custody of the Indian juvenile by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian juvenile under s. 938.028 (4) (d) 1.

(b) That active efforts under s. 938.028 (4) (d) 2. have been made to prevent the breakup of the Indian juvenile's family and that those efforts have proved unsuccessful.

(c) That the placement recommended is in compliance with the order of placement preference under s. 938.028 (6) (a) or, if applicable, s. 938.028 (6) (b) or, if that placement is not in compliance with that order, good cause, as described in s. 938.028 (6) (d), for departing from that order.

(3m) VICTIMS' STATEMENTS. Before imposing a disposition in a proceeding in which a juvenile is adjudged to be delinquent under s. 938.12 or is found to be in need of protection or services under s. 938.13 (12), all of the following shall occur:

(ag) The court shall determine whether a victim of the juvenile's act wants to make a statement to the court. If a victim wants to make a statement, the court shall allow the victim to make a statement in court or to submit a written statement to be read to the court. The court may allow any other person to make or submit a statement under this paragraph. Any statement made under this paragraph must be relevant to the disposition.

(am) The court shall inquire of the district attorney or corporation counsel whether he or she has complied with par. (b) and s. 938.27 (4m), whether any of the known victims requested notice of the date, time, and place of the dispositional hearing, and, if so, whether the district attorney or corporation counsel provided to the victim notice of the date, time, and place of the hearing.

(b) The district attorney or corporation counsel shall make a reasonable attempt to contact any known victim to inform that person of the right to make a statement under par. (ag). Any failure to comply with this paragraph is not a ground for an appeal of a dispositional order or for any court to reverse or modify a dispositional order.

(3r) CHILD SUPPORT. At hearings under this section, a parent of the juvenile may present evidence relevant to the amount of child support to be paid by either or both parents.

(4) TESTIMONY BY TELEPHONE OR LIVE AUDIOVISUAL MEANS. At hearings under this section, s. 938.357, 938.358, 938.363, or 938.365, on the request of any party, unless good cause to the contrary is shown, the court may admit testimony on the record by telephone or live audiovisual means, if available, under s. 807.13 (2). The request and the showing of good cause may be made by telephone.

(5) DISPOSITIONAL ORDER. At the conclusion of the hearing, the court shall make a dispositional order in accordance with s. 938.355.

(6) JUVENILE PLACED OUTSIDE THE HOME. If the dispositional order places the juvenile outside the home, the parent, if present at the hearing, shall be requested to provide the names and other identifying information of 3 relatives of the juvenile or other individuals 18 years of age or over whose homes the parent requests the court to consider as placements for the juvenile, unless that information has previously been provided under s. 938.21 (2) (e) or (3) (f). If the parent does not provide that information at the hearing, the county department or the agency primarily responsible for providing services to the juvenile under the dispositional order shall permit the parent to provide the information at a later date.

History: 1995 a. 77; 1997 a. 181, 252; 2001 a. 109; 2005 a. 344; 2009 a. 28, 79, 94, 185; 2011 a. 181, 258; s. 13.92 (2) (i).

938.34 Disposition of juvenile adjudged delinquent. If the court adjudges a juvenile delinquent, the court shall enter an order deciding one or more of the dispositions of the case as provided in this section under a care and treatment plan. A disposition under sub. (4m) must be combined with a disposition under sub. (4n). In deciding the dispositions for a juvenile who is adjudicated delinquent, the court shall consider the seriousness of the act for which the juvenile is adjudicated delinquent and may consider any other delinquent act that is read into the record and dismissed at the time of the adjudication. The dispositions under this section are:

(1) COUNSELING. Counsel the juvenile or the parent, guardian or legal custodian.

(2) SUPERVISION. (a) Place the juvenile under the supervision of an agency, the department, if the department approves, or a suitable adult, including a friend of the juvenile, under conditions prescribed by the court, including reasonable

rules for the juvenile's conduct, designed for the physical, mental, and moral well-being and behavior of the juvenile.

(b) If the juvenile is placed in the juvenile's home under the supervision of an agency or the department, order the agency or department to provide specified services to the juvenile and the juvenile's family, including individual, family, or group counseling, homemaker or parent aide services, respite care, housing assistance, child care, or parent skills training.

(c) Order the juvenile to remain at his or her home or other placement for a period of not more than 30 days under rules of supervision specified in the order.

(2g) VOLUNTEERS IN PROBATION PROGRAM. If the juvenile is adjudicated delinquent for the commission of an act that would constitute a misdemeanor if committed by an adult, if the chief judge of the judicial administrative district has approved under s. 973.11 (2) a volunteers in probation program established in the juvenile's county of residence, and if the court determines that volunteer supervision under that program will likely benefit the juvenile and the community, place the juvenile with the volunteers in probation program under conditions the court determines are reasonable and appropriate. These conditions may include any of the following:

(a) A directive to a volunteer to be a role model for the juvenile, informal counseling, general monitoring monitoring of the conditions established by the court, or any combination of these functions.

(b) Any other disposition that the court may impose under this section.

(2m) TEEN COURT PROGRAM. Order the juvenile to be placed in a teen court program if all of the following conditions apply:

(a) The chief judge of the judicial administrative district has approved a teen court program established in the juvenile's county of residence and the court determines that participation in the teen court program will likely benefit the juvenile and the community.

(b) The juvenile is alleged to have committed a delinquent act that would be a misdemeanor if committed by an adult.

(c) The juvenile admits or pleads no contest in open court, in the presence of the juvenile's parent, guardian, or legal custodian, to the allegations that the juvenile committed the delinquent act.

(d) The juvenile has not successfully completed participation in a teen court program during the 2 years before the date of the alleged delinquent act.

(2r) INTENSIVE SUPERVISION. Order the juvenile to participate in an intensive supervision program under s. 938.534.

(3) PLACEMENT. Designate one of the following as the placement for the juvenile:

(a) The home of a parent or other relative of the juvenile, except that the court may not designate the home of a parent or other relative of the juvenile as the juvenile's placement if the parent or other relative has been convicted of the homicide of a parent of the juvenile under s. 940.01 or 940.05, and the conviction has not been reversed, set aside, or vacated, unless the court determines by clear and convincing evidence that the placement would be in the best interests of the juvenile. The court shall consider the wishes of the juvenile in making that determination.

(b) The home of a person who is not required to be licensed if placement is for less than 30 days, except that the court may not designate the home of a person who is not required to be licensed as the juvenile's placement if the person has been convicted of the homicide of a parent of the juvenile under s. 940.01 or 940.05, and the conviction has not been reversed, set aside, or vacated, unless the court determines by clear and convincing evidence that the placement would be in the best interests of the juvenile. The court shall consider the wishes of the juvenile in making that determination.

(c) A foster home licensed under s. 48.62 or a group home licensed under s. 48.625.

(cm) A group home described in s. 48.625 (1m) if the juvenile is at least 12 years of age, is a custodial parent, as defined in s. 49.141 (1) (b), or an expectant mother, is receiving inadequate care, and is in need of a safe and structured living arrangement.

(d) A residential treatment center operated by a child welfare agency licensed under s. 48.60.

(e) An independent living situation effective on or after the juvenile's 17th birthday, either alone or with friends, under supervision the court considers appropriate, but only if the juvenile is of sufficient maturity and judgment to live independently and only upon proof of a reasonable plan for supervision by an appropriate person or agency.

(f) A juvenile detention facility or juvenile portion of a county jail that meets the standards promulgated by the department by rule, or in a place of nonsecure custody designated by the court, subject to all of the following:

1. The placement may be for any combination of single or consecutive days totalling not more than 180, including any placement under pars. (a) to (e). The juvenile shall be given credit against the period of detention or nonsecure custody imposed under this paragraph for all time spent in secure detention in connection with the course of conduct for which the detention or nonsecure custody was imposed.

2. The order may provide that the juvenile may be released from the juvenile detention facility, juvenile portion of the jail, or place of nonsecure custody during specified hours to attend school, to work at the juvenile's place of employment or to attend or participate in any activity which the court considers beneficial to the juvenile.

3. The use of placement in a juvenile detention facility or in a juvenile portion of a county jail as a disposition under this paragraph is subject to the adoption of a resolution by the county board of supervisors under s. 938.06 (5) authorizing the use of those placements as a disposition.

4. If a juvenile's placement under this paragraph exceeds 30 days, whether or not consecutive, the county department shall offer the juvenile alcohol or other drug abuse treatment, counseling, and education services under sub. (6r). The payment for those services shall be in accordance with s. 938.361.

(3g) ELECTRONIC MONITORING. Monitoring by an electronic monitoring system for a juvenile subject to an order under sub. (2), (2r), (3) (a) to (e), (4h) or (4n) who is placed in the community.

(4) TRANSFER OF LEGAL CUSTODY. If it is shown that the rehabilitation or the treatment and care of the juvenile cannot be

accomplished by means of voluntary consent of the parent or guardian, transfer legal custody to any of the following:

(a) A relative of the juvenile.

(b) A county department.

(c) A licensed child welfare agency.

(4d) TYPE 2 RESIDENTIAL CARE CENTER FOR CHILDREN AND YOUTH PLACEMENT. Place the juvenile in a Type 2 residential care center for children and youth under the supervision of the county department and subject to Type 2 status, as described in s. 938.539, but only if all of the following apply:

(a) The juvenile has been found to be delinquent for the commission of an act that would be punishable by a sentence of 6 months or more if committed by an adult.

(b) The juvenile has been found to be a danger to the public and to be in need of restrictive custodial treatment. If the court determines that any of the conditions specified in sub. (4m) (b) 1., 2., or 3. applies, but that placement in the serious juvenile offender program under sub. (4h) or in a juvenile correctional facility under sub. (4m) would not be appropriate, that determination shall be prima facie evidence that the juvenile is a danger to the public and in need of restrictive custodial treatment under this subsection.

(4h) SERIOUS JUVENILE OFFENDER PROGRAM. Place the juvenile in the serious juvenile offender program under s. 938.538, but only if all of the following apply:

(a) The juvenile is 14 years of age or over and has been adjudicated delinquent for committing or conspiring to commit a violation of s. 939.32 (1) (a), 940.03, 940.06, 940.21, 940.225 (1), 940.305, 940.31, 941.327 (2) (b) 4., 943.02, 943.10 (2), 943.23 (1g), 943.32 (2), 948.02 (1), 948.025 (1), or 948.30 (2) or attempting a violation of s. 943.32 (2) or the juvenile is 10 years of age or over and has been adjudicated delinquent for attempting or committing a violation of s. 940.01 or for committing a violation of s. 940.02 or 940.05.

(b) The court finds that the only other disposition that is appropriate for the juvenile is placement in a juvenile correctional facility under sub. (4m).

(4m) CORRECTIONAL PLACEMENT. Place the juvenile in a juvenile correctional facility or a secured residential care center for children and youth under the supervision of the department if all of the following apply:

(a) The juvenile has been found to be delinquent for the commission of an act that would be punishable by a sentence of 6 months or more if committed by an adult.

(b) The juvenile has been found to be a danger to the public and to be in need of restrictive custodial treatment. If the court determines that any of the following conditions applies, but that placement in the serious juvenile offender program under sub. (4h) is not appropriate, that determination shall be prima facie evidence that the juvenile is a danger to the public and in need of restrictive custodial treatment under this subsection:

1. The juvenile has committed a delinquent act that would be a felony under s. 940.01, 940.02, 940.03, 940.05, 940.19 (2) to (6), 940.21, 940.225 (1), 940.31, 941.20 (3), 943.02 (1), 943.23 (1g), 943.32 (2), 947.013 (1t), (1v) or (1x), 948.02 (1) or (2), 948.025, 948.03, or 948.085 (2) if committed by an adult.

2. The juvenile has possessed, used or threatened to use a handgun, as defined in s. 175.35 (1) (b), short-barreled rifle, as defined in s. 941.28 (1) (b), or short-barreled shotgun, as defined in s. 941.28 (1) (c), while committing a delinquent act that would be a felony under ch. 940 if committed by an adult.

3. The juvenile has possessed or gone armed with a short-barreled rifle or a short-barreled shotgun in violation of s. 941.28 or has possessed or gone armed with a handgun in violation of s. 948.60.

(4n) AFTERCARE SUPERVISION. Subject to any arrangement between the department and a county department regarding the provision of aftercare supervision for juveniles who have been released from a juvenile correctional facility or a secured residential care center for children and youth, designate one of the following to provide aftercare supervision for the juvenile following the juvenile's release from the juvenile correctional facility or secured residential care center for children and youth:

(a) The department.

(b) The county department of the county of the court that placed the juvenile in the juvenile correctional facility or secured residential care center for children and youth.

(c) The county department of the juvenile's county of legal residence.

(5) RESTITUTION. (a) Subject to par. (c), if the juvenile is found to have committed a delinquent act that resulted in damage to the property of another, or actual physical injury to another excluding pain and suffering, order the juvenile to repair the damage to property or to make reasonable restitution for the damage or injury, either in the form of cash payments or, if the victim agrees, the performance of services for the victim, or both, if the court, after taking into consideration the well-being and needs of the victim, considers it beneficial to the well-being and behavior of the juvenile. The order shall include a finding that the juvenile alone is financially able to pay or physically able to perform the services, may allow up to the date of the expiration of the order for the payment or for the completion of the services, and may include a schedule for the performance and completion of the services. If the juvenile objects to the amount of damages claimed, the juvenile is entitled to a hearing on the question of damages before the amount of restitution is ordered. Any recovery under this paragraph shall be reduced by the amount recovered as restitution under s. 938.45 (1r) (a).

(am) Subject to par. (c), order a juvenile who owes restitution under par. (a) and who is receiving income while placed in a juvenile correctional facility, residential care center for children and youth, or other out-of-home placement to contribute a specified percentage of that income towards that restitution.

(b) In addition to any other employment or duties permitted under ch. 103 or any rule or order under ch. 103, a juvenile under 14 years of age who is participating in a restitution project provided by the county or who is performing services for the victim as restitution may, for the purpose of making restitution ordered by the court under this subsection, be employed or perform any duties under any circumstances in which a juvenile 14 or 15 years of age is permitted to be employed or perform duties under ch. 103 or any rule or order under ch. 103. A juvenile who is participating in a restitution project provided by the county or who is performing services for the victim as restitution is exempt from the permit requirement under s. 103.70 (1).

(c) Under this subsection, a court may order a juvenile who is under 14 years of age to make not more than $250 in restitution or to perform not more than 40 total hours of services for the victim as total restitution under the order.

(5g) SUPERVISED WORK PROGRAM OR OTHER COMMUNITY SERVICE WORK. (a) Order the juvenile to participate in a supervised work program administered by the county department or a community agency approved by the court or other community service work administered by a public agency or nonprofit charitable organization approved by the court.

(am) The court shall set standards for the supervised work program within the budgetary limits established by the county board of supervisors. The supervised work program may provide the juvenile reasonable compensation reflecting a reasonable market value of the work performed or it may consist of uncompensated community service work. Community service work may be in lieu of restitution only if also agreed to by the county department, community agency, public agency or nonprofit charitable organization and by the person to whom the restitution is owed. The court may use any available resources, including any community service work program, in ordering the juvenile to perform community service work.

(b) The supervised work program or other community service work shall be constructive and designed to promote the rehabilitation of the juvenile, appropriate to the age level and physical ability of the juvenile, and combined with counseling from a member of the staff of the county department, community agency, public agency, or nonprofit charitable organization or other qualified person. The supervised work program or other community service work may not conflict with the juvenile's regular attendance at school. Subject to par. (d), the amount of work required shall be reasonably related to the seriousness of the juvenile's offense.

(c) In addition to any other employment or duties permitted under ch. 103 or any rule or order under ch. 103, a juvenile under 14 years of age who is participating in a supervised work program or other community service work may, for purposes of performing the supervised work or other community service work, be employed or perform any duties under any circumstances in which a juvenile 14 or 15 years of age is permitted to be employed or perform duties under ch. 103 or any rule or order under ch. 103. A juvenile who is participating in a supervised work program or other community service work is exempt from the permit requirement under s. 103.70 (1).

(d) Under this subsection, a juvenile who is under 14 years of age may not be required to perform more than 40 total hours of supervised work or other community service work, except as provided in subs. (13r) and (14t).

(5m) COMMUNITY SERVICE WORK PROGRAM. Order the juvenile to participate in a youth corps program, as defined in s. 16.22 (1) (dm) or another community service work program, if the sponsor of the program approves the juvenile's participation in the program.

(5r) VICTIM-OFFENDER MEDIATION PROGRAM. Order the juvenile to participate in a victim-offender mediation program if the victim of the juvenile's delinquent act agrees.

(6) SPECIAL TREATMENT OR CARE. (a) If the juvenile is in need of special treatment or care, as identified in an evaluation under s. 938.295 and the report under s. 938.33 (1), order the juvenile's parent to provide the special treatment or care.

(am) An order of special treatment or care under this subsection may include an order committing the juvenile to a county department under s. 51.42 or 51.437 for special treatment or care in an inpatient facility, as defined in s. 51.01 (10), if the evaluation under s. 938.295 and the report under s. 938.33 (1) indicate all of the following:

1. That the juvenile has an alcohol or other drug abuse impairment.

2. That the juvenile is a proper subject for treatment and is in need of inpatient treatment because appropriate treatment is not available on an outpatient basis.

(ap) An order under par. (am) is subject to all of the following:

1. The commitment may total not more than 30 days.

2. The use of commitment to a county department under s. 51.42 or 51.437 as a disposition under par. (am) is subject to the adoption of a resolution by the county board of supervisors under s. 938.06 (5) authorizing the use of that disposition.

(ar) If the parent fails or is financially unable to provide the special treatment or care ordered under par. (a) or (am), the court may order an appropriate agency to provide the special treatment or care whether or not legal custody has been taken from the parents. If the court orders a county department under s. 51.42 or 51.437 to provide special treatment or care under par. (a) or (am), the provision of that special treatment or care shall be subject to conditions specified in ch. 51, except that an order under par. (am) may not be extended. An order of special treatment or care under this subsection may not include an order for the administration of psychotropic medication.

(b) Payment for alcohol and other drug abuse services ordered under par. (a) shall be in accordance with s. 938.361.

(c) Payment for services provided under ch. 51 that are ordered under par. (a), other than alcohol and other drug abuse services, shall be in accordance with s. 938.362.

(6m) COORDINATED SERVICES PLAN OF CARE. If the report prepared under s. 938.33 (1) recommends that the juvenile is in need of a coordinated services plan of care and if an initiative under s. 46.56 has been established in the county or, if applicable, by a tribe, order that an assessment of the juvenile and the juvenile's family for eligibility for and appropriateness of the initiative, and if eligible for enrollment in the initiative, that a coordinated services plan of care be developed and implemented.

(6r) ALCOHOL OR DRUG TREATMENT OR EDUCATION. (a) If the report prepared under s. 938.33 (1) recommends that the juvenile is in need of treatment for the use or abuse of alcohol beverages, controlled substances, or controlled substance analogs and its medical, personal, family, or social effects, order the juvenile to enter an outpatient alcohol and other drug abuse treatment program at an approved treatment facility. The approved treatment facility shall, under the terms of a service agreement between the county and the approved treatment facility, or with the written informed consent of the juvenile or the juvenile's parent if the juvenile has not attained the age of 12, report to the agency primarily responsible for providing services to the juvenile as to whether the juvenile is cooperating with the treatment and whether the treatment appears to be effective.

(b) If the report prepared under s. 938.33 (1) recommends that the juvenile is in need of education relating to the use of alcohol beverages, controlled substances, or controlled substance analogs, order the juvenile to participate in an alcohol or other drug abuse education program approved by the court. The person or agency that provides the education program shall, under the terms of a service agreement between the county and the education program, or with the written informed consent of the juvenile or the juvenile's parent if the juvenile has not attained the age of 12, report to the agency primarily responsible for providing services to the juvenile about the juvenile's attendance at the program.

(c) Payment for the court-ordered treatment or education under this subsection in counties that have a pilot program under s. 938.547 shall be in accordance with s. 938.361.

(6s) DRUG TESTING. If the report under s. 938.33 (1) indicates that the juvenile is in need of treatment for the use or abuse of controlled substances or controlled substance analogs, order the juvenile to submit to drug testing under a drug testing program that the department shall promulgate by rule.

(7d) EDUCATION PROGRAM. (a) Except as provided in par. (d), order the juvenile to attend any of the following:

1. A nonresidential educational program, including a program for children at risk under s. 118.153, provided by the school district in which the juvenile resides.

2. Under a contractual agreement with the school district in which the juvenile resides, a nonresidential educational program provided by a licensed child welfare agency.

3. Under a contractual agreement with the school district in which the juvenile resides, an educational program provided by a private, nonprofit, nonsectarian agency that is located in the school district in which the juvenile resides and that complies with 42 USC 2000d.

4. Under a contractual agreement with the school district in which the juvenile resides, an educational program provided by a technical college district located in the school district in which the juvenile resides.

5. Under a contractual agreement with the school district in which the child resides, an educational program provided by a tribal school.

(b) The court shall order the school board to disclose the juvenile's pupil records, as defined under s. 118.125 (1) (d), to the county department or licensed child welfare agency responsible for supervising the juvenile, as necessary to determine the juvenile's compliance with the order under par. (a).

(c) The court shall order the county department or licensed child welfare agency responsible for supervising the juvenile to disclose to the school board, technical college district board, tribal school, or private, nonprofit, nonsectarian agency which is providing an educational program under par. (a) 3. records or information about the juvenile, as necessary to assure the provision of appropriate educational services under par. (a).

(d) This subsection does not apply to a juvenile who is a child with a disability, as defined under s. 115.76 (5).

(7g) EXPERIENTIAL EDUCATION. Order the juvenile to participate in a wilderness challenge program or other experiential education program.

(7j) YOUTH REPORT CENTER. Order the juvenile to report to a youth report center after school, in the evening, on weekends, on other nonschool days, or at any other time that the juvenile is not under immediate adult supervision, for participation in the social, behavioral, academic, community service, and other programming of the center. Subsection (5g) applies to any community service work performed by a juvenile under this subsection.

(7n) JUVENILE OFFENDER EDUCATION PROGRAM. Order the juvenile to participate in an educational program that is designed to deter future delinquent behavior by focusing on such issues as decision making, assertiveness instead of aggression, family and peer relationships, self-esteem, identification and expression of feelings, alcohol and other drug abuse recognition and errors in thinking and judgment.

(7r) VOCATIONAL TRAINING. If the report under s. 938.33 (1) recommends that the juvenile is in need of vocational assessment, counseling and training, order the juvenile to participate in that assessment, counseling and training.

(7w) DAY TREATMENT PROGRAM. If the report under s. 938.33 (1) indicates that the juvenile has specialized educational needs, order the juvenile to participate in a day treatment program.

(8) FORFEITURE. Impose a forfeiture based upon a determination that this disposition is in the best interest of the juvenile and the juvenile's rehabilitation. The maximum forfeiture that the court may impose under this subsection for a violation by a juvenile is the maximum amount of the fine that may be imposed on an adult for committing that violation or, if the violation is applicable only to a person under 18 years of age, $100. The order shall include a finding that the juvenile alone is financially able to pay the forfeiture and shall allow up to 12 months for payment. If the juvenile fails to pay the forfeiture, the court may vacate the forfeiture and order other alternatives under this section; or the court may suspend any license issued under ch. 29 for not less than 30 days nor more than 5 years, or suspend the juvenile's operating privilege, as defined in s. 340.01 (40), for not more than 2 years. If the court suspends any license under this subsection, the clerk of the court shall immediately take possession of the suspended license if issued under ch. 29 or, if the license is issued under ch. 343, the court may take possession of, and if possession is taken, shall destroy, the license. The court shall forward to the department which issued the license a notice of suspension stating that the suspension is for failure to pay a forfeiture imposed by the court, together with any license issued under ch. 29 of which the court takes possession. If the forfeiture is paid during the period of suspension, the suspension shall be reduced to the time period which has already elapsed and the court shall immediately notify the department which shall then, if the license is issued under ch. 29, return the license to the juvenile. Any recovery under this subsection shall be reduced by the amount recovered as a forfeiture for the same act under s. 938.45 (1r) (b).

(8d) DELINQUENCY VICTIM AND WITNESS ASSISTANCE SURCHARGE. (a) In addition to any other disposition imposed under this section, the court shall impose a delinquency victim and witness assistance surcharge of $20.

(b) The clerk of court shall collect and transmit the amount to the county treasurer under s. 59.40 (2) (m). The county treasurer shall then make payment to the secretary of administration under s. 59.25 (3) (f) 2.

(c) If a juvenile placed in a juvenile correctional facility or a secured residential care center for children and youth fails to pay the surcharge under par. (a), the department shall assess and collect the amount owed from the juvenile's wages or other moneys. Any amount collected shall be transmitted to the secretary of administration.

(d) If the juvenile fails to pay the surcharge under par. (a), the court may vacate the surcharge and order other alternatives under this section, in accordance with the conditions specified in this chapter; or the court may suspend any license issued under ch. 29 for not less than 30 days nor more than 5 years, or suspend the juvenile's operating privilege, as defined in s. 340.01 (40), for not less than 30 days nor more than 5 years. If the court suspends any license under this subsection, the clerk of the court shall immediately take possession of the suspended license if issued under ch. 29 or, if the license is issued under ch. 343, the court may take possession of, and if possession is taken, shall destroy, the license. The court shall forward to the department which issued the license a notice of suspension stating that the suspension is for failure to pay a surcharge imposed by the court, together with any license issued under ch. 29 of which the court takes possession. If the surcharge is paid during the period of suspension, the suspension shall be reduced to the time period which has already elapsed and the court shall immediately notify the department which shall then, if the license is issued under ch. 29, return the license to the juvenile.

(11) TRANSFER TO FOREIGN COUNTRIES UNDER TREATY. If a treaty is in effect between the United States and a foreign country, allowing a juvenile adjudged delinquent who is a citizen or national of the foreign country to be transferred to the foreign country and if the juvenile and the juvenile's parent, guardian and legal custodian agree, request the governor to commence a transfer of the juvenile to the juvenile's country.

(13r) VIOLENT VIOLATION IN A SCHOOL ZONE. (a) If the juvenile is adjudicated delinquent for a violation of a violent crime law specified in s. 939.632 (1) (e) in a school zone, as defined in s. 939.632 (1) (d), require that the juvenile participate for 100 hours in a supervised work program under sub. (5g) or perform 100 hours of other community service work.

(b) The court may not impose the requirement under par. (a) if the court determines that the juvenile would pose a threat to public safety while completing the requirement.

(13t) GRAFFITI VIOLATION. If the juvenile is adjudicated delinquent for a violation of s. 943.017, require that the juvenile participate for not less than 10 hours nor more than 100 hours in a supervised work program under sub. (5g) or perform not less than 10 hours nor more than 100 hours of other community service work, except that if the juvenile has not attained 14 years of age the maximum number of hours is 40.

(14d) HATE VIOLATIONS. In addition to any other disposition imposed under this section, if the juvenile is found to have committed a violation under circumstances in which, if committed by an adult, the adult would be subject to a penalty enhancement under s. 939.645, order any one or more of the following dispositions:

(a) Restitution under sub. (5).

(b) Participation in a supervised work program or other community service work under sub. (5g) or (5m).

(c) Participation in a victim-offender mediation program under sub. (5r) or an other means of apologizing to the victim.

(d) Participation in an educational program under sub. (7n) that includes sensitivity training or training in diversity.

(14m) VIOLATION INVOLVING A MOTOR VEHICLE. Restrict or suspend the operating privilege, as defined in s. 340.01 (40), of a juvenile who is adjudicated delinquent under a violation of any law in which a motor vehicle is involved. If the court suspends a juvenile's operating privilege under this subsection, the court may take possession of the suspended license. If the court takes possession of a license, it shall destroy the license. The court shall forward to the department of transportation a notice stating the reason for and duration of the suspension. If the court limits a juvenile's operating privilege under this subsection, the court shall immediately notify the department of transportation of that limitation.

(14p) COMPUTER VIOLATION. If the juvenile is found to have violated s. 943.70, place restrictions on the juvenile's use of computers.

(14q) CERTAIN BOMB SCARES AND FIREARM VIOLATIONS. In addition to any other disposition imposed under this section, if the juvenile is found to have violated s. 947.015 and the property involved is owned or leased by the state or any political subdivision of the state, or if the property involved is a school premises, as defined in s. 948.61 (1) (c), or if the juvenile is found to have violated s. 941.235 or 948.605, immediately suspend the juvenile's operating privilege, as defined in s. 340.01 (40), for 2 years. The court shall immediately forward to the department of transportation the notice of suspension, stating that the suspension is for a violation of s. 947.015 involving school premises, or for a violation of s. 941.235 or 948.605. If otherwise eligible, the juvenile is eligible for an occupational license under s. 343.10.

(14r) VIOLATIONS RELATING TO CONTROLLED SUBSTANCES OR CONTROLLED SUBSTANCE ANALOGS. (a) In addition to any other dispositions imposed under this section, if the juvenile is found to have violated ch. 961, the court may suspend the juvenile's operating privilege, as defined in s. 340.01 (40), for not less than 6 months nor more than 5 years. If a court suspends a person's operating privilege under this paragraph, the court may take possession of any suspended license. If the court takes possession of a license, it shall destroy the license. The court shall forward to the department of transportation the notice of suspension stating that the suspension or revocation is for a violation of ch. 961.

(b) This subsection does not apply to violations under s. 961.573 (2), 961.574 (2) or 961.575 (2) or a local ordinance that strictly conforms to one of those statutes.

(c) If the juvenile's license or operating privilege is currently suspended or revoked or if the juvenile does not currently possess a valid operator's license issued under ch. 343, the suspension under this subsection is effective on the date on which the juvenile is first eligible for issuance or reinstatement of an operator's license under ch. 343.

(14s) POSSESSION OF CONTROLLED SUBSTANCES OR CONTROLLED SUBSTANCE ANALOGS. (a) In addition to any other dispositions imposed under this section, if the juvenile is found to have violated s. 961.41 (3g), the court shall order one of the following penalties:

1. For a first violation, a forfeiture of not more than $50.

2. For a violation committed within 12 months of a previous violation, a forfeiture of not more than $100.

3. For a violation committed within 12 months of 2 or more previous violations, a forfeiture of not more than $500.

(am) In addition to any other dispositions imposed under this section, if the juvenile is found to have violated s. 961.41 (1) or (1m) or 961.65, the court shall order one of the following penalties:

1. For a first violation, a forfeiture of not less than $250 nor more than $500.

2. For a violation committed within 12 months of a previous violation, a forfeiture of not less than $300.

3. For a violation committed within 12 months of 2 or more previous violations, a forfeiture of $500.

(b) After ordering a disposition under par. (a) or (am), the court, with the agreement of the juvenile, may enter an additional order staying the execution of the dispositional order. If the court stays a dispositional order under this paragraph, the court shall enter an additional order requiring the juvenile to do any of the following:

1. Submit to an alcohol and other drug abuse assessment that conforms to the criteria specified under s. 938.547 (4) and that is conducted by an approved treatment facility. The order shall designate an approved treatment facility to conduct the alcohol and other drug abuse assessment and shall specify the date by which the assessment must be completed.

2. Participate in an outpatient alcohol or other drug abuse treatment program at an approved treatment facility, if an assessment conducted under subd. 1. or s. 938.295 (1) recommends treatment.

3. Participate in an alcohol or other drug abuse education program.

(c) If the approved treatment facility, with the written informed consent of the juvenile or, if the juvenile has not attained the age of 12, the written informed consent of the juvenile's parent, notifies the agency primarily responsible for providing services to the juvenile that the juvenile has submitted to an assessment under this subsection and that the juvenile does not need treatment, intervention or education, the court shall notify the juvenile of whether or not the original dispositional order will be reinstated.

(d) If the juvenile completes the alcohol or other drug abuse treatment program or court-approved alcohol or other drug abuse education program, the approved treatment facility or court-approved alcohol or other drug abuse education program shall, with the written informed consent of the juvenile or, if the juvenile has not attained the age of 12, the written informed consent of the juvenile's parent, notify the agency primarily responsible for providing services to the juvenile that the juvenile has complied with the order and the court shall notify the juvenile of whether or not the original dispositional order will be reinstated.

(e) If an approved treatment facility or court-approved alcohol or other drug abuse education program, with the written informed consent of the juvenile or, if the juvenile has not attained the age of 12, the written informed consent of the juvenile's parent, notifies the agency primarily responsible for providing services to the juvenile that a juvenile is not participating in, or has not satisfactorily completed, a recommended alcohol or other drug abuse treatment program or a court-approved alcohol or other drug abuse education program, the court shall impose the original disposition under par. (a) or (am).

(14t) POSSESSION OF A CONTROLLED SUBSTANCE OR CONTROLLED SUBSTANCE ANALOG ON OR NEAR CERTAIN PREMISES. If the juvenile is adjudicated delinquent under a violation of s. 961.41 (3g) by possessing or attempting to possess a controlled substance included in schedule I or II under ch. 961, a controlled substance analog of a controlled substance included in schedule I or II under ch. 961 or ketamine or flunitrazepam while in or on the premises of a scattered-site public housing project, as defined in s. 961.01 (20i), while in or on or otherwise within 1,000 feet of a state, county, city, village, or town park, a jail or correctional facility, as defined in s. 961.01 (12m), a multiunit public housing project, as defined in s. 961.01 (14m), a swimming pool open to members of the public, a youth center, as defined in s. 961.01 (22), or a community center, while in or on or otherwise within 1,000 feet of any private, tribal, or public school premises, or while in or on or otherwise within 1,000 feet of a school bus, as defined in s. 340.01 (56), the court shall require that the juvenile participate for 100 hours in a supervised work program or other community service work under sub. (5g).

(15) DEOXYRIBONUCLEIC ACID ANALYSIS REQUIREMENTS. (a) 1. If the juvenile is adjudicated delinquent on the basis of a violation of s. 940.225, 948.02 (1) or (2), 948.025, or 948.085 (2), the court shall require the juvenile to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis.

2. Except as provided in subd. 1., if the juvenile is adjudicated delinquent on the basis of any violation under ch. 940, 944 or 948 or ss. 943.01 to 943.15, the court may require the juvenile to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis.

3. The results from deoxyribonucleic acid analysis of a specimen under subd. 1. or 2. may be used only as authorized under s. 165.77 (3). The state crime laboratories shall destroy any such specimen in accordance with s. 165.77 (3).

(b) The department of justice shall promulgate rules providing procedures for juveniles to provide specimens under par. (a) and for the transportation of the specimens to the state crime laboratories under s. 165.77.

Cross-reference: See also ch. Jus 9, Wis. adm. code.

(15m) SEX OFFENDER REPORTING REQUIREMENTS. (am) 1. Except as provided in par. (bm), if the juvenile is adjudicated delinquent on the basis of any violation, or the solicitation, conspiracy, or attempt to commit any violation, under ch. 940, 944, or 948 or s. 942.08 or 942.09, or ss. 943.01 to 943.15, the court may require the juvenile to comply with the reporting requirements under s. 301.45 if the court determines that the underlying conduct was sexually motivated, as defined in s. 980.01 (5), and that it would be in the interest of public protection to have the juvenile report under s. 301.45.

2. If the court under subd. 1. orders the juvenile to comply with the reporting requirements under s. 301.45 in connection with a violation, or the solicitation, conspiracy, or attempt to commit a violation, of s. 942.09, the court may provide that the juvenile be released from the requirement to comply with the reporting requirements under s. 301.45 upon satisfying the conditions of the dispositional order imposed for the offense. If the juvenile satisfies the conditions of the dispositional order,

the court shall notify the department that the juvenile has satisfied the conditions of the dispositional order.

(bm) If the juvenile is adjudicated delinquent on the basis of a violation, or the solicitation, conspiracy, or attempt to commit a violation, of s. 940.22 (2), 940.225 (1), (2), or (3), 944.06, 948.02 (1) or (2), 948.025, 948.05, 948.051, 948.055, 948.06, 948.07, 948.075, 948.08, or 948.085 (2), 948.095, 948.11 (2) (a) or (am), 948.12, 948.13, or 948.30, of s. 940.302 (2) if s. 940.302 (2) (a) 1. b. applies, or of s. 940.30 or 940.31 if the victim was a minor and the juvenile was not the victim's parent, the court shall require the juvenile to comply with the reporting requirements under s. 301.45 unless the court determines, after a hearing on a motion made by the juvenile, that the juvenile is not required to comply under s. 301.45 (1m).

(c) In determining under par. (am) 1. whether it would be in the interest of public protection to have the juvenile report under s. 301.45, the court may consider any of the following:

1. The ages, at the time of the violation, of the juvenile and the victim of the violation.

2. The relationship between the juvenile and the victim of the violation.

3. Whether the violation resulted in bodily harm, as defined in s. 939.22 (4), to the victim.

4. Whether the victim suffered from a mental illness or mental deficiency that rendered him or her temporarily or permanently incapable of understanding or evaluating the consequences of his or her actions.

5. The probability that the juvenile will commit other violations in the future.

7. Any other factor that the court determines may be relevant to the particular case.

(d) If the court orders a juvenile to comply with the reporting requirements under s. 301.45, the court may order the juvenile to continue to comply with the reporting requirements until his or her death.

(e) If the court orders a juvenile to comply with the reporting requirements under s. 301.45, the clerk of the court in which the order is entered shall promptly forward a copy of the order to the department of corrections. If the finding of delinquency on which the order is based is reversed, set aside or vacated, the clerk of the court shall promptly forward to the department of corrections a certificate stating that the finding of delinquency has been reversed, set aside or vacated.

(16) STAY OF ORDER. After ordering a disposition under this section, enter an additional order staying the execution of the dispositional order contingent on the juvenile's satisfactory compliance with any conditions that are specified in the dispositional order and explained to the juvenile by the court. If the juvenile violates a condition of his or her dispositional order, the agency supervising the juvenile or the district attorney or corporation counsel in the county in which the dispositional order was entered shall notify the court and the court shall hold a hearing within 30 days after the filing of the notice to determine whether the original dispositional order should be imposed, unless the juvenile signs a written waiver of any objections to imposing the original dispositional order and the court approves the waiver. If a hearing is held, the court shall notify the parent, juvenile, guardian, and legal custodian, all parties bound by the original dispositional order, and the district attorney or corporation counsel in the county in which the dispositional order was entered of the time and place of the hearing at least 3 days before the hearing. If all parties consent, the court may proceed immediately with the hearing. The court may not impose the original dispositional order unless the court finds by a preponderance of the evidence that the juvenile has violated a condition of his or her dispositional order.

History: 1995 a. 77, 352, 440, 448; 1997 a. 27, 35, 36, 84, 130, 164, 183, 205; 1999 a. 9, 32, 57, 89, 185; 2001 a. 16, 59, 69, 109; 2003 a. 33, 50, 200, 321; 2005 a. 14, 253, 277, 344; 2007 a. 97, 116; 2009 a. 8, 28, 103, 137, 185, 302, 334; 2011 a. 32, 258; s. 35.17 correction in (3) (f) 4.

Cross-reference: See also ch. DOC 392, Wis. adm. code.

Sub. (4h) does not encompass similar offenses from other jurisdictions. A juvenile may not be placed in the serious juvenile offender program on the basis that the juvenile is adjudicated delinquent for violating similar statutes in other jurisdictions. State v. David L.W. 213 Wis. 2d 277, 570 N.W.2d 582 (Ct. App. 1997), 97-0606.

Sub. (16) permits a court to stay imposition of a dispositional order, including revisions. Failure to comply can trigger commencement of the stayed portion commencing when the stay is lifted and terminating upon the completion of the term stated in the stayed order. State v. Kendall G. 2001 WI App 95, 243 Wis. 2d 67, 625 N.W.2d 918, 00-3240.

Placement in the serious juvenile offender program under sub. (4h) must occur at an original disposition. It is not a disposition to extend, revise, or change a placement already in effect. State v. Terry T. 2002 WI App 81, 251 Wis. 2d 462, 643 N.W.2d 175, 01-2226.

A circuit court has discretion under sub. (16) to stay that part of a dispositional order requiring a delinquent child to register as a sex offender. In determining whether to stay an order, a court should consider the seriousness of the offense as well as the factors enumerated in sub. (15m) (c) and s. 301.45 (1m) (e). Sex offender registration is part of a disposition under this section and sub. (16) allows a circuit court to stay a dispositional order or any number of the dispositions set forth within the order. State v. Cesar G. 2004 WI 61, 272 Wis. 2d 22, 682 N.W.2d 1, 02-2106.

Mandatory sex offender registration under sub. (15m) is not criminal punishment. If a provision is not criminal punishment, there is no constitutional right to a jury trial. Sub. (15m) does not violate the guarantees of substantive due process or equal protection. State v. Jeremy P. 2005 WI App 13, 278 Wis. 2d 366, 692 N.W.2d 311, 04-0360.

Sub. (4m) permits a juvenile court to order an adjudged delinquent to a secured correctional facility. Under sub. (16), a trial court, after ordering a disposition, may stay the execution of the dispositional order contingent on the juvenile's satisfactory compliance with any conditions the court specifies in the dispositional order and explains to the juvenile. That the Racine County juvenile court, Racine County Human Services Department and Racine Unified School District joined together to offer a voluntary residential treatment program for adjudged juvenile delinquents as an alternative to a "secured correctional facility" not found in this section does not make a juvenile's participation illegal. State v. Andrew J. K. 2006 WI App 126, 293 Wis. 2d 739, 718 N.W.2d 229, 05-2395.

Under sub. (5) (a) assessing the damages to the victim is the first step in the court's determination of restitution and determining the amount the juvenile is capable of paying is the second. Whichever amount is lower is the maximum amount that the court may order as restitution. Under s. 895.035 (2m) (a), courts are without authority to order that the "total damage" figure be converted to a civil judgment. Section 895.035 (2m) (a) allows only for the conversion of restitution. State v. Anthony D. 2006 WI App 218, 296 Wis. 2d 771, 723 N.W. 2d 775, 05-2644.

Section 938.355 provides a variety of sanctions for juveniles who have violated their dispositional orders. Section 938.357 enumerates the ways in which a juvenile's placement may be changed. Nothing in either statute indicates that it is to be the exclusive mechanism for violation of a disposition order. Section 938.34 (16) specifically allows an alternative procedure for dealing with violations of a disposition order when part of the disposition is imposed and stayed. State v. Richard J. D. 2006 WI App 242, 297 Wis. 2d 20, 724 N.W.2d 665, 06-0555.

Sub. (7d) authorizes a circuit court to order a juvenile to attend a variety of educational programs, but it does not authorize a circuit court to order a school district to create an educational program or contract for an educational program. Madison Metropolitan School District v. Circuit Court for Dane County, 2011 WI 72, 336 Wis. 2d 95, 800 N.W.2d 442, 09-2845.

Dispositions: Increased Options. Wis. Law. Apr. 1996.

938.341 Delinquency adjudication; restriction on firearm possession. Whenever a court adjudicates a juvenile delinquent for an act that if committed by an adult in

this state would be a felony, the court shall inform the juvenile of the requirements and penalties under s. 941.29.

History: 1995 a. 77.

938.3415 Delinquency adjudication; restriction on body armor possession. Whenever a court adjudicates a juvenile delinquent for an act that if committed by an adult in this state would be a violent felony, as defined in s. 941.291 (1) (b), the court shall inform the juvenile of the requirements and penalties under s. 941.291.

History: 2001 a. 95.

938.342 Disposition; truancy and school dropout ordinance violations. (1d) TRUANCY ORDINANCE VIOLATIONS. If the court finds that the person violated a municipal ordinance enacted under s. 118.163 (1m), the court shall enter an order making one or more of the following dispositions if the disposition is authorized by the municipal ordinance:

(a) Order the person to attend school.

(b) Impose a forfeiture of not more than $50 plus costs for a first violation, or a forfeiture of not more than $100 plus costs for any 2nd or subsequent violation committed within 12 months of a previous violation, subject to s. 938.37 and subject to a maximum cumulative forfeiture amount of not more than $500 for all violations committed during a school semester. All or part of the forfeiture plus costs may be assessed against the person, the parent or guardian of the person, or both.

(c) Order the person to report to a youth report center after school, in the evening, on weekends, on other nonschool days, or at any other time that the person is not under immediate adult supervision, for participation in the social, behavioral, academic, community service, and other programming of the center. Section 938.34 (5g) applies to any community service work performed by a person under this paragraph.

(1g) HABITUAL TRUANCY ORDINANCE VIOLATIONS. If the court finds that a person under 18 years of age violated a municipal ordinance enacted under s. 118.163 (2), the court shall enter an order making one or more of the following dispositions if the disposition is authorized by the municipal ordinance:

(a) Suspend the person's operating privilege, as defined in s. 340.01 (40), for not less than 30 days nor more than one year. The court may take possession of the suspended license. If the court takes possession of a license, it shall destroy the license. The court shall forward to the department of transportation a notice stating the reason for and duration of the suspension.

(b) Order the person to participate in counseling or a supervised work program or other community service work as described in s. 938.34 (5g). The costs of any counseling, supervised work program, or other community service work may be assessed against the person, the parents or guardian of the person, or both. Any county department, community agency, public agency, or nonprofit charitable organization administering a supervised work program or other community service work to which a person is assigned under an order under this paragraph acting in good faith has immunity from any civil liability in excess of $25,000 for any act or omission by or impacting on that person.

(c) Order the person to remain at home except during hours in which the person is attending religious worship or a school program, including travel time required to get to and from the school program or place of worship. The order may permit a person to leave his or her home if the person is accompanied by a parent or guardian.

(d) Order the person to attend an educational program under s. 938.34 (7d).

(e) Order the department of workforce development to revoke, under s. 103.72, a permit under s. 103.70 authorizing the employment of the person.

(f) Order the person to be placed in a teen court program if all of the following conditions apply:

1. The chief judge of the judicial administrative district has approved a teen court program established in the person's county of residence and the court determines that participation in the teen court program will likely benefit the person and the community.

2. The person admits or pleads no contest in open court, in the presence of the person's parent, guardian, or legal custodian, to the allegations that the person violated the municipal ordinance enacted under s. 118.163 (2).

3. The person has not successfully completed participation in a teen court program during the 2 years before the date of the alleged municipal ordinance violation.

(g) Order the person to attend school.

(h) Impose a forfeiture of not more than $500 plus costs, subject to s. 938.37. All or part of the forfeiture plus costs may be assessed against the person, the parent or guardian of the person, or both.

(i) Order the person to comply with any other reasonable conditions that are consistent with this subsection, including a curfew, restrictions as to going to or remaining on specified premises and restrictions on associating with other juveniles or adults.

(j) Place the person under formal or informal supervision, as described in s. 938.34 (2), for up to one year.

(k) Order the person to report to a youth report center after school, in the evening, on weekends, on other nonschool days, or at any other time that the juvenile is not under immediate adult supervision, for participation in the social, behavioral, academic, community service, and other programming of the center. Section 938.34 (5g) applies to any community service work performed by a person under this paragraph.

(1m) ORDERS APPLICABLE TO PARENTS, GUARDIANS, AND LEGAL CUSTODIANS. (a) If the court finds that the person violated a municipal ordinance enacted under s. 118.163 (2), the court may, in addition to or instead of the dispositions under sub. (1g), order the person's parent, guardian, or legal custodian to participate in counseling at the parent's, guardian's, or legal custodian's own expense or to attend school with the person, or both, if the disposition is authorized by the municipal ordinance.

(am) If the court finds that the person violated a municipal ordinance enacted under s. 118.163 (1m), the court may, as part of the disposition under sub. (1d), order the person's parent or guardian to pay all or part of a forfeiture plus costs assessed under sub. (1d) (b). If the court finds that the person violated a municipal ordinance enacted under s. 118.163 (2), the court may, as part of the disposition under sub. (1g), order the person's parent or guardian to pay all or part of the costs of any program ordered under sub. (1g) (b) or to pay all or part of a forfeiture plus costs assessed under sub. (1g) (h).

(b) No order to any parent, guardian, or legal custodian under par. (a) or (am) may be entered until the parent, guardian, or legal custodian is given an opportunity to be heard on the contemplated order of the court. The court shall cause notice of the time, place, and purpose of the hearing to be served on the parent, guardian, or legal custodian personally at least 10 days before the date of the hearing. The procedure in these cases shall, as far as practicable, be the same as in other cases to the court. At the hearing, the parent, guardian, or legal custodian may be represented by counsel and may produce and cross-examine witnesses. A parent, guardian, or legal custodian who fails to comply with any order issued by a court under par. (a) or (am) may be proceeded against for contempt of court.

(1r) SCHOOL ATTENDANCE CONDITION. If school attendance is a condition of an order under sub. (1d) or (1g), the order shall specify what constitutes a violation of the condition and shall direct the school board of the school district or the governing body of the private school in which the person is enrolled, or shall request the governing body of the tribal school in which the person is enrolled, to notify the court or, if the person is under the supervision of an agency under sub. (1g) (j), the agency that is responsible for supervising the person, within 5 days after any violation of the condition by the person.

(2) SCHOOL DROPOUT ORDINANCE VIOLATION. (a) Except as provided in par. (b), if the court finds that a person is subject to a municipal ordinance enacted under s. 118.163 (2m) (a), the court shall enter an order suspending the person's operating privilege, as defined in s. 340.01 (40), until the person attains 18 years of age.

(b) The court may order any of the dispositions specified under sub. (1g) if the court finds that suspension of the person's operating privilege, as defined in s. 340.01 (40), until the person attains 18 years of age would cause an undue hardship to the person or the person's family.

History: 1995 a. 27 s. 9130 (4); 1995 a. 77, 352; 1997 a. 3, 239; 2001 a. 16; 2003 a. 82; 2005 a. 344; 2009 a. 103, 302.

938.343 Disposition of juvenile adjudged to have violated a civil law or an ordinance. Except as provided by ss. 938.342 and 938.344, if the court finds that the juvenile violated a civil law or an ordinance, the court shall enter an order making one or more of the following dispositions:

(1) COUNSELING. Counsel the juvenile or the parent or guardian.

(2) FORFEITURE. Impose a forfeiture not to exceed the maximum forfeiture that may be imposed on an adult for committing that violation or, if the violation is only applicable to a person under 18 years of age, $50. The order shall include a finding that the juvenile alone is financially able to pay and shall allow up to 12 months for the payment. If a juvenile fails to pay the forfeiture, the court may suspend any license issued under ch. 29 or suspend the juvenile's operating privilege, as defined in s. 340.01 (40), for not more than 2 years. The court shall immediately take possession of the suspended license if issued under ch. 29 or, if the license is issued under ch. 343, the court may take possession of, and if possession is taken, shall destroy, the license. The court shall forward to the department which issued the license the notice of suspension stating that the suspension is for failure to pay a forfeiture imposed by the court, together with any license issued under ch. 29 of which the court takes possession. If the forfeiture is paid during the period of suspension, the court shall immediately notify the department, which shall, if the license is issued under ch. 29, return the license to the person. Any recovery under this subsection shall be reduced by the amount recovered as a forfeiture for the same act under s. 938.45 (1r) (b).

(2m) TEEN COURT PROGRAM. Order the juvenile to be placed in a teen court program if all of the following conditions apply:

(a) The chief judge of the judicial administrative district has approved a teen court program established in the juvenile's county of residence and the court determines that participation in the teen court program will likely benefit the juvenile and the community.

(b) The juvenile admits or pleads no contest in open court, in the presence of the juvenile's parent, guardian or legal custodian, to the allegations that the juvenile violated the civil law or ordinance.

(c) The juvenile has not successfully completed participation in a teen court program during the 2 years before the date of the alleged civil law or ordinance violation.

(3) COMMUNITY SERVICE WORK PROGRAM. Order the juvenile to participate in a supervised work program or other community service work under s. 938.34 (5g).

(3m) YOUTH REPORT CENTER. Order the juvenile to report to a youth report center after school, in the evening, on weekends, on other nonschool days, or at any other time that the juvenile is not under immediate adult supervision, for participation in the social, behavioral, academic, community service, and other programming of the center. Section 938.34 (5g) applies to any community service work performed by a juvenile under this subsection.

(4) RESTITUTION. If the violation has resulted in damage to the property of another, or in actual physical injury to another excluding pain and suffering, order the juvenile to make repairs of the damage to property or reasonable restitution for the damage or injury, either in the form of cash payments or, if the victim agrees, the performance of services for the victim, or both, if the court, after taking into consideration the well-being and needs of the victim, considers it beneficial to the well-being and behavior of the juvenile. An order requiring payment for repairs or restitution shall include a finding that the juvenile alone is financially able to pay or physically able to perform the services, may allow up to the date of the expiration of the order for the payment or for the completion of the services, and may include a schedule for the performance and completion of the services. If the juvenile objects to the amount of damages claimed, the juvenile is entitled to a hearing on the question of damages before the amount of restitution is ordered. Any recovery under this subsection shall be reduced by the amount recovered as restitution for the same act under s. 938.45 (1r) (a).

(5) BOATING SAFETY COURSE. If the violation is related to unsafe use of a boat, order the juvenile to attend a boating safety course under s. 30.74 (1). If the juvenile has a valid boating safety certificate at the time that the court imposes the disposition, the court shall revoke the certificate and order the person to obtain another boating safety certificate under s. 30.74 (1).

(6) HUNTING, TRAPPING, OR FISHING LICENSE SUSPENSION. If the violation is of ch. 29, suspend the license or licenses of the

juvenile issued under that chapter for not more than one year or until the juvenile is 18 years of age, whichever occurs first.

(7) HUNTER EDUCATION PROGRAM. If the violation is related to the unsafe use of firearms, order the juvenile to attend the hunter education program course under s. 29.591.

(8) SNOWMOBILE SAFETY COURSE. If the violation is one under ch. 350 concerning the use of snowmobiles, order the juvenile to attend a snowmobile safety course under s. 350.055.

(9) ALL-TERRAIN OR UTILITY TERRAIN VEHICLE SAFETY COURSE. If the violation is one under s. 23.33 or under an ordinance enacted in accordance with s. 23.33 concerning the use of all-terrain vehicles or utility terrain vehicles, order the juvenile to attend an all-terrain vehicle or utility terrain vehicle safety course.

(10) ALCOHOL OR DRUG ASSESSMENT, TREATMENT, OR EDUCATION. If the violation is related to the use or abuse of alcohol beverages, controlled substances or controlled substance analogs, order the juvenile to do any of the following:

(a) Submit to an alcohol and other drug abuse assessment that conforms to the criteria specified under s. 938.547 (4) and that is conducted by an approved treatment facility. The order shall designate an approved treatment facility to perform the assessment and shall specify the date by which the assessment must be completed.

(b) Participate in an outpatient alcohol and other drug abuse treatment program if an assessment conducted under par. (a) or s. 938.295 (1) recommends treatment.

(c) Participate in a court-approved alcohol or other drug abuse education program.

History: 1995 a. 77, 352, 448; 1997 a. 84, 183, 197, 198, 205, 248; 1999 a. 9, 32, 185; 2001 a. 16; 2005 a. 344; 2009 a. 103, 367; 2011 a. 32, 208.

Municipal courts have statutory authority to order parents of a juvenile to pay a forfeiture imposed on their child for violating a nontraffic municipal ordinance. OAG 4-00.

938.344 Disposition; certain intoxicating liquor, beer and drug violations. (2) UNDERAGE ALCOHOL POSSESSION OR POSSESSION ON SCHOOL GROUNDS. If a court finds a juvenile committed a violation under s. 125.07 (4) (b) or 125.09 (2), or a local ordinance that strictly conforms to one of those statutes, the court shall order one or any combination of the following penalties:

(a) For a first violation, a forfeiture of not more than $50, suspension of the juvenile's operating privilege under s. 343.30 (6) (b) 1., or participation in a supervised work program or other community service work under s. 938.34 (5g).

(b) For a violation committed within 12 months of one previous violation, a forfeiture of not more than $100 or participation in a supervised work program or other community service work under s. 938.34 (5g). In addition, the juvenile's operating privilege may be suspended under s. 343.30 (6) (b) 2., except that if the violation of s. 125.07 (4) (b) involved a motor vehicle the juvenile's operating privilege shall be suspended under s. 343.30 (6) (b) 2.

(c) For a violation committed within 12 months of 2 or more previous violations, a forfeiture of not more than $500 or participation in a supervised work program or other community service work under s. 938.34 (5g). In addition, the juvenile's operating privilege may be suspended under s. 343.30 (6) (b) 3., except that if the violation of s. 125.07 (4) (b) involved a motor vehicle the juvenile's operating privilege shall be suspended under s. 343.30 (6) (b) 3.

(2b) UNDERAGE PURCHASE OF ALCOHOL OR ENTERING LICENSED PREMISES. If a court finds a juvenile committed a violation under s. 125.07 (4) (a), or a local ordinance which strictly conforms to s. 125.07 (4) (a), the court shall order one or any combination of the following penalties:

(a) For a first violation, a forfeiture of not less than $250 nor more than $500, suspension of the juvenile's operating privilege under s. 343.30 (6) (b) 1., or participation in a supervised work program or other community service work under s. 938.34 (5g).

(b) For a violation committed within 12 months of one previous violation, a forfeiture of not less than $300 nor more than $500 or participation in a supervised work program or other community service work under s. 938.34 (5g). In addition, the juvenile's operating privilege may be suspended under s. 343.30 (6) (b) 2., except that if the violation involved a motor vehicle the juvenile's operating privilege shall be suspended under s. 343.30 (6) (b) 2.

(c) For a violation committed within 12 months of 2 or more previous violations, a forfeiture of $500 or participation in a supervised work program or other community service work under s. 938.34 (5g). In addition, the juvenile's operating privilege may be suspended under s. 343.30 (6) (b) 3., except that if the violation involved a motor vehicle the juvenile's operating privilege shall be suspended under s. 343.30 (6) (b) 3.

(2d) FALSE PROOF OF AGE. If a court finds a juvenile committed a violation under s. 125.085 (3) (b), or a local ordinance which strictly conforms to s. 125.085 (3) (b), the court shall order one or any combination of the following penalties:

(a) For a first violation, a forfeiture of not less than $100 nor more than $500, suspension of the juvenile's operating privilege under s. 343.30 (6) (b) 1., or participation in a supervised work program or other community service work under s. 938.34 (5g).

(b) For a violation committed within 12 months of a previous violation, a forfeiture of not less than $300 nor more than $500, suspension of the juvenile's operating privilege under s. 343.30 (6) (b) 2., or participation in a supervised work program or other community service work under s. 938.34 (5g).

(c) For a violation committed within 12 months of 2 or more previous violations, a forfeiture of $500, suspension of the juvenile's operating privilege under s. 343.30 (6) (b) 3., or participation in a supervised work program or other community service work under s. 938.34 (5g).

(2e) DRUG PARAPHERNALIA VIOLATION. (a) If a court finds a juvenile committed a violation under s. 961.573 (2), 961.574 (2) or 961.575 (2), or a local ordinance that strictly conforms to one of those statutes, the court shall suspend the juvenile's operating privilege, as defined in s. 340.01 (40), for not less than 6 months nor more than 5 years and, in addition, shall order one of the following penalties:

1. For a first violation, a forfeiture of not more than $50 or participation in a supervised work program or other community service work under s. 938.34 (5g) or both.

2. For a violation committed within 12 months of a previous violation, a forfeiture of not more than $100 or

participation in a supervised work program or other community service work under s. 938.34 (5g) or both.

3. For a violation committed within 12 months of 2 or more previous violations, a forfeiture of not more than $500 or participation in a supervised work program or other community service work under s. 938.34 (5g) or both.

(b) Whenever a court suspends a juvenile's operating privilege under this subsection, the court may take possession of any suspended license. If the court takes possession of a license, it shall destroy the license. The court shall forward to the department of transportation the notice of suspension stating that the suspension is for a violation under s. 961.573 (2), 961.574 (2), or 961.575 (2), or a local ordinance that strictly conforms to one of those statutes.

(c) If the juvenile's license or operating privilege is currently suspended or revoked or the juvenile does not currently possess a valid operator's license under ch. 343, the suspension under this subsection is effective on the date on which the juvenile is first eligible for issuance or reinstatement of an operator's license under ch. 343.

(2g) STAY OF ORDER. (a) After ordering a penalty under sub. (2), (2b), (2d) or (2e), the court, with the agreement of the juvenile, may enter an additional order staying the execution of the penalty order and suspending or modifying the penalty imposed. The order under this paragraph shall require the juvenile to do any of the following:

1. Submit to an alcohol and other drug abuse assessment that conforms to the criteria under s. 938.547 (4) and that is conducted by an approved treatment facility. The order shall designate an approved treatment facility to conduct the alcohol and other drug abuse assessment and shall specify the date by which the assessment must be completed.

2. Participate in an outpatient alcohol or other drug abuse treatment program at an approved treatment facility, if an alcohol or other drug abuse assessment conducted under subd. 1. or s. 938.295 (1) recommends treatment.

3. Participate in a court-approved alcohol or other drug abuse education program.

4. Participate in a teen court program if all of the following conditions apply:

a. The chief judge of the judicial administrative district has approved a teen court program established in the juvenile's county of residence and the court determines that participation in the teen court program will likely benefit the juvenile and the community.

b. The juvenile admits or pleads no contest in open court, in the presence of the juvenile's parent, guardian or legal custodian, to the allegations that the juvenile committed the violation specified in sub. (2), (2b), (2d) or (2e).

c. The juvenile has not successfully completed participation in a teen court program during the 2 years before the date of the alleged violation.

5. Report to a youth report center after school, in the evening, on weekends, on other nonschool days, or at any other time that the juvenile is not under immediate adult supervision, for participation in the social, behavioral, academic, community service, and other programming of the center. Section 938.34 (5g) applies to any community service work performed by a juvenile under this subdivision.

(b) If the approved treatment facility, with the written informed consent of the juvenile or, if the juvenile has not attained the age of 12, the written informed consent of the juvenile's parent, notifies the agency primarily responsible for providing services to the juvenile that the juvenile has submitted to an assessment under par. (a) and that the juvenile does not need treatment, intervention or education, the court shall notify the juvenile of whether or not the penalty will be reinstated.

(c) If the juvenile completes the alcohol or other drug abuse treatment program or court-approved alcohol or other drug abuse education program, the approved treatment facility or court-approved alcohol or other drug abuse education program shall, with the written informed consent of the juvenile or, if the juvenile has not attained the age of 12, the written informed consent of the juvenile's parent, notify the agency primarily responsible for providing services to the juvenile that the juvenile has complied with the order and the court shall notify the juvenile of whether or not the penalty will be reinstated.

(d) If an approved treatment facility or court-approved alcohol or other drug abuse education program, with the written informed consent of the juvenile or, if the juvenile has not attained the age of 12, the written informed consent of the juvenile's parent, notifies the agency primarily responsible for providing services to the juvenile that a juvenile is not participating, or has not satisfactorily completed, a recommended alcohol or other drug abuse treatment program or a court-approved alcohol or other drug abuse education program, the court shall hold a hearing to determine whether to impose the penalties under sub. (2), (2b), (2d), or (2e).

(2m) COUNTING VIOLATIONS. For purposes of subs. (2) to (2e), all violations arising out of the same incident or occurrence shall be counted as a single violation.

(3) PROSECUTION IN ADULT COURT. If the juvenile alleged to have committed the violation is within 3 months of his or her 17th birthday, the court assigned to exercise jurisdiction under this chapter and ch. 48 may, at the request of the district attorney or on its own motion, dismiss the citation without prejudice and refer the matter to the district attorney for prosecution under s. 125.07 (4). The juvenile is entitled to a hearing only on the issue of his or her age. This subsection does not apply to violations under s. 961.573 (2), 961.574 (2) or 961.575 (2) or a local ordinance that strictly conforms to one of those statutes.

History: 1995 a. 77, 448; 1997 a. 84; 1999 a. 9 s. 3263; 1999 a. 109; 2001 a. 16; 2005 a. 344; 2009 a. 103; 2011 a. 32.

938.345 Disposition of juvenile adjudged in need of protection or services. (1) DISPOSITIONAL ORDER. If the court finds that the juvenile is in need of protection or services, the court shall enter an order including one or more of the dispositions under s. 938.34 under a care and treatment plan except that the order may not do any of the following:

(a) Place the juvenile in the serious juvenile offender program juvenile correctional facility or a secured residential care center for children and youth.

(c) Order payment of a forfeiture or surcharge.

(d) Restrict or suspend the driving privileges of the juvenile, except as provided under sub. (2).

(e) Place any juvenile not found under ch. 880, 2003 stats., or ch. 46, 49, 51, 54, or 115 to have a developmental disability or a mental illness or to be a child with a disability, as defined

in s. 115.76 (5), in a facility that exclusively treats one or more of those categories of juveniles.

(g) Place the juvenile in a juvenile detention facility or juvenile portion of a county jail or in nonsecure custody under s. 938.34 (3) (f).

(1m) INDIAN JUVENILE; PLACEMENT PREFERENCES. (a) Subject to s. 938.028 (6) (b), if the juvenile is an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7) and who is being removed from the home of his or her parent or Indian custodian and placed outside that home, the court shall designate one of the placements specified in s. 938.028 (6) (a) 1. to 4. as the placement for the Indian juvenile, in the order of preference listed, unless the court finds good cause, as described in s. 938.028 (6) (d), for departing from that order.

(2) SCHOOL DROPOUTS AND HABITUAL TRUANTS. If the court finds that a juvenile is in need of protection or services based on the fact that the juvenile is a school dropout, as defined in s. 118.153 (1) (b), or based on habitual truancy, and the court also finds that the juvenile has dropped out of school or is a habitual truant as a result of the juvenile's intentional refusal to attend school rather than the failure of any other person to comply with s. 118.15 (1) (a) and (am), the court, instead of or in addition to any other disposition imposed under sub. (1), may enter an order permitted under s. 938.342.

(3) SEX OFFENDER REGISTRATION. (a) If the court finds that a juvenile is in need of protection or services on the basis of a violation, or the solicitation, conspiracy, or attempt to commit a violation, under ch. 940, 944, or 948 or s. 942.08 or 942.09, or ss. 943.01 to 943.15, the court may require the juvenile to comply with the reporting requirements under s. 301.45 if the court determines that the underlying conduct was sexually motivated, as defined in s. 980.01 (5), and that it is in the interest of public protection to have the juvenile report under s. 301.45. In determining whether it is in the interest of public protection to have the juvenile report under s. 301.45, the court may consider any of the following:

1. The ages, at the time of the violation, of the juvenile and the victim of the violation.

2. The relationship between the juvenile and the victim of the violation.

3. Whether the violation resulted in bodily harm, as defined in s. 939.22 (4), to the victim.

4. Whether the victim suffered from a mental illness or mental deficiency that rendered him or her temporarily or permanently incapable of understanding or evaluating the consequences of his or her actions.

5. The probability that the juvenile will commit other violations in the future.

6. Any other factor that the court determines may be relevant to the particular case.

(b) If the court orders a juvenile to comply with the reporting requirements under s. 301.45, the court may order the juvenile to continue to comply with the reporting requirements until his or her death.

(c) If the court orders a juvenile to comply with the reporting requirements under s. 301.45, the clerk of the court in which the order is entered shall promptly forward a copy of the order to the department. If the finding of need of protection or services on which the order is based is reversed, set aside, or vacated, the clerk of the court shall promptly forward to the department a certificate stating that the finding has been reversed, set aside or vacated.

(d) If the court under par. (a) orders the juvenile to comply with the reporting requirements under s. 301.45 in connection with a violation, or the solicitation, conspiracy, or attempt to commit a violation, of s. 942.09, the court may provide that the juvenile be released from the requirement to comply with the reporting requirements under s. 301.45 upon satisfying the conditions of the dispositional order imposed for the offense. If the juvenile satisfies the conditions of the dispositional order, the clerk of the court shall notify the department that the juvenile has satisfied the conditions of the dispositional order.

(4) UNCONTROLLABLE JUVENILES. If the court finds that a juvenile is in need of protection or services under s. 938.13 (4), the court, instead of or in addition to any other disposition imposed under sub. (1), may place the juvenile in the home of a guardian under s. 48.977 (2).

History: 1995 a. 77; 1997 a. 27, 164; 1999 a. 9, 89; 2003 a. 50; 2005 a. 25, 344, 387; 2007 a. 96, 97; 2009 a. 41, 94, 137.

938.346 Notice to victims of juveniles' acts. (1) INFORMATION TO VICTIMS. Each known victim of a juvenile's act shall receive timely notice of the following information:

(a) The procedures under s. 938.396 (1) (c) 5. and 6. for obtaining the identity of the juvenile and the juvenile's parents.

(b) The procedure under s. 938.396 (1) (c) 5. for obtaining the juvenile's police records.

(c) The potential liability of the juvenile's parents under s. 895.035.

(d) Either of the following:

1. Information regarding any decision to close a case under s. 938.24 (5m), any deferred prosecution agreement under s. 938.245, any decision not to file a petition under s. 938.25 (2m), any consent decree under s. 938.32 or any dispositional order under ss. 938.34 to 938.345. The information may not include reports under s. 938.295 or 938.33 or any other information that deals with sensitive personal matters of the juvenile and the juvenile's family and that does not directly relate to the act or alleged act committed against the victim. This subdivision does not affect the right of a victim to attend any hearing that the victim is permitted to attend under s. 938.299 (1) (am).

2. The procedure for obtaining the information in subd. 1.

(e) The procedure under s. 938.296 under which the victim, if an adult, or the parent, guardian or legal custodian of the victim, if the victim is a child, may request an order requiring a juvenile who is alleged to have violated s. 940.225, 948.02, 948.025, 948.05, 948.06, or 948.085 (2) to submit to an HIV test, as defined in s. 252.01 (2m), and a test or a series of tests to detect the presence of a sexually transmitted disease, as defined in s. 252.11 (1), and to have the results of the tests disclosed as provided in s. 938.296 (4) (a) to (e).

(ec) The procedure under s. 938.296 under which the victim, if an adult, or the parent, guardian or legal custodian of the victim, if the victim is a child, may request an order requiring a juvenile who is alleged to have violated s. 946.43 (2m) to submit to a test or a series of tests to detect the presence of communicable diseases and to have the results of that test or series of tests disclosed as provided in s. 938.296 (5) (a) to (e).

(em) The right to confer, if requested, with an intake worker regarding deferred prosecution agreements under s. 938.245 (1m) or with a district attorney or corporation counsel under s. 938.265 regarding the possible outcomes of the proceedings and under s. 938.32 (1) (am) regarding consent decrees.

(f) The right to request and receive notice of the time and place of any hearing that the victim may attend under s. 938.299 (1) (am).

(fm) All of the following:

1. The right to a separate waiting area as provided under s. 938.2965.

2. The right to have his or her interest considered concerning continuances in the case under s. 938.315 (2)

3. The right to have victim impact information included in a court report under s. 938.33 and to have the person preparing the court report attempt to contact the victim, as provided under s. 938.331.

4. The right to employer intercession services under s. 950.04 (1v) (bm).

(g) The right to make a statement to the court as provided in ss. 938.32 (1) (b) and 938.335 (3m).

(h) All of the following:

1. The right to be accompanied by a service representative, as provided under s. 895.45.

2. The right to restitution, as provided under ss. 938.245, 938.32 (1t) and 938.34 (5).

3. The right to compensation, as provided under subch. I of ch. 949.

4. The right to a speedy disposition of the case under s. 950.04 (1v) (k).

5. The right to have personal property returned, as provided under s. 950.04 (1v) (s).

6. The right to complain to the department of justice concerning the treatment of crime victims, as provided under s. 950.08 (3), and to request review by the crime victims rights board of the complaint, as provided under s. 950.09 (2).

(1m) DUTIES OF INTAKE WORKERS AND DISTRICT ATTORNEYS. The intake worker shall make a reasonable attempt to provide notice of the information under sub. (1) (a), (b), (c), and (h), the information under sub. (1) (d) relating to a deferred prosecution agreement under s. 938.245, the information under sub. (1) (em) relating to the right to confer, if requested, on deferred prosecution agreements and the information under sub. (3) if the juvenile's case is closed. The district attorney or corporation counsel shall make a reasonable attempt to provide notice of the information under sub. (1) (e), (ec), (f), (fm), and (g), the information under sub. (1) (d) relating to a consent decree under s. 938.32 or a dispositional order under ss. 938.34 to 938.345, the information under sub. (1) (em) relating to the right to request an opportunity to confer, if requested, on amendment of petitions, consent decrees and disposition recommendations and the information under sub. (3) if he or she decides not to file a petition or the proceeding is terminated without a consent decree or dispositional order after the filing of a petition.

(2) RESTRICTIONS ON DISCLOSURE OF INFORMATION. The notice under sub. (1) shall include an explanation of the restrictions on disclosing information obtained under this chapter and the penalties for violating the restrictions.

(3) CLOSED CASES. If an inquiry is closed by an intake worker or otherwise does not result in a deferred prosecution agreement, the intake worker shall make a reasonable attempt to inform each known victim of the juvenile's alleged act as provided in s. 938.24 (5m). If a district attorney or corporation counsel decides not to file a petition or if, after a petition is filed, a proceeding is dismissed or otherwise does not result in a consent decree or dispositional order, a district attorney or corporation counsel shall make a reasonable attempt to inform each known victim of the juvenile's alleged act as provided in s. 938.25 (2m) or 938.312, whichever is applicable.

(4) CHILD VICTIMS. If the victim, as defined in s. 938.02 (20m) (a) 1., is a child, the notice under this section shall be given to the child's parents, guardian or legal custodian.

(5) COURT POLICIES AND RULES. Chief judges and circuit judges shall establish by policy and rule procedures for the implementation of this section. Subject to subs. (1m) and (3), the policies and rules shall specify when, how and by whom the notice under this section shall be provided to victims and with whom victims may confer regarding deferred prosecution agreements, amendment of petitions, consent decrees and disposition recommendations.

History: 1995 a. 77; 1997 a. 181, 205; 1999 a. 188; 2005 a. 155, 277, 344; 2007 a. 20; 2009 a. 209.

938.371 Access to certain information by substitute care provider. (1) MEDICAL INFORMATION. If a juvenile is placed in a foster home, group home, residential care center for children and youth, or juvenile correctional facility or in the home of a relative other than a parent, including a placement under s. 938.205 or 938.21, the agency, as defined in s. 938.38 (1) (a), that placed the juvenile or arranged for the placement of the juvenile shall provide the following information to the foster parent, relative, or operator of the group home, residential care center for children and youth, or juvenile correctional facility at the time of placement or, if the information has not been provided to the agency by that time, as soon as possible after the date on which the agency receives that information, but not more than 2 working days after that date:

(a) Results of an HIV test, as defined in s. 252.01 (2m), of the juvenile as provided under s. 252.15 (3m) (d) 15., including results included in a court report or permanency plan. At the time that the test results are provided, the agency shall notify the foster parent, relative, or operator of the group home, residential care center for children and youth, or juvenile correctional facility of the confidentiality requirements under s. 252.15 (6).

(b) Results of any tests of the juvenile to determine the presence of viral hepatitis, type B, including results included in a court report or permanency plan.

(c) Any other medical information concerning the juvenile that is necessary for the care of the juvenile.

(3) OTHER INFORMATION. At the time of placement of a juvenile in a foster home, group home, residential care center for children and youth, or juvenile correctional facility or in the home of a relative other than a parent or, if the information is not available at that time, as soon as possible after the date on which the court report or permanency plan has been submitted, but no later than 7 days after that date, the agency, as defined in s. 938.38 (1) (a), responsible for preparing the juvenile's permanency plan shall provide to the foster parent, relative, or

operator of the group home, residential care center for children and youth, or juvenile correctional facility information contained in the court report submitted under s. 938.33 (1) or 938.365 (2g) or permanency plan submitted under s. 938.355 (2e) or 938.38 relating to findings or opinions of the court or agency that prepared the court report or permanency plan relating to any of the following:

(a) Any mental, emotional, cognitive, developmental, or behavioral disability of the juvenile.

(b) Any involvement of the juvenile in any criminal gang, as defined in s. 939.22 (9), or in any other group in which any child was traumatized as a result of his or her association with that group.

(c) Any involvement of the juvenile in any activities that are harmful to the juvenile's physical, mental, or moral well-being.

(d) Any involvement of the juvenile, whether as victim or perpetrator, in sexual intercourse or sexual contact in violation of s. 940.225, 948.02, 948.025, or 948.085, prostitution in violation of s. 944.30, sexual exploitation of a child in violation of s. 948.05, or causing a child to view or listen to sexual activity in violation of s. 948.055, if the information is necessary for the care of the juvenile or for the protection of any person living in the foster home, group home, residential care center for children and youth, or juvenile correctional facility.

(e) The religious affiliation or beliefs of the juvenile.

(4) DISCLOSURE BEFORE PLACEMENT PERMITTED. Subsection (1) does not preclude an agency, as defined in s. 48.38 (1) (a), that is arranging for the placement of a juvenile from providing the information specified in sub. (1) (a) to (c) to a person specified in sub. (1) (intro.) before the time of placement of the juvenile. Subsection (3) does not preclude an agency, as defined in s. 48.38 (1) (a), responsible for preparing a juvenile's court report or permanency plan from providing the information specified in sub. (3) (a) to (e) to a person specified in sub. (3) (intro.) before the time of placement of the juvenile.

(5) CONFIDENTIALITY OF INFORMATION. Except as permitted under s. 252.15 (6), a foster parent, treatment foster parent, relative, or operator of a group home, residential care center for children and youth, or juvenile correctional facility that receives any information under sub. (1) or (3), other than the information described in sub. (3) (e), shall keep the information confidential and may disclose that information only for the purposes of providing care for the juvenile or participating in a court hearing or permanency review concerning the juvenile.

History: 1995 a. 77, 275, 352; 1997 a. 35, 272; 1999 a. 32; 2001 a. 59; 2005 a. 232, 277, 344; 2007 a. 97; 2009 a. 28, 209; 2011 a. 181, 260.

SUBCHAPTER VII

PERMANENCY PLANNING; RECORDS

938.396 Records. (1) LAW ENFORCEMENT RECORDS. (a) *Confidentiality.* Law enforcement agency records of juveniles shall be kept separate from records of adults. Law enforcement agency records of juveniles may not be open to inspection or their contents disclosed except under par. (b) or (c), sub. (1j), (2m) (c) 1p., or (10), or s. 938.293 or by order of the court.

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

1. The disclosure of information to representatives of the news media who wish to obtain information for the purpose of reporting news. A representative of the news media who obtains information under this subdivision may not reveal the identity of the juvenile involved.

2. The confidential exchange of information between a law enforcement agency and officials of the public or private school attended by the juvenile. A public school official who obtains information under this subdivision shall keep the information confidential as required under s. 118.125, and a private school official who obtains information under this subdivision shall keep the information confidential in the same manner as is required of a public school official under s. 118.125.

2m. The confidential exchange of information between a law enforcement agency and officials of the tribal school attended by the juvenile if the law enforcement agency determines that enforceable protections are provided by a tribal school policy or tribal law that requires tribal school officials to keep the information confidential in a manner at least as stringent as is required of a public school official under s. 118.125.

3. The confidential exchange of information between a law enforcement agency and another law enforcement agency. A law enforcement agency that obtains information under this subdivision shall keep the information confidential as required under par. (a) and s. 48.396 (1).

4. The confidential exchange of information between a law enforcement agency and a social welfare agency. A social welfare agency that obtains information under this subdivision shall keep the information confidential as required under ss. 48.78 and 938.78.

5. The disclosure of information relating to a juvenile 10 years of age or over who is subject to the jurisdiction of a court of criminal jurisdiction.

(c) *Exceptions.* Notwithstanding par. (a), law enforcement agency records of juveniles may be disclosed as follows:

1. If requested by the parent, guardian or legal custodian of a juvenile who is the subject of a law enforcement officer's report, or if requested by the juvenile, if 14 years of age or over, a law enforcement agency may, subject to official agency policy, provide to the parent, guardian, legal custodian or juvenile a copy of that report.

2. Upon the written permission of the parent, guardian or legal custodian of a juvenile who is the subject of a law enforcement officer's report or upon the written permission of the juvenile, if 14 years of age or over, a law enforcement agency may, subject to official agency policy, make available to the person named in the permission any reports specifically identified by the parent, guardian, legal custodian or juvenile in the written permission.

3. At the request of a school district administrator, administrator of a private school, or administrator of a tribal school, or designee of a school district administrator, private school administrator, or tribal school administrator, or on its own initiative, a law enforcement agency may, subject to official agency policy, provide to the school district administrator, private school administrator, or tribal school administrator or designee, for use as provided in s. 118.127, any

information in its records relating to any of the following if the official agency policy specifies that the information may not be provided to an administrator of a tribal school or a tribal school administrator's designee unless the governing body of the tribal school agrees that the information will be used by the tribal school as provided in s. 118.127:

a. The use, possession, or distribution of alcohol or a controlled substance or controlled substance analog by a juvenile enrolled in the public school district, private school, or tribal school.

b. The illegal possession by a juvenile of a dangerous weapon, as defined in s. 939.22 (10).

c. An act for which a juvenile enrolled in the school district, private school, or tribal school was taken into custody under s. 938.19 based on a law enforcement officer's belief that the juvenile was committing or had committed a violation of any state or federal criminal law.

d. An act for which a juvenile enrolled in the public school district, private school, or tribal school was adjudged delinquent.

4. A law enforcement agency may enter into an interagency agreement with a school board, a private school, a tribal school, a social welfare agency, or another law enforcement agency providing for the routine disclosure of information under subs. (1) (b) 2. and 2m. and (c) 3. to the school board, private school, tribal school, social welfare agency, or other law enforcement agency.

5. If requested by a victim of a juvenile's act, a law enforcement agency may, subject to official agency policy, disclose to the victim any information in its records relating to the injury, loss or damage suffered by the victim, including the name and address of the juvenile and the juvenile's parents. The victim may use and further disclose the information only for the purpose of recovering for the injury, damage or loss suffered as a result of the juvenile's act.

6. If requested by the victim-witness coordinator, a law enforcement agency shall disclose to the victim-witness coordinator any information in its records relating to the enforcement of rights under the constitution, this chapter, and s. 950.04 or the provision of services under s. 950.06 (1m), including the name and address of the juvenile and the juvenile's parents. The victim-witness coordinator may use the information only for the purpose of enforcing those rights and providing those services and may make that information available only as necessary to ensure that victims and witnesses of crimes, as defined in s. 950.02 (1m), receive the rights and services to which they are entitled under the constitution, this chapter, and ch. 950. The victim-witness coordinator may also use the information to disclose the name and address of the juvenile and the juvenile's parents to the victim of the juvenile's act.

7. If a juvenile has been ordered to make restitution for any injury, loss or damage caused by the juvenile and if the juvenile has failed to make that restitution within one year after the entry of the order, the insurer of the victim, as defined in s. 938.02 (20m) (a) 1., may request a law enforcement agency to disclose to the insurer any information in its records relating to the injury, loss or damage suffered by the victim, including the name and address of the juvenile and the juvenile's parents, and the law enforcement agency may, subject to official agency policy, disclose to the victim's insurer that information. The insurer may use and further disclose the information only for the purpose of investigating a claim arising out of the juvenile's act.

8. If requested by a fire investigator under s. 165.55 (15), a law enforcement agency may, subject to official agency policy, disclose to the fire investigator any information in its records relating to a juvenile as necessary for the fire investigator to pursue his or her investigation under s. 165.55. The fire investigator may use and further disclose the information only for the purpose of pursuing that investigation.

(d) *Law enforcement access to school records.* On petition of a law enforcement agency to review pupil records, as defined in s. 118.125 (1) (d), other than pupil records that may be disclosed without a court order under s. 118.125 (2) or (2m), for the purpose of pursuing an investigation of any alleged delinquent or criminal activity or on petition of a fire investigator under s. 165.55 (15) to review those pupil records for the purpose of pursuing an investigation under s. 165.55 (15), the court may order the school board of the school district, or the governing body of the private school, in which a juvenile is enrolled to disclose to the law enforcement agency or fire investigator the pupil records of that juvenile as necessary for the law enforcement agency or fire investigator to pursue the investigation. The law enforcement agency or fire investigator may use the pupil records only for the purpose of the investigation and may make the pupil records available only to employees of the law enforcement agency or fire investigator who are working on the investigation.

(1j) LAW ENFORCEMENT RECORDS, COURT-ORDERED DISCLOSURE. (a) Any person who is denied access to a record under sub. (1) (a) or (10) may petition the court to order the disclosure of the record. The petition shall be in writing and shall describe as specifically as possible all of the following:

1. The type of information sought.

2. The reason the information is being sought.

3. The basis for the petitioner's belief that the information is contained in the records.

4. The relevance of the information sought to the petitioner's reason for seeking the information.

5. The petitioner's efforts to obtain the information from other sources.

(b) Subject to par. (bm), the court, on receipt of a petition, shall notify the juvenile, the juvenile's counsel, the juvenile's parents, and appropriate law enforcement agencies in writing of the petition. If any person notified objects to the disclosure, the court may hold a hearing to take evidence relating to the petitioner's need for the disclosure.

(bm) If the petitioner is seeking access to a record under sub. (1) (c) 3., the court shall, without notice or hearing, make the inspection and determinations specified in par. (c) and, if the court determines that disclosure is warranted, shall order disclosure under par. (d). The petitioner shall provide a copy of the disclosure order to the law enforcement agency that denied access to the record, the juvenile, the juvenile's counsel, and the juvenile's parents. Any of those persons may obtain a hearing on the court's determinations by filing a motion to set aside the disclosure order within 10 days after receipt of the order. If no motion is filed within those 10 days or if, after hearing, the court determines that no good cause has been

shown for setting aside the order, the law enforcement agency shall disclose the juvenile's record as ordered.

(c) The court shall make an inspection, which may be in camera, of the juvenile's records. If the court determines that the information sought is for good cause and that it cannot be obtained with reasonable effort from other sources, it shall then determine whether the petitioner's need for the information outweighs society's interest in protecting its confidentiality. In making this determination, the court shall balance the following private and societal interests:

1. The petitioner's interest in recovering for the injury, damage or loss he or she has suffered against the juvenile's interest in rehabilitation and in avoiding the stigma that might result from disclosure.

2. The public's interest in the redress of private wrongs through private litigation against the public's interest in protecting the integrity of the juvenile justice system.

3. If the petitioner is a person who was denied access to a record under sub. (1) (c) 3., the petitioner's legitimate educational interests, including safety interests, in the information against society's interest in protecting its confidentiality.

(d) If the court determines that disclosure is warranted, it shall order the disclosure of only as much information as is necessary to meet the petitioner's need for the information.

(e) The court shall record the reasons for its decision to disclose or not to disclose the juvenile's records. All records related to a decision under this subsection are confidential.

(2) COURT RECORDS; CONFIDENTIALITY. Records of the court assigned to exercise jurisdiction under this chapter and ch. 48 and of municipal courts exercising jurisdiction under s. 938.17 (2) shall be entered in books or deposited in files kept for that purpose only. Those records shall not be open to inspection or their contents disclosed except by order of the court assigned to exercise jurisdiction under this chapter and ch. 48 or as required or permitted under sub. (2g), (2m) (b) or (c), or (10).

(2g) CONFIDENTIALITY OF COURT RECORDS; EXCEPTIONS. Notwithstanding sub. (2), records of the court assigned to exercise jurisdiction under this chapter and ch. 48 and of courts exercising jurisdiction under s. 938.17 (2) may be disclosed as follows:

(ag) *Request of parent or juvenile.* Upon request of the parent, guardian, or legal custodian of a juvenile who is the subject of a record of a court assigned to exercise jurisdiction under this chapter and ch. 48 or of a municipal court exercising jurisdiction under s. 938.17 (2), or upon request of the juvenile, if 14 years of age or over, the court that is the custodian of the record shall open for inspection by the parent, guardian, legal custodian, or juvenile its records relating to that juvenile, unless that court finds, after due notice and hearing, that inspection of those records by the parent, guardian, legal custodian, or juvenile would result in imminent danger to anyone.

(am) *Permission of parent or juvenile.* Upon the written permission of the parent, guardian, or legal custodian of a juvenile who is the subject of a record of a court assigned to exercise jurisdiction under this chapter and ch. 48 or of a municipal court exercising jurisdiction under s. 938.17 (2), or upon written permission of the juvenile if 14 years of age or over, the court that is the custodian of the record shall open for inspection by the person named in the permission any records specifically identified by the parent, guardian, legal custodian, or juvenile in the written permission, unless e that court finds, after due notice and hearing, that inspection of those records by the person named in the permission would result in imminent danger to anyone.

(b) *Federal program monitoring.* Upon request of the department, the department of children and families, or a federal agency to review court records for the purpose of monitoring and conducting periodic evaluations of activities as required by and implemented under 45 CFR 1355, 1356, and 1357, the court shall open those records for inspection by authorized representatives of that department or federal agency.

(c) *Law enforcement agencies.* Upon request of a law enforcement agency to review court records for the purpose of investigating alleged criminal activity or activity that may result in a court exercising jurisdiction under s. 938.12 or 938.13 (12), the court assigned to exercise jurisdiction under this chapter and ch. 48 shall open for inspection by authorized representatives of the requester the records of the court relating to any juvenile who has been the subject of a proceeding under this chapter.

(d) *Criminal and civil proceedings.* Upon request of a court of criminal jurisdiction to review court records for the purpose of conducting or preparing for a proceeding in that court, upon request of a district attorney to review court records for the purpose of performing his or her official duties in a proceeding in a court of criminal jurisdiction, or upon request of a court of civil jurisdiction or the attorney for a party to a proceeding in that court to review court records for the purpose of impeaching a witness under s. 906.09, the court assigned to exercise jurisdiction under this chapter and ch. 48 shall open for inspection by authorized representatives of the requester the records of the court relating to any juvenile who has been the subject of a proceeding under this chapter.

(dm) *Delinquency or criminal defense.* Upon request of a defense counsel to review court records for the purpose of preparing his or her client's defense to an allegation of delinquent or criminal activity, the court shall open for inspection by authorized representatives of the requester the records of the court relating to that client.

(dr) *Presentence investigation.* Upon request of the department of corrections or any other person preparing a presentence investigation under s. 972.15 to review court records for the purpose of preparing the presentence investigation, the court shall open for inspection by any authorized representative of the requester the records of the court relating to any juvenile who has been the subject of a proceeding under this chapter.

(em) *Sex offender registration.* Upon request of the department to review court records for the purpose of obtaining information concerning a juvenile who is required to register under s. 301.45, the court shall open for inspection by authorized representatives of the department the records of the court relating to any juvenile who has been adjudicated delinquent or found in need of protection or services or not responsible by reason of mental disease or defect for an offense specified in s. 301.45 (1g) (a). The department may disclose information that it obtains under this paragraph as provided under s. 301.46.

(f) *Victim-witness coordinator.* Upon request of the victim-witness coordinator to review court records for the purpose of enforcing rights under the constitution, this chapter, and s. 950.04 and providing services under s. 950.06 (1m), the court shall open for inspection by the victim-witness coordinator the records of the court relating to the enforcement of those rights or the provision of those services, including the name and address of the juvenile and the juvenile's parents. The victim-witness coordinator may use any information obtained under this paragraph only for the purpose of enforcing those rights and providing those services and may make that information available only as necessary to ensure that victims and witnesses of crimes, as defined in s. 950.02 (1m), receive the rights and services to which they are entitled under the constitution, this chapter and ch. 950. The victim-witness coordinator may also use that information to disclose the name and address of the juvenile and the juvenile's parents to the victim of the juvenile's act.

(fm) *Victim's insurer.* Upon request of an insurer of the victim, as defined in s. 938.02 (20m) (a) 1., the court shall disclose to an authorized representative of the requester the amount of restitution, if any, that the court has ordered a juvenile to make to the victim.

(g) *Paternity of juvenile.* Upon request of a court having jurisdiction over actions affecting the family, an attorney responsible for support enforcement under s. 59.53 (6) (a) or a party to a paternity proceeding under subch. IX of ch. 767, the party's attorney or the guardian ad litem for the juvenile who is the subject of that proceeding to review or be provided with information from the records of the court assigned to exercise jurisdiction under this chapter and ch. 48 relating to the paternity of a juvenile for the purpose of determining the paternity of the juvenile or for the purpose of rebutting the presumption of paternity under s. 891.405 or 891.41, the court assigned to exercise jurisdiction under this chapter and ch. 48 shall open for inspection by the requester its records relating to the paternity of the juvenile or disclose to the requester those records.

(gm) *Other courts.* Upon request of any court assigned to exercise jurisdiction under this chapter and ch. 48, any municipal court exercising jurisdiction under s. 938.17 (2), or a district attorney, corporation counsel, or city, village, or town attorney to review court records for the purpose of any proceeding in that court or upon request of the attorney or guardian ad litem for a party to a proceeding in that court to review court records for the purpose of that proceeding, the court assigned to exercise jurisdiction under this chapter and ch. 48 or the municipal court exercising jurisdiction under s. 938.17 (2) shall open for inspection by any authorized representative of the requester its records relating to any juvenile who has been the subject of a proceeding under this chapter.

(h) *Custody of juvenile.* Upon request of the court having jurisdiction over an action affecting the family or of an attorney for a party or a guardian ad litem in an action affecting the family to review court records for the purpose of considering the custody of a juvenile, the court assigned to exercise jurisdiction under this chapter and ch. 48 or a municipal court exercising jurisdiction under s. 938.17 (2) shall open for inspection by an authorized representative of the requester its records relating to any juvenile who has been the subject of a proceeding under this chapter.

(i) *Probate court.* Upon request of the court assigned to exercise probate jurisdiction, the attorney general, the personal representative or special administrator of, or an attorney performing services for, the estate of a decedent in any proceeding under chs. 851 to 879, a person interested, as defined in s. 851.21, or an attorney, attorney-in-fact, guardian ad litem or guardian of the estate of a person interested to review court records for the purpose of s. 854.14 (5) (b), the court assigned to exercise jurisdiction under this chapter and ch. 48 shall open for inspection by any authorized representative of the requester the records of the court relating to any juvenile who has been adjudged delinquent on the basis of unlawfully and intentionally killing a person.

(j) *Fire investigator.* Upon request of a fire investigator under s. 165.55 (15) to review court records for the purpose of pursuing an investigation under s. 165.55, the court shall open for inspection by authorized representatives of the requester the records of the court relating to any juvenile who has been adjudicated delinquent or found to be in need of protection or services under s. 938.13 (12) or (14) for a violation of s. 940.08, 940.24, 941.10, 941.11, 943.01, 943.012, 943.013, 943.02, 943.03, 943.04, 943.05, or 943.06 or for an attempt to commit any of those violations.

(k) *Serious juvenile offenders.* Upon request of any person, the court shall open for inspection by the requester the records of the court, other than reports under s. 938.295 or 938.33 or other records that deal with sensitive personal information of the juvenile and the juvenile's family, relating to a juvenile who has been alleged to be delinquent for committing a violation specified in s. 938.34 (4h) (a). The requester may further disclose the information to anyone.

(L) *Repeat offenders.* Upon request of any person, the court shall open for inspection by the requester the records of the court, other than reports under s. 938.295 or 938.33 or other records that deal with sensitive personal information of the juvenile and the juvenile's family, relating to a juvenile who has been alleged to be delinquent for committing a violation that would be a felony if committed by an adult if the juvenile has been adjudicated delinquent at any time preceding the present proceeding and that previous adjudication remains of record and unreversed. The requester may further disclose the information to anyone.

(m) *Notification of juvenile's school.* 1. If a petition under s. 938.12 or 938.13 (12) is filed alleging that a juvenile has committed a delinquent act that would be a felony if committed by an adult, the court clerk shall notify the school board of the school district, the governing body of the private school, or the governing body of the tribal school in which the juvenile is enrolled or the designee of the school board or governing body of the fact that the petition has been filed and the nature of the delinquent act alleged in the petition. If later the proceeding on the petition is closed, dismissed, or otherwise terminated without a finding that the juvenile has committed a delinquent act, the court clerk shall notify the school board of the school district or the governing body of the private school or tribal school in which the juvenile is enrolled or the designee of the school board or governing body that the proceeding has been terminated without a finding that the juvenile has committed a delinquent act.

2. Subject to subd. 4., if a juvenile is adjudged delinquent, within 5 days after the date on which the dispositional order is entered, the court clerk shall notify the school board of the school district, the governing body of the private school, or the governing body of the tribal school in which the juvenile is enrolled or the designee of the school board or governing body of the fact that the juvenile has been adjudicated delinquent, the nature of the violation committed by the juvenile, and the disposition imposed on the juvenile under s. 938.34 as a result of the violation.

3. If school attendance is a condition of a dispositional order under s. 938.342 (1d) or (1g) or 938.355 (2) (b) 7., within 5 days after the date on which the dispositional order is entered, the clerk of the court assigned to exercise jurisdiction under this chapter and ch. 48 or the clerk of the municipal court exercising jurisdiction under s. 938.17 (2) shall notify the school board of the school district, the governing body of the private school, or the governing body of the tribal school in which the juvenile is enrolled or the designee of the school board or governing body of the fact that the juvenile's school attendance is a condition of a dispositional order.

4. If a juvenile is found to have committed a delinquent act at the request of or for the benefit of a criminal gang, as defined in s. 939.22 (9), that would have been a felony under chs. 939 to 948 or 961 if committed by an adult and is adjudged delinquent on that basis, within 5 days after the date on which the dispositional order is entered, the court clerk shall notify the school board of the school district, the governing body of the private school, or the governing body of the tribal school in which the juvenile is enrolled or the designee of the school board or governing body of the fact that the juvenile has been adjudicated delinquent on that basis, the nature of the violation committed by the juvenile, and the disposition imposed on the juvenile under s. 938.34 as a result of that violation.

5. In addition to the disclosure made under subd. 2. or 4., if a juvenile is adjudicated delinquent and as a result of the dispositional order is enrolled in a different school district, private school, or tribal school from the school district, private school, or tribal school in which the juvenile is enrolled at the time of the dispositional order, the court clerk, within 5 days after the date on which the dispositional order is entered, shall provide the school board of the juvenile's new school district, the governing body of the juvenile's new private school, or the governing body of the tribal school or the designee of the school board or governing body with the information specified in subd. 2. or 4., whichever is applicable, and, in addition, shall notify that school board, governing body, or designee of whether the juvenile has been adjudicated delinquent previously by that court, the nature of any previous violations committed by the juvenile, and the dispositions imposed on the juvenile under s. 938.34 as a result of those previous violations.

6. Except as required under subds. 1. to 5. or by order of the court, no information from the juvenile's court records may be disclosed to the school board of the school district, the governing body of the private school, or the governing body of the tribal school in which the juvenile is enrolled or the designee of the school board or governing body. Any information from a juvenile's court records provided to the school board of the school district or the governing body of the private school in which the juvenile is enrolled or the designee of the school board or governing body shall be disclosed by the school board, governing body, or designee to employees of the school district or private school who work directly with the juvenile or who have been determined by the school board, governing body, or designee to have legitimate educational interests, including safety interests, in the information. A school district or private school employee to whom that information is disclosed may not further disclose the information. If information is disclosed to the governing body of a tribal school under this subdivision, the court shall request that the governing body of the tribal school or its designee disclose the information to employees who work directly with the juvenile or who have been determined by the governing body or its designee to have legitimate educational interests, including safety interests, in the information, and shall further request that the governing body prohibit any employee to whom information is disclosed under this subdivision from further disclosing the information. A school board may not use any information from a juvenile's court records as the sole basis for expelling or suspending a juvenile or as the sole basis for taking any other disciplinary action against a juvenile, but may use information from a juvenile's court records as the sole basis for taking action against a juvenile under the school district's athletic code. A member of a school board or of the governing body of a private school or tribal school or an employee of a school district, private school, or tribal school may not be held personally liable for any damages caused by the nondisclosure of any information specified in this subdivision unless the member or employee acted with actual malice in failing to disclose the information. A school district, private school, or tribal school may not be held liable for any damages caused by the nondisclosure of any information specified in this subdivision unless the school district, private school, or tribal school or its agent acted with gross negligence or with reckless, wanton, or intentional misconduct in failing to disclose the information.

(n) *Firearms restriction record search or background check.* If a juvenile is adjudged delinquent for an act that would be a felony if committed by an adult, the court clerk shall notify the department of justice of that fact. No other information from the juvenile's court records may be disclosed to the department of justice except by order of the court. The department of justice may disclose any information provided under this subsection only as part of a firearms restrictions record search under s. 175.35 (2g) (c) or a background check under s. 175.60 (9g) (a).

(o) *Criminal history record search.* If a juvenile is adjudged delinquent for committing a serious crime, as defined in s. 48.685 (1) (c), the court clerk shall notify the department of justice of that fact. No other information from the juvenile's court records may be disclosed to the department of justice except by order of the court. The department of justice may disclose any information provided under this subsection only as part of a criminal history record search under s. 48.685 (2) (am) 1. or (b) 1. a.

(2m) ELECTRONIC COURT RECORDS. (a) In this subsection, "court" means the court assigned to exercise jurisdiction under this chapter and ch. 48.

(b) 1. The court shall make information relating to a proceeding under this chapter that is contained in the electronic records of the court available to any other court assigned to exercise jurisdiction under this chapter and ch. 48, a municipal

court exercising jurisdiction under s. 938.17 (2), a court of criminal jurisdiction, a person representing the interests of the public under s. 48.09 or 938.09, an attorney or guardian ad litem for a parent or child who is a party to a proceeding in a court assigned to exercise jurisdiction under this chapter or ch. 48 or a municipal court, a district attorney prosecuting a criminal case, a law enforcement agency, or the department, regardless of whether the person to whom the information is disclosed is a party to or is otherwise involved in the proceedings in which the electronic records containing that information were created. The director of state courts may use the circuit court automated information systems established under s. 758.19 (4) to make information contained in the electronic records of the court available as provided in this subdivision.

2. Subdivision 1. does not authorize disclosure of any information relating to the physical or mental health of an individual or that deals with any other sensitive personal matter of an individual, including information contained in a patient health care record, as defined in s. 146.81 (4), a treatment record, as defined in s. 51.30 (1) (b), the record of a proceeding under s. 48.135, a report resulting from an examination or assessment under s. 938.295, a court report under s. 938.33, or a permanency plan under s. 938.38, except with the informed consent of a person authorized to consent to that disclosure, by order of the court, or as otherwise permitted by law.

(c) 1g. A court assigned to exercise jurisdiction under this chapter and ch. 48, a municipal court exercising jurisdiction under s. 938.17 (2), or a court of criminal jurisdiction shall keep any information made available to that court under par. (b) 1. confidential and may use or allow access to that information only for the purpose of conducting or preparing for a proceeding in that court. That court may allow that access regardless of whether the person who is allowed that access is a party to or is otherwise involved in the proceedings in which the electronic records containing that information were created.

1m. A person representing the interests of the public under s. 48.09 or 938.09, an attorney or guardian ad litem for a parent or child who is a party to a proceeding in a court assigned to exercise jurisdiction under this chapter or ch. 48 or a municipal court, or a district attorney prosecuting a criminal case shall keep any information made available to that person under par. (b) 1. confidential and may use or allow access to that information only for the purpose of performing his or her official duties relating to a proceeding in a court assigned to exercise jurisdiction under this chapter and ch. 48, a municipal court, or a court of criminal jurisdiction. That person may allow that access regardless of whether the person who is allowed that access is a party to or is otherwise involved in the proceedings in which the electronic records containing that information were created.

1p. A law enforcement agency shall keep any information made available to the law enforcement agency under par. (b) 1. confidential and may use or allow access to that information only for the purpose of investigating alleged criminal activity or activity that may result in a court exercising jurisdiction under s. 938.12 or 938.13 (12). A law enforcement agency may allow that access regardless of whether the person who is allowed that access is a party to or is otherwise involved in the proceedings in which the electronic records containing that information were created.

1r. The department shall keep any information made available to the department under par. (b) 1. confidential and may use or allow access to that information only for the purpose of providing services under s. 48.06, 48.067, 48.069, 938.06, 938.067, or 938.069. The department may allow that access regardless of whether the person who is allowed that access is a party to or is otherwise involved in the proceedings in which the electronic records containing that information were created.

2. An individual who is allowed under subd. 1g., 1m., 1p., or 1r. to have access to any information made available under par. (b) 1. shall keep the information confidential and may use and further disclose the information only for the purpose described in subd. 1g., 1m., 1p., or 1r.

(d) Any person who intentionally uses or discloses information in violation of par. (c) may be required to forfeit not more than $5,000.

(3) MOTOR VEHICLE VIOLATION RECORDS. This section does not apply to proceedings for violations of chs. 340 to 349 and 351 or any county or municipal ordinance enacted under ch. 349, except that this section does apply to proceedings for violations of ss. 342.06 (2) and 344.48 (1), and ss. 30.67 (1) and 346.67 (1) when death or injury occurs.

(4) OPERATING PRIVILEGE RECORDS. When a court assigned to exercise jurisdiction under this chapter and ch. 48 or a municipal court exercising jurisdiction under s. 938.17 (2) revokes, suspends, or restricts a juvenile's operating privilege under this chapter, the department of transportation may not disclose information concerning or relating to the revocation, suspension, or restriction to any person other than a court assigned to exercise jurisdiction under this chapter and ch. 48, a municipal court exercising jurisdiction under s. 938.17 (2), a district attorney, county corporation counsel, or city, village, or town attorney, a law enforcement agency, a driver licensing agency of another jurisdiction, the juvenile whose operating privilege is revoked, suspended, or restricted, or the juvenile's parent or guardian. Persons entitled to receive this information may not disclose the information to other persons or agencies.

(10) SEXUALLY VIOLENT PERSON COMMITMENT. A law enforcement agency's records and records of the court assigned to exercise jurisdiction under this chapter and ch. 48 shall be open for inspection by authorized representatives of the department of corrections, the department of health services, the department of justice, or a district attorney for use in the prosecution of any proceeding or any evaluation conducted under ch. 980, if the records involve or relate to an individual who is the subject of the proceeding or evaluation. The court in which the proceeding under ch. 980 is pending may issue any protective orders that it determines are appropriate concerning information made available or disclosed under this subsection. Any representative of the department of corrections, the department of health services, the department of justice, or a district attorney may disclose information obtained under this subsection for any purpose consistent with any proceeding under ch. 980.

History: 1995 a. 27 s. 9126 (19); 1995 a. 77, 352, 440, 448; 1997 a. 27, 35, 80, 95, 181, 205, 252, 258, 281; 1999 a. 9, 32, 89; 2001 a. 95; 2003 a. 82, 292; 2005 a. 344, 434; 2005 a. 443 s. 265; 2007 a. 20 ss. 3826 to 3827, 9121 (6) (a); 2007 a. 97; 2009 a. 302, 309, 338; 2011 a. 35, 165, 260, 270.

The juvenile court must make a threshold relevancy determination by an in camera review when confronted with: 1) a discovery request under s. 48.293(2); 2) an inspection request of juvenile records under ss. 48.396 (2) and 938.396 (2); or 3) an inspection request of agency records under ss. 48.78 (2) (a) and 938.78(2)

(a). The test for permissible discovery is whether the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Courtney F. v. Ramiro M.C. 2004 WI App 36, 269 Wis. 2d 709, 676 N.W.2d 545, 03-3018.

Applicable law allows electronic transmission of certain confidential case information among clerks of circuit court, county sheriff's offices, and the Department of Justice through electronic interfaces involving the Department of Administration's Office of Justice Assistance, specifically including electronic data messages about arrest warrants issued in juvenile cases that are confidential under sub. (2). OAG 2-10.

SUBCHAPTER XI

AUTHORITY

938.505 Juveniles placed under correctional supervision. (1) RIGHTS AND DUTIES OF DEPARTMENT OR COUNTY DEPARTMENT. When a juvenile is placed under the supervision of the department under s. 938.183, 938.34 (4h), (4m) or (4n) or 938.357 (4) or (5) (e) or under the supervision of a county department under s. 938.34 (4n), the department or county department having supervision over the juvenile shall have the right and duty to protect, train, discipline, treat and confine the juvenile and to provide food, shelter, legal services, education and ordinary medical and dental care for the juvenile, subject to the rights, duties and responsibilities of the guardian of the juvenile and subject to any residual parental rights and responsibilities and the provisions of any court order.

(2) PSYCHOTROPIC MEDICATION. (a) If a juvenile 14 years of age or older is under the supervision of the department or a county department as described in sub. (1), is not residing in his or her home, and wishes to be administered psychotropic medication but a parent with legal custody or the guardian refuses to consent to the administration of psychotropic medication or cannot be found, or if there is no parent with legal custody, the department or county department acting on the juvenile's behalf may petition the court assigned to exercise jurisdiction under this chapter and ch. 48 in the county in which the juvenile is located for permission to administer psychotropic medication to the juvenile. A copy of the petition and a notice of hearing shall be served upon the parent or guardian at his or her last-known address. If, after hearing, the court determines that all of the following apply, the court shall grant permission for the department or county department to administer psychotropic medication to the juvenile without the parent's or guardian's consent:

1. The parent's or guardian's consent is unreasonably withheld, the parent or guardian cannot be found, or there is no parent with legal custody, except that the court may not determine that a parent's or guardian's consent is unreasonably withheld solely because the parent or guardian relies on treatment by spiritual means through prayer for healing in accordance with his or her religious tradition.

2. The juvenile is 14 years of age or older, is competent to consent to the administration of psychotropic medication, and voluntarily consents to the administration of psychotropic medication.

3. The juvenile, based on the recommendation of a physician, is in need of psychotropic medication, and psychotropic medication is appropriate for the juvenile's needs and is the least restrictive treatment consistent with those needs.

(b) The court may, at the request of the department or county department, temporarily approve the administration of psychotropic medication, for not more than 10 days after the date of the request, pending the hearing on the petition. The hearing shall be held within that 10-day period.

History: 1995 a. 77; 2005 a. 344.

Cross-reference: See also chs. DOC 375 and 383, Wis. adm. code.

938.51 Notification of release or escape of juvenile from correctional custody or supervision. (1) RELEASE FROM SECURED FACILITY OR SUPERVISION. At least 15 days prior to the date of release from a juvenile correctional facility or a secured residential care center for children and youth of a juvenile who has been adjudicated delinquent and at least 15 days prior to the release from the supervision of the department or a county department of a juvenile who has been adjudicated delinquent, the department or county department having supervision over the juvenile shall make a reasonable attempt to do all of the following:

(a) Notify all of the following local agencies in the community in which the juvenile will reside of the juvenile's return to the community:

1. The law enforcement agencies.

2. The school district.

3. The county departments under ss. 46.215, 46.22, 46.23, 51.42 and 51.437.

(b) Subject to pars. (c) and (cm), notify any known victim of the act for which the juvenile has been found delinquent of the juvenile's release, if all of the following apply:

2. The victim can be found.

3. The victim has sent in a request card under sub. (2) or, if the victim was under 18 years of age when his or her parent sent in a request card under sub. (2), the parent or guardian authorized on the request card direct notification of the victim after the victim attains 18 years of age.

(c) Subject to par. (cm), notify an adult relative of the victim of the juvenile's release if all of the following apply:

1. The victim died as a result of the juvenile's delinquent act.

2. The adult relative can be found.

3. The adult relative has sent in a request card under sub. (2).

(cm) Notify the victim's parent or legal guardian of the juvenile's release if all of the following apply:

1. The victim is younger than 18 years of age.

2. The parent or legal guardian can be found.

3. The parent or legal guardian has sent in a request card under sub. (2).

(d) Notify any witness who testified against the juvenile in any court proceeding involving the delinquent act of the juvenile's release if all of the following apply:

1. The witness can be found.

2. The witness has sent in a request card under sub. (2).

(1d) RELEASE FROM NONSECURED RESIDENTIAL CARE CENTER. At least 15 days prior to the release from a nonsecured residential care center for children and youth of a juvenile who has either been adjudicated delinquent under s. 48.12, 1993 stats., or s. 938.12 or been found to be in need of protection or services under s. 48.13 (12), 1993 stats., or s. 938.13 (12) and who has been found to have committed a violation of ch. 940 or of s. 948.02, 948.025, 948.03, or 948.085 (2), and at least 15 days prior to the release from a nonsecured residential care center for children and youth of a juvenile who

has been found to be in need of protection or services under s. 48.13 (14), 1993 stats., or s. 938.13 (14), the department or county department having supervision over the juvenile shall notify all of the following persons of the juvenile's release:

(a) Any known victim of the act for which the juvenile was found delinquent or to be in need of protection or services, if the criteria under sub. (1) (b) are met; an adult relative of the victim, if the criteria under sub. (1) (c) are met; or the victim's parent or guardian, if the criteria under sub. (1) (cm) are met.

(b) Any witness who testified against the juvenile in any court proceeding involving the act for which the juvenile was found delinquent or to be in need of protection or services, if the criteria under sub. (1) (d) are met.

(1g) RELEASE FROM INPATIENT FACILITY. At least 15 days prior to the release from an inpatient facility, as defined in s. 51.01 (10), of a juvenile who has been found to be in need of protection or services under s. 48.13 (14), 1993 stats., or s. 938.13 (14), the county department having supervision over the juvenile shall notify all of the following persons of the juvenile's release:

(a) Any known victim of the act for which the juvenile was found to be in need of protection or services, if the criteria under sub. (1) (b) are met; an adult relative of the victim, if the criteria under sub. (1) (c) are met; or the victim's parent or guardian, if the criteria under sub. (1) (cm) are met.

(b) Any witness who testified against the juvenile in any court proceeding involving the act for which the juvenile was found to be in need of protection or services, if the criteria under sub. (1) (d) are met.

(1m) NOTIFICATION OF LOCAL AGENCIES. The department or county department having supervision over a juvenile described in sub. (1) shall determine the local agencies that it will notify under sub. (1) (a) based on the residence of the juvenile's parents or on the juvenile's intended residence specified in the juvenile's aftercare supervision plan or, if those methods do not indicate the community in which the juvenile will reside following release from a juvenile correctional facility or a secured residential care center for children and youth or from the supervision of the department or county department, the community in which the juvenile states that he or she intends to reside.

(1r) CONTENTS OF NOTICE. The notification under sub. (1), (1d) or (1g) shall include only the juvenile's name, the date of the juvenile's release and the type of placement to which the juvenile is released.

(2) NOTIFICATION REQUEST CARDS. The department shall design and prepare cards for any person specified in sub. (1) (b), (c), (cm), or (d) to send to the department or county department having supervision over a juvenile described in sub. (1), (1d), or (1g). The cards shall have space for the person's name, telephone number and mailing address, the name of the applicable juvenile, and any other information that the department determines is necessary. The cards shall advise a victim who is under 18 years of age that he or she may complete a card requesting notification under sub. (1) (b), (1d), or (1g) if the notification occurs after the victim attains 18 years of age and advising the parent or guardian of a victim who is under 18 years of age that the parent or guardian may authorize on the card direct notification of the victim under sub. (1) (b), (1d), or (1g) if the notification occurs after the victim attains 18 years of age. The department shall provide the cards, without charge, to district attorneys. District attorneys shall provide the cards, without charge, to persons specified in sub. (1) (b) to (d). These persons may send completed cards to the department or county department having supervision over the juvenile. Department and county department records or portions of records that relate to telephone numbers and mailing addresses of these persons are not subject to inspection or copying under s. 19.35 (1).

(3) RELEASE NOT AFFECTED BY FAILURE TO NOTIFY. Timely release of a juvenile specified in sub. (1), (1d) or (1g) shall not be prejudiced by the fact that the department or county department having supervision over the juvenile did not provide notification as required under sub. (1), (1d) or (1g), whichever is applicable.

(4) NOTIFICATION IF ESCAPE OR ABSENCE. If a juvenile described in sub. (1), (1d), or (1g) escapes from a juvenile correctional facility, residential care center for children and youth, inpatient facility, juvenile detention facility, or juvenile portion of a county jail, or from the custody of a peace officer or a guard of such a facility, center, home, or jail, or has been allowed to leave a juvenile correctional facility, residential care center for children and youth, inpatient facility, juvenile detention facility, or juvenile portion of a county jail for a specified period of time and is absent from the facility, center, home, or jail for more than 12 hours after the expiration of the specified period, as soon as possible after the department or county department having supervision over the juvenile discovers the escape or absence, the department or county department shall make a reasonable attempt to notify by telephone all of the following persons:

(a) Any known victim of the act for which the juvenile was found delinquent or to be in need of protection or services, if the criteria under sub. (1) (b) are met; an adult relative of the victim, if the criteria under sub. (1) (c) are met; or the victim's parent or guardian, if the criteria under sub. (1) (cm) are met.

(b) Any witness who testified against the juvenile in any court proceeding involving the act for which the juvenile was found delinquent or to be in need of protection or services, if the criteria under sub. (1) (d) are met.

History: 1995 a. 77, 352; 1997 a. 181, 207; 1999 a. 9, 32, 186; 2001 a. 59; 2005 a. 277, 344.

SUBCHAPTER XII

COUNTY JUVENILE WELFARE SERVICES

938.59 Examination and records. (1) INVESTIGATION AND EXAMINATION. The county department shall investigate the personal and family history and environment of any juvenile transferred to its legal custody or placed under its supervision under s. 938.34 (4d) or (4n) and make any physical or mental examinations of the juvenile considered necessary to determine the type of care necessary for the juvenile. The county department shall screen a juvenile who is examined to determine whether the juvenile is in need of special treatment or care because of alcohol or other drug abuse, mental illness, or severe emotional disturbance. The county department shall keep a complete record of the information received from the court, the date of reception, all available data on the personal and family history of the juvenile, the results of all tests and

examinations given the juvenile, and a complete history of all placements of the juvenile while in the legal custody or under the supervision of the county department.

(2) REPORT TO THE DEPARTMENT. At the department's request, the county department shall report to the department regarding juveniles in the legal custody or under the supervision of the county department.

History: 1995 a. 77, 352; 2005 a. 344.

SUBCHAPTER XVII

GENERAL PROVISIONS ON RECORDS

938.78 Confidentiality of records. (1) DEFINITION. In this section, unless otherwise qualified, "agency" means the department, a county department or a licensed child welfare agency.

(2) CONFIDENTIALITY; EXCEPTIONS. (a) No agency may make available for inspection or disclose the contents of any record kept or information received about an individual who is or was in its care or legal custody, except as provided under sub. (3) or s. 48.396 (3) (bm) or (c) 1r., 938.371, 938.38 (5) (b) or (d) or (5m) (d), 938.396 (2m) (c) 1r., 938.51, or 938.57 (2m) or by order of the court.

(ag) Paragraph (a) does not prohibit an agency from making available for inspection or disclosing the contents of a record, upon the request of the parent, guardian, or legal custodian of the juvenile who is the subject of the record or upon the request of the juvenile, if 14 years of age or older, to the parent, guardian, legal custodian, or juvenile, unless the agency finds that inspection of the record by the juvenile, parent, guardian, or legal custodian would result in imminent danger to anyone.

(am) Paragraph (a) does not prohibit an agency from making available for inspection or disclosing the contents of a record, upon the written permission of the parent, guardian, or legal custodian of the juvenile who is the subject of the record or upon the written permission of the juvenile, if 14 years of age or older, to the person named in the permission if the parent, guardian, legal custodian, or juvenile specifically identifies the record in the written permission, unless the agency determines that inspection of the record by the person named in the permission would result in imminent danger to anyone.

(b) 1. Paragraph (a) does not apply to the confidential exchange of information between an agency and another social welfare agency, a law enforcement agency, the victim-witness coordinator, a fire investigator under s. 165.55 (15), a public school district or a private school regarding an individual in the care or legal custody of the agency. A social welfare agency that obtains information under this paragraph shall keep the information confidential as required under this section and s. 48.78. A law enforcement agency that obtains information under this paragraph shall keep the information confidential as required under ss. 48.396 (1) and 938.396 (1) (a). A public school that obtains information under this paragraph shall keep the information confidential as required under s. 118.125, and a private school that obtains information under this paragraph shall keep the information confidential in the same manner as is required of a public school under s. 118.125. Paragraph (a) does not apply to the confidential exchange of information between an agency and officials of a tribal school regarding an individual in the care or legal custody of the agency if the agency determines that enforceable protections are provided by a tribal school policy or tribal law that requires tribal school officials to keep the information confidential in a manner at least as stringent as is required of a public school official under s. 118.125.

1m. An agency may enter into an interagency agreement with a school board, a private school, a tribal school, a law enforcement agency, or another social welfare agency providing for the routine disclosure of information under subd. 1. to the school board, private school, tribal school, law enforcement agency, or other social welfare agency.

2. On petition of an agency to review pupil records, as defined in s. 118.125 (1) (d), other than pupil records that may be disclosed without court order under s. 118.125 (2) or (2m), for the purpose of providing treatment or care for an individual in the care or legal custody of the agency, the court may order the school board of the school district, or the governing body of the private school, in which an individual is enrolled to disclose to the agency the pupil records of the individual as necessary for the agency to provide that treatment or care. The court may request the governing body of the tribal school in which an individual is enrolled to disclose to the agency the pupil records of the individual as necessary for the agency to provide that treatment or care. The agency may use the pupil records only for the purpose of providing treatment or care and may make the pupil records available only to employees of the agency who are providing treatment or care for the individual.

(d) Paragraph (a) does not prohibit the department of health services or a county department from disclosing information about an individual formerly in the legal custody or under the supervision of that department under s. 48.34 (4m), 1993 stats., or formerly under the supervision of that department or county department under s. 48.34 (4n), 1993 stats., or s. 938.34 (4d) or (4n) to the department of corrections, if the individual is at the time of disclosure any of the following:

1. The subject of a presentence investigation under s. 972.15.

2. Under sentence to the Wisconsin state prisons under s. 973.15.

3. Subject to an order under s. 48.366 or 938.183 and placed in a state prison under s. 48.366 (8) or 938.183.

4. On probation to the department of corrections under s. 973.09.

5. On parole under s. 302.11 or ch. 304 or on extended supervision under s. 302.113 or 302.114.

(e) Notwithstanding par. (a), an agency shall, upon request, disclose information to authorized representatives of the department of corrections, the department of health services, the department of justice, or a district attorney for use in the prosecution of any proceeding or any evaluation conducted under ch. 980, if the information involves or relates to an individual who is the subject of the proceeding or evaluation. The court in which the proceeding under ch. 980 is pending may issue any protective orders that it determines are appropriate concerning information disclosed under this paragraph. Any representative of the department of corrections, the department of health services, the department of justice, or a district attorney may disclose information obtained under this paragraph for any purpose consistent with any proceeding under ch. 980.

(g) Paragraph (a) does not prohibit an agency from disclosing information about an individual in its care or legal custody on the written request of the department of safety and professional services or of any interested examining board or affiliated credentialing board in that department for use in any investigation or proceeding relating to any alleged misconduct by any person who is credentialed or who is seeking credentialing under ch. 448, 455 or 457. Unless authorized by an order of the court, the department of safety and professional services and any examining board or affiliated credentialing board in that department shall keep confidential any information obtained under this paragraph and may not disclose the name of or any other identifying information about the individual who is the subject of the information disclosed, except to the extent that redisclosure of that information is necessary for the conduct of the investigation or proceeding for which that information was obtained.

(h) Paragraph (a) does not prohibit the department of children and families, a county department, or a licensed child welfare agency from entering the content of any record kept or information received by that department, county department, or licensed child welfare agency into the statewide automated child welfare information system established under s. 48.47 (7g) or the department of children and families from transferring any information maintained in that system to the court under s. 48.396 (3) (bm). If the department of children and families transfers that information to the court, the court and the director of state courts may allow access to that information as provided in s. 48.396 (3) (c) 2.

(i) Paragraph (a) does not prohibit an agency from disclosing information to a relative of a juvenile placed outside of his or her home only to the extent necessary to facilitate the establishment of a relationship between the juvenile and the relative or a placement of the juvenile with the relative or from disclosing information under s. 938.21 (5) (e), 938.355 (2) (cm), or 938.357 (2v) (d). In this paragraph, "relative" includes a relative whose relationship is derived through a parent of the juvenile whose parental rights are terminated.

(3) RELEASE OF INFORMATION WHEN ESCAPE OR ABSENCE; RULES. If a juvenile adjudged delinquent under s. 48.12, 1993 stats., or s. 938.12 or found to be in need of protection or services under s. 48.13 (12), 1993 stats., or s. 48.13 (14), 1993 stats., or s. 938.13 (12) or (14) on the basis of a violation of s. 943.23 (1m) or (1r), 1999 stats., or s. 941.10, 941.11, 941.20, 941.21, 941.23, 941.235, 941.237, 941.24, 941.26, 941.28, 941.295, 941.298, 941.30, 941.31, 941.32, 941.325, 943.02, 943.03, 943.04, 943.10 (2) (a), 943.23 (1g), 943.32 (2), 948.02, 948.025, 948.03, 948.05, 948.055, 948.085 (2), 948.60, 948.605, or 948.61 or any crime specified in ch. 940 has escaped from a juvenile correctional facility, residential care center for children and youth, inpatient facility, as defined in s. 51.01 (10), juvenile detention facility, or juvenile portion of a county jail, or from the custody of a peace officer or a guard of such a facility, center, or jail, or has been allowed to leave a juvenile correctional facility, residential care center for children and youth, inpatient facility, juvenile detention facility, or juvenile portion of a county jail for a specified time period and is absent from the facility, center, home, or jail for more than 12 hours after the expiration of the specified period, the department or county department having supervision over the juvenile may release the juvenile's name and any information about the juvenile that is necessary for the protection of the public or to secure the juvenile's return to the facility, center, home, or jail. The department shall promulgate rules establishing guidelines for the release of the juvenile's name or information about the juvenile to the public.

History: 1995 a. 27 s. 9126 (19); 1995 a. 77, 230, 352; 1997 a. 205, 207, 283; 1999 a. 9; 2001 a. 38, 59, 109; 2003 a. 292, 321; 2005 a. 25, 277, 293, 344, 406, 434; 2007 a. 20 ss. 3834, 9121 (6) (a); 2007 a. 97; 2009 a. 79, 302, 338; 2011 a. 32, 270.

As a juvenile has a constitutional right to both inspect and reply to a hearing examiner's report on the revocation of aftercare supervision, s. 48.78 does not prevent a juvenile from having access to the report. State ex rel. R.R. v. Schmidt, 63 Wis. 2d 82, 216 N.W.2d 18 (1974).

NOTE: The above annotation cites to s. 48.78, the predecessor statute to s. 938.78.

The juvenile court must make a threshold relevancy determination by an in camera review when confronted with: 1) a discovery request under s. 48.293(2); 2) an inspection request of juvenile records under ss. 48.396 (2) and 938.396 (2); or 3) an inspection request of agency records under ss. 48.78 (2) (a) and 938.78(2) (a). The test for permissible discovery is whether the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Courtney F. v. Ramiro M.C. 2004 WI App 36, 269 Wis. 2d 709, 676 N.W.2d 545, 03-3018.

SUBCHAPTER XX

MISCELLANEOUS PROVISIONS

938.988 Interstate placement of juveniles. Sections 48.988 and 48.989 apply to the interstate placement of juveniles, except that s. 48.99, rather than those sections, applies to the interstate placement of juveniles following withdrawal from the Interstate Compact on the Placement of Children as described in s. 48.9895.

History: 1995 a. 77; 2009 a. 339.

938.991 Interstate compact on juveniles. The following compact, by and between the state of Wisconsin and any other state which has or shall hereafter ratify or legally join in the same, is ratified and approved:

INTERSTATE COMPACT ON JUVENILES.

The contracting states solemnly agree:

(1) ARTICLE I — FINDINGS AND PURPOSES. That juveniles who are not under proper supervision and control, or who have absconded, escaped or run away, are likely to endanger their own health, morals and welfare, and the health, morals and welfare of others. The cooperation of the states party to this compact is therefore necessary to provide for the welfare and protection of juveniles and of the public with respect to (1) cooperative supervision of delinquent juveniles on probation, extended supervision or parole; (2) the return, from one state to another, of delinquent juveniles who have escaped or absconded; (3) the return, from one state to another, of nondelinquent juveniles who have run away from home; and (4) additional measures for the protection of juveniles and of the public, which any 2 or more of the party states may find desirable to undertake cooperatively. In carrying out the provisions of this compact the party states shall be guided by the noncriminal, reformative and protective policies which guide their laws concerning delinquent, neglected or dependent juveniles generally. It shall be the policy of the states party to this compact to cooperate and observe their respective responsibilities for the prompt return and acceptance of juveniles and delinquent juveniles who become subject to the provisions of this compact. The provisions of this compact

shall be reasonably and liberally construed to accomplish the foregoing purposes.

(2) ARTICLE II — EXISTING RIGHTS AND REMEDIES. That all remedies and procedures provided by this compact shall be in addition to and not in substitution for other rights, remedies and procedures, and shall not be in derogation of parental rights and responsibilities.

(3) ARTICLE III — DEFINITIONS. That, for the purposes of this compact:

(a) "Court" means any court having jurisdiction over delinquent, neglected or dependent children.

(b) "Delinquent juvenile" means any juvenile who has been adjudged delinquent and who, at the time the provisions of this compact are invoked, is still subject to the jurisdiction of the court that has made such adjudication or to the jurisdiction or supervision of an agency or institution pursuant to an order of such court.

(c) "Probation, extended supervision or parole" means any kind of conditional release of juveniles authorized under the laws of the states party hereto.

(d) "Residence" or any variant thereof means a place at which a home or regular place of abode is maintained.

(e) "State" means any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(4) ARTICLE IV — RETURN OF RUNAWAYS. (a) That the parent, guardian, person or agency entitled to legal custody of a juvenile who has not been adjudged delinquent but who has run away without the consent of that parent, guardian, person or agency may petition the appropriate court in the demanding state for the issuance of a requisition for the return of the juvenile. The petition shall state the name and age of the juvenile, the name of the petitioner and the basis of entitlement to the juvenile's custody, the circumstances of the juvenile's running away, the juvenile's location if known at the time application is made, and such other facts as may tend to show that the juvenile who has run away is endangering his or her welfare or the welfare of others and is not an emancipated minor. The petition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by 2 certified copies of the document or documents on which the petitioner's entitlement to the juvenile's custody is based, such as birth certificates, letters of guardianship, or custody decrees. Further affidavits and other documents as may be deemed proper may be submitted with the petition. The judge of the court to which this application is made may hold a hearing thereon to determine whether for the purposes of this compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not the juvenile is an emancipated minor, and whether or not it is in the best interest of the juvenile to compel the return of the juvenile to the state. If the judge determines, either with or without a hearing, that the juvenile should be returned, the judge shall present to the appropriate court or to the executive authority of the state where the juvenile is alleged to be located a written requisition for the return of the juvenile. The requisition shall set forth the name and age of the juvenile, the determination of the court that the juvenile has run away without the consent of a parent, guardian, person or agency entitled to legal custody of the juvenile, and that the return of the juvenile is in the best interest and for the protection of the juvenile. In the event that a proceeding for the adjudication of the juvenile as a delinquent, neglected or dependent juvenile is pending in the court at the time when the juvenile runs away, the court may issue a requisition for the return of the juvenile upon its own motion, regardless of the consent of the parent, guardian, person or agency entitled to legal custody, reciting therein the nature and circumstances of the pending proceeding. The requisition shall in every case be executed in duplicate and shall be signed by the judge. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of the court. Upon the receipt of a requisition demanding the return of a juvenile who has run away, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing that person to take into custody and detain the juvenile. The detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No juvenile detained upon a detention order shall be delivered over to the officer whom the court demanding the juvenile shall have appointed to receive the juvenile, unless the juvenile shall first be taken forthwith before a judge of a court in the state, who shall inform the juvenile of the demand made for his or her return, and who may appoint counsel or guardian ad litem for the juvenile. If the judge shall find that the requisition is in order, the judge shall deliver the juvenile over to the officer whom the court demanding the juvenile shall have appointed to receive the juvenile. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

(am) Upon reasonable information that a person is a juvenile who has run away from another state party to this compact without the consent of a parent, guardian, person or agency entitled to that juvenile's legal custody, that juvenile may be taken into custody without a requisition and brought forthwith before a judge of the appropriate court who may appoint counsel or guardian ad litem for the juvenile and who shall determine after a hearing whether sufficient cause exists to hold the juvenile, subject to the order of the court, for the juvenile's own protection and welfare, for such a time not exceeding 90 days as will enable the return of the juvenile to another state party to this compact pursuant to a requisition for the return of the juvenile from a court of that state. If, at the time when a state seeks the return of a juvenile who has run away, there is pending in the state wherein the juvenile is found any criminal charge, or any proceeding to have the juvenile adjudicated a delinquent juvenile for an act committed in that state, or if the juvenile is suspected of having committed within that state a criminal offense or an act of juvenile delinquency, the juvenile shall not be returned without the consent of that state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for the offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of the officers' authority and the identity of the juvenile being returned, shall be permitted to transport the juvenile through any and all states party to this compact, without interference. Upon the return of the juvenile to the state from which the juvenile ran away, the juvenile shall be subject to further proceedings as may be appropriate under the laws of that state.

(b) That the state to which a juvenile is returned under this subsection shall be responsible for payment of the transportation costs of such return.

(c) That "juvenile" as used in this subsection means any person who is a minor under the law of the state of residence of the parent, guardian, person or agency entitled to legal custody of such minor.

(5) ARTICLE V — RETURN OF ESCAPEES AND ABSCONDERS. (a) That the appropriate person or authority from whose probation, extended supervision or parole supervision a delinquent juvenile has absconded or from whose institutional custody the delinquent juvenile has escaped shall present to the appropriate court or to the executive authority of the state where the delinquent juvenile is alleged to be located a written requisition for the return of the delinquent juvenile. The requisition shall state the name and age of the delinquent juvenile, the particulars of that person's adjudication as a delinquent juvenile, the circumstances of the breach of the terms of the delinquent juvenile's probation, extended supervision or parole or of the delinquent juvenile's escape from an institution or agency vested with legal custody or supervision of the delinquent juvenile, and the location of the delinquent juvenile, if known, at the time the requisition is made. The requisition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by 2 certified copies of the judgment, formal adjudication, or order of commitment which subjects the delinquent juvenile to probation, extended supervision or parole or to the legal custody of the institution or agency concerned. Further affidavits and other documents as may be deemed proper may be submitted with the requisition. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of the appropriate court. Upon the receipt of a requisition demanding the return of a delinquent juvenile who has absconded or escaped, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing that person to take into custody and detain the delinquent juvenile. The detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No delinquent juvenile detained upon a detention order shall be delivered over to the officer whom the appropriate person or authority demanding the delinquent juvenile shall have appointed to receive the delinquent juvenile, unless the delinquent juvenile shall first be taken forthwith before a judge of an appropriate court in the state, who shall inform the delinquent juvenile of the demand made for the return of the delinquent juvenile and who may appoint counsel or guardian ad litem for the delinquent juvenile. If the judge shall find that the requisition is in order, the judge shall deliver the delinquent juvenile over to the officer whom the appropriate person or authority demanding shall have appointed to receive the delinquent juvenile. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

(am) Upon reasonable information that a person is a delinquent juvenile who has absconded while on probation, extended supervision or parole, or escaped from an institution or agency vested with legal custody or supervision of the person in any state party to this compact, the person may be taken into custody in any other state party to this compact without a requisition. In that event, the person must be taken forthwith before a judge of the appropriate court, who may appoint counsel or guardian ad litem for the person and who shall determine, after a hearing, whether sufficient cause exists to hold the person subject to the order of the court for a time, not exceeding 90 days, as will enable the person's detention under a detention order issued on a requisition pursuant to this subsection. If, at the time when a state seeks the return of a delinquent juvenile who has either absconded while on probation, extended supervision or parole or escaped from an institution or agency vested with legal custody or supervision of the delinquent juvenile, there is pending in the state wherein the delinquent juvenile is detained any criminal charge or any proceeding to have the delinquent juvenile adjudicated a delinquent juvenile for an act committed in that state, or if the delinquent juvenile is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, the delinquent juvenile shall not be returned without the consent of that state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of the officers' authority and the identity of the delinquent juvenile being returned, shall be permitted to transport the delinquent juvenile through any and all states party to this compact, without interference. Upon the return of the delinquent juvenile to the state from which the delinquent juvenile escaped or absconded, the delinquent juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(b) That the state to which a delinquent juvenile is returned under this subsection shall be responsible for payment of the transportation costs of such return.

(6) ARTICLE VI — VOLUNTARY RETURN PROCEDURE. That any delinquent juvenile who has absconded while on probation, extended supervision or parole, or escaped from an institution or agency vested with legal custody or supervision of the delinquent juvenile in any state party to this compact, and any juvenile who has run away from any state party to this compact, who is taken into custody without a requisition in another state party to this compact under sub. (4) (a) or (5) (a), may consent to his or her immediate return to the state from which the juvenile or delinquent juvenile absconded, escaped or ran away. Consent shall be given by the juvenile or delinquent juvenile and his or her counsel or guardian ad litem, if any, by executing or subscribing a writing, in the presence of a judge of the appropriate court, which states that the juvenile or delinquent juvenile and his or her counsel or guardian ad litem, if any, consent to the return of the juvenile or delinquent juvenile to the demanding state. Before the consent shall be executed or subscribed, however, the judge, in the presence of counsel or guardian ad litem, if any, shall inform the juvenile or delinquent juvenile of his or her rights under this compact. When the consent has been duly executed, it shall be forwarded to and filed with the compact administrator of the state in which the court is located and the judge shall direct the officer having the juvenile or delinquent juvenile in custody to deliver the juvenile or delinquent juvenile to the duly accredited officer or officers of the state demanding the return of the juvenile or delinquent juvenile, and shall cause to be delivered to the officer or officers a copy of the consent. The court may, however, upon the

request of the state to which the juvenile or delinquent juvenile is being returned, order the juvenile or delinquent juvenile to return unaccompanied to that state and shall provide the juvenile or delinquent juvenile with a copy of the court order; in that event a copy of the consent shall be forwarded to the compact administrator of the state to which the juvenile or delinquent juvenile is ordered to return.

(7) ARTICLE VII — COOPERATIVE SUPERVISION OF PROBATIONERS, PERSONS ON EXTENDED SUPERVISION AND PAROLEES. (a) That the duly constituted judicial and administrative authorities of a state party to this compact (herein called "sending state") may permit any delinquent juvenile within such state, placed on probation, extended supervision or parole, to reside in any other state party to this compact (herein called "receiving state") while on probation, extended supervision or parole, and the receiving state shall accept such delinquent juvenile, if the parent, guardian or person entitled to the legal custody of such delinquent juvenile is residing or undertakes to reside within the receiving state. Before granting such permission, opportunity shall be given to the receiving state to make such investigations as it deems necessary. The authorities of the sending state shall send to the authorities of the receiving state copies of pertinent court orders, social case studies and all other available information which may be of value to and assist the receiving state in supervising a probationer, parolee or person under extended supervision under this compact. A receiving state, in its discretion, may agree to accept supervision of a probationer, parolee or person under extended supervision in cases where the parent, guardian or person entitled to legal custody of the delinquent juvenile is not a resident of the receiving state, and if so accepted the sending state may transfer supervision accordingly.

(b) That each receiving state will assume the duties of visitation and of supervision over any such delinquent juvenile and in the exercise of those duties will be governed by the same standards of visitation and supervision that prevail for its own delinquent juveniles released on probation, extended supervision or parole.

(c) That, after consultation between the appropriate authorities of the sending state and of the receiving state as to the desirability and necessity of returning such a delinquent juvenile, the duly accredited officers of a sending state may enter a receiving state and there apprehend and retake any such delinquent juvenile on probation, extended supervision or parole. For that purpose, no formalities will be required, other than establishing the authority of the officer and the identity of the delinquent juvenile to be retaken and returned. The decision of the sending state to retake a delinquent juvenile on probation, extended supervision or parole shall be conclusive upon and not reviewable within the receiving state, but if, at the time the sending state seeks to retake a delinquent juvenile on probation, extended supervision or parole, there is pending against the delinquent juvenile within the receiving state any criminal charge or any proceeding to have the delinquent juvenile adjudicated a delinquent juvenile for any act committed in that state, or if the delinquent juvenile is suspected of having committed within that state a criminal offense or an act of juvenile delinquency, the delinquent juvenile shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of the sending state shall be permitted to transport delinquent juveniles being so returned through any and all states party to this compact, without interference.

(d) That the sending state shall be responsible under this subsection for paying the costs of transporting any delinquent juvenile to the receiving state or of returning any delinquent juvenile to the sending state.

(8) ARTICLE VIII — RESPONSIBILITY FOR COSTS. (a) That subs. (4) (b), (5) (b) and (7) (d) shall not be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

(b) That nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to sub. (4) (b), (5) (b) or (7) (d).

(9) ARTICLE IX — DETENTION PRACTICES. That, to every extent possible, it shall be the policy of states party to this compact that no juvenile or delinquent juvenile shall be placed or detained in any prison, jail or lockup nor be detained or transported in association with criminal, vicious or dissolute persons.

(10) ARTICLE X — SUPPLEMENTARY AGREEMENTS. That the duly constituted administrative authorities of a state party to this compact may enter into supplementary agreements with any other state or states party hereto for the cooperative care, treatment and rehabilitation of delinquent juveniles whenever they shall find that such agreements will improve the facilities or programs available for such care, treatment and rehabilitation. Such care, treatment and rehabilitation may be provided in an institution located within any state entering into such supplementary agreement. Such supplementary agreements shall:

(a) Provide the rates to be paid for the care, treatment and custody of such delinquent juveniles, taking into consideration the character of facilities, services and subsistence furnished;

(b) Provide that the delinquent juvenile shall be given a court hearing prior to being sent to another state for care, treatment and custody;

(c) Provide that the state receiving such a delinquent juvenile in one of its institutions shall act solely as agent for the state sending such delinquent juvenile;

(d) Provide that the sending state shall at all times retain jurisdiction over delinquent juveniles sent to an institution in another state;

(e) Provide for reasonable inspection of such institutions by the sending state;

(f) Provide that the consent of the parent, guardian, person or agency entitled to the legal custody of said delinquent juvenile shall be secured prior to the delinquent juvenile's being sent to another state; and

(g) Make provision for such other matters and details as shall be necessary to protect the rights and equities of such delinquent juveniles and of the cooperating states.

(11) ARTICLE XI — ACCEPTANCE OF FEDERAL AND OTHER AID. That any state party to this compact may accept any and all donations, gifts and grants of money, equipment and services

from the federal or any local government, or any agency thereof and from any person, firm or corporation, for any of the purposes and functions of this compact, and may receive and utilize the same subject to the terms, conditions and regulations governing such donations, gifts and grants.

(12) ARTICLE XII — COMPACT ADMINISTRATORS. That the governor of each state party to this compact shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

(13) ARTICLE XIII — EXECUTION OF COMPACT. That this compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state.

(14) ARTICLE XIV — RENUNCIATION. That this compact shall continue in force and remain binding upon each executing state until renounced by it. Renunciation of this compact shall be by the same authority which executed it, by sending 6 months notice in writing of its intention to withdraw from the compact to the other states party hereto. The duties and obligations of a renouncing state under sub. (7) shall continue as to parolees, probationers and persons on extended supervision residing therein at the time of withdrawal until retaken or finally discharged. Supplementary agreements entered into under sub. (10) shall be subject to renunciation as provided by such supplementary agreements, and shall not be subject to the 6 months' renunciation notice of the present Article.

(15) ARTICLE XV — SEVERABILITY. That the provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: 1981 c. 390; 1983 a. 189; 1991 a. 316; 1995 a. 77 s. 388; Stats. 1995 s. 938.991; 1997 a. 283; 1999 a. 85.

Cross-reference: See the appendix for a list of states that have ratified this compact.

938.992 Definitions. As used in the interstate compact on juveniles, the following words and phrases have the following meanings as to this state:

(1) (a) The "appropriate court" of this state to issue a requisition under s. 938.991 (4) is the court assigned to exercise jurisdiction under this chapter and ch. 48 for the county of the petitioner's residence, or, if the petitioner is a child welfare agency, the court so assigned for the county where the agency has its principal office, or, if the petitioner is the department, any court so assigned in the state.

(b) The "appropriate court" of this state to receive a requisition under s. 938.991 (4) or (5) or 938.998 is the court assigned to exercise jurisdiction under this chapter and ch. 48 for the county where the juvenile is located.

(2) "Executive authority" means the compact administrator.

(3) Notwithstanding s. 938.991 (3) (b), "delinquent juvenile" does not include a person subject to an order under s. 48.366 who is confined to a state prison under s. 302.01.

History: 1977 c. 449; 1981 c. 390; 1983 a. 189; 1985 a. 294; 1987 a. 27; 1989 a. 31, 107; 1995 a. 27; 1995 a. 77 s. 389 to 392; Stats. 1995 s. 938.992; 2005 a. 344.

938.999 Interstate Compact for Juveniles. (1) ARTICLE I — PURPOSE. (a) The compacting states to this interstate compact recognize that each state is responsible for the proper supervision or return of juveniles, delinquents, and status offenders who are on probation or parole and who have absconded, escaped, or run away from supervision and control and in so doing have endangered their own safety and the safety of others. The compacting states also recognize that each state is responsible for the safe return of juveniles who have run away from home and in doing so have left their state of residence. The compacting states also recognize that the U.S. Congress, by enacting the Crime Control Act, 4 USC 112, has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

(b) It is the purpose of this compact, through means of joint and cooperative action among the compacting states, to do all of the following:

1. Ensure that the adjudicated juveniles and status offenders who are subject to this compact are provided with adequate supervision and services in the receiving state as ordered by the adjudicating judge or parole authority in the sending state.

2. Ensure that the public safety interests of the citizens, including the victims of juvenile offenders, in both the sending and receiving states are adequately protected.

3. Return juveniles who have run away, absconded, or escaped from supervision or control or who have been accused of an offense to the state requesting their return.

4. Make contracts for the cooperative institutionalization in public facilities in member states of delinquent youth needing special services.

5. Provide for the effective tracking and supervision of juveniles.

6. Equitably allocate the costs, benefits, and obligations of the compact among the compacting states.

7. Establish procedures to manage the movement between states of juvenile offenders who are released to the community under the jurisdiction of courts, juvenile departments, or other criminal or juvenile justice agencies that have jurisdiction over juvenile offenders.

8. Ensure that immediate notice is given to jurisdictions where defined offenders are authorized to travel or to relocate across state lines.

9. Establish procedures to resolve pending charges or detainers against juvenile offenders before transfer or release to the community under this compact.

10. Establish a system of uniform data collection of information pertaining to juveniles who are subject to this compact that allows access by authorized juvenile justice and criminal justice officials and a system of regular reporting of compact activities to heads of state executive, judicial, and legislative branches and juvenile and criminal justice administrators.

11. Monitor compliance with the rules governing the interstate movement of juveniles and intervene to address and correct any noncompliance with those rules.

12. Coordinate training and education regarding the regulation of the interstate movement of juveniles for officials who are involved in that activity.

13. Coordinate the implementation and operation of this compact with the Interstate Compact on the Placement of Children under ss. 48.988 and 48.989, the Interstate Compact for the Placement of Children under s. 48.99, the Interstate Compact for Adult Offender Supervision under s. 304.16, and other compacts affecting juveniles, particularly in those cases in which concurrent or overlapping supervision issues arise.

(c) It is the policy of the compacting states that the activities conducted by the interstate commission are the formation of public policies and, therefore, are public business. Furthermore, the compacting states shall cooperate with each other and observe their individual and collective duties and responsibilities for the prompt return and acceptance of juveniles who are subject to this compact.

(d) The compact shall be reasonably and liberally construed to accomplish the purposes and policies of the compact.

(2) ARTICLE II — DEFINITIONS. In this section:

(a) "Bylaws" means the bylaws established by the interstate commission for its governance or for directing or controlling its actions or conduct.

(b) "Commissioner" means the voting representative of each compacting state appointed under sub. (3) (b).

(c) "Compact administrator" means the person appointed under this compact in each compacting state who is responsible for the administration and management of the state's supervision and transfer of juveniles who are subject to this compact, the rules, and the policies adopted by the state board under this compact.

(d) "Compacting state" means a state that has enacted the enabling legislation for this compact.

(e) "Court" means a court having jurisdiction over delinquent, neglected, or dependent juveniles.

(f) "Deputy compact administrator" means the person, if any, appointed in each compacting state to act on behalf of a compact administrator in the administration and management of the state's supervision and transfer of juveniles who are subject to this compact, the rules, and the policies adopted by the state board under this compact.

(g) "Interstate commission" means the interstate commission for juveniles established under sub. (3) (a).

(h) "Juvenile" means a person who is defined as a juvenile under the law of any compacting state or by the rules, including all of the following:

1. An accused delinquent. For purposes of this subdivision, "accused delinquent" means a person who is charged with an offense that, if committed by an adult, would be a criminal offense.

2. An adjudicated delinquent. For purposes of this subdivision, "adjudicated delinquent" means a person who has been found to have committed an offense that, if committed by an adult, would be a criminal offense.

3. An accused status offender. For purposes of this subdivision, "accused status offender" means a person who is charged with an offense that would not be a criminal offense if committed by an adult.

4. An adjudicated status offender. For purposes of this subdivision, "adjudicated status offender" means a person who has been found to have committed an offense that would not be a criminal offense if committed by an adult.

5. A nonoffender. For purposes of this subdivision, "nonoffender" means a person who is in need of supervision, but who has not been charged with or found to have committed an offense.

(i) "Noncompacting state" means a state that has not enacted the enabling legislation for this compact.

(j) "Probation or parole" means any kind of supervision or conditional release of a juvenile that is authorized under the laws of a compacting state.

(k) Except as provided in sub. (6) (f), "rule" means a written statement by the interstate commission promulgated under sub. (6) that is of general applicability; that implements, interprets, or prescribes a policy or provision of the compact or an organizational, procedural, or practice requirement of the interstate commission; and that has the force of statutory law in a compacting state. "Rule" includes the amendment, repeal, or suspension of an existing rule.

(L) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, or the Northern Marianas Islands.

(m) "State board" means the state board for interstate juvenile supervision created by each compacting state under sub. (9).

(3) ARTICLE III — INTERSTATE COMMISSION FOR JUVENILES. (a) There is created the interstate commission for juveniles. The interstate commission shall be a body corporate and joint agency of the compacting states. The interstate commission shall have all of the responsibilities, powers, and duties specified in this section and such additional powers as may be conferred upon the interstate commission by subsequent action of the respective legislatures of the compacting states exercised in accordance with this compact.

(b) The interstate commission shall consist of commissioners appointed by the appropriate appointing authority in each compacting state under the requirements of the compacting state and in consultation with the state board of the compacting state. The commissioner shall be the compact administrator, deputy compact administrator, or designee from the compacting state and shall serve on the interstate commission in that capacity under the applicable law of the compacting state.

(c) In addition to the commissioners who are the voting representatives of each compacting state, the interstate commission shall include, as nonvoting members, persons who are members of interested organizations. Those nonvoting members shall include members of the national organizations of governors, legislators, state supreme court chief justices, attorneys general, juvenile justice and juvenile corrections officials, and crime victims and members of the Interstate Compact on the Placement of Children, the Interstate Compact for the Placement of Children, and the Interstate Compact for Adult Offender Supervision. The interstate commission may provide in the bylaws for the inclusion of additional nonvoting

members, including members of other national organizations, in such numbers as may be determined by the interstate commission.

(d) Each compacting state represented at any meeting of the interstate commission is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws.

(e) The interstate commission shall meet at least once each year. The chairperson may call additional meetings and, upon the request of a simple majority of the compacting states, shall call additional meetings. Public notice shall be given of all meetings and, except as provided in par. (i), meetings shall be open to the public.

(f) The interstate commission shall establish an executive committee, which shall include officers and members of the interstate commission and others as determined by the bylaws. The executive committee may act on behalf of the interstate commission during periods when the interstate commission is not in session, with the exception of rule making and amending the compact. The executive committee shall oversee the day-to-day activities of the administration of the compact that are managed by an executive director and interstate commission staff; administer enforcement of and compliance with the compact, the bylaws, and the rules; and perform such other duties as directed by the interstate commission or as specified in the bylaws.

(g) Each commissioner is entitled to cast the vote to which the compacting state represented by the commissioner is entitled and to participate in the business and affairs of the interstate commission. A commissioner shall vote in person and may not delegate a vote to another compacting state, except that a commissioner, in consultation with the state board of the commissioner's state, may appoint another authorized representative, in the absence of the commissioner, to cast a vote on behalf of the compacting state at a specified meeting. The bylaws may provide for members' participation in meetings by telephone or by other means of telecommunication or electronic communication.

(h) The bylaws shall establish conditions and procedures under which the interstate commission shall make its information and official records available to the public for inspection or copying. The interstate commission may exempt from disclosure any information or official records to the extent that the information or records would adversely affect personal privacy rights or proprietary interests.

(i) Public notice shall be given of all meetings, and all meetings shall be open to the public, except as specified in the rules or as otherwise provided in the compact. The interstate commission and any of its committees may close a meeting to the public if the interstate commission or committee determines by a two-thirds vote that an open meeting would be likely to do any of the following:

1. Relate solely to the interstate commission's internal personnel practices and procedures.

2. Disclose matters that are specifically exempted from disclosure by statute.

3. Disclose trade secrets or commercial or financial information that is privileged or confidential.

4. Involve accusing any person of a crime or formally censuring any person.

5. Disclose information that is of a personal nature, if disclosure of the information would constitute a clearly unwarranted invasion of personal privacy.

6. Disclose investigative records that have been compiled for law enforcement purposes.

7. Disclose information that is contained in or related to an examination, operating, or condition report prepared by, on behalf of, or for the use of the interstate commission with respect to a regulated person for the purpose of regulation or supervision of that person.

8. Disclose information, the premature disclosure of which would significantly endanger the stability of a regulated person.

9. Specifically relate to the interstate commission's issuance of a subpoena or the participation of the interstate commission in a civil action or other legal proceeding.

(j) For every meeting that is closed under par. (i), the interstate commission's legal counsel shall publicly certify that, in the opinion of the legal counsel, the meeting may be closed to the public and shall reference each provision under par. (i) authorizing closure of the meeting. The interstate commission shall keep minutes that shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons for those actions, including a description of each of the views expressed on any item and the record of any roll call vote reflecting the vote of each commissioner on the question. All documents considered in connection with any action shall be identified in the minutes.

(k) The interstate commission shall collect standardized data concerning the interstate movement of juveniles as directed by the rules. The rules shall specify the date to be collected and the means of collection and shall specify data exchange and reporting requirements. Those methods of data collection, exchange, and reporting shall, insofar as is reasonably possible, conform to up-to-date technology and shall coordinate the interstate commission's information functions with the appropriate repository of records.

(4) ARTICLE IV — POWERS AND DUTIES OF THE INTERSTATE COMMISSION. The interstate commission shall have the power and duty to do all of the following:

(a) Provide for dispute resolution among compacting states.

(b) Promulgate rules to effect the purposes and obligations enumerated in this compact, which rules shall have the effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact.

(c) Oversee, supervise, and coordinate the interstate movement of juveniles who are subject to this compact, the bylaws, and the rules.

(d) Enforce compliance with the compact, the bylaws, and the rules, using all necessary and proper means, including the use of judicial process.

(e) Establish and maintain offices that shall be located within one or more of the compacting states.

(f) Purchase and maintain insurance and bonds.

(g) Borrow, accept, hire, or contract for the services of personnel.

(h) Establish and appoint committees and hire staff that the interstate commission considers necessary for carrying out its functions, including an executive committee as required by sub. (3) (f), which shall have the power to act on behalf of the

interstate commission in carrying out the powers and duties of the interstate commission under this compact.

(i) Elect or appoint officers, attorneys, employees, agents, or consultants; fix their compensation, define their duties, and determine their qualifications; and establish the personnel policies and programs of the interstate commission relating to, among other things, conflicts of interest, rates of compensation, and qualifications of personnel.

(j) Accept, receive, utilize, and dispose of donations and grants of money, equipment, supplies, materials, and services.

(k) Lease, purchase, accept contributions or donations of, or otherwise own, hold, improve, or use any property, real, personal, or mixed.

(L) Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed.

(m) Establish a budget and make expenditures and levy assessments as provided in sub. (8).

(n) Sue and be sued.

(o) Adopt a seal and bylaws governing the management and operation of the interstate commission.

(p) Perform such functions as may be necessary to achieve the purposes of this compact.

(q) Report annually to the legislatures, governors, judiciary, and state boards of the compacting states concerning the activities of the interstate commission during the preceding year. Those reports shall also include any recommendations that have been adopted by the interstate commission.

(r) Coordinate education, training, and public awareness regarding the interstate movement of juveniles for officials who are involved in that activity.

(s) Establish uniform standards for reporting, collecting, and exchanging data.

(t) Maintain the corporate books and records of the interstate commission in accordance with the bylaws.

(5) ARTICLE V — ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION. (a) *Bylaws.* Within 12 months after the first meeting of the interstate commission, the interstate commission shall, by a majority vote of the members present and voting, adopt bylaws to govern the conduct of the interstate commission as may be necessary to carry out the purposes of the compact, including bylaws that do all of the following:

1. Establish the fiscal year of the interstate commission.

2. Establish an executive committee and such other committees as may be necessary.

3. Provide for the establishment of committees governing any general or specific delegation of any authority or function of the interstate commission.

4. Provide reasonable procedures for calling and conducting meetings of the interstate commission and for ensuring reasonable notice of each meeting.

5. Establish the titles and responsibilities of the officers of the interstate commission.

6. Provide a mechanism for concluding the operations of the interstate commission and for returning any surplus funds that may exist upon the termination of the compact after the payment or reserving of all of the debts and obligations of the interstate commission.

7. Provide rules for the initial administration of the compact.

8. Establish standards and procedures for compliance and technical assistance in carrying out the compact.

(b) *Officers and staff.* 1. The interstate commission shall, by a majority of the members, elect annually from among its members a chairperson and a vice chairperson, each of whom shall have such authority and duties as may be specified in the bylaws. The chairperson or, in the chairperson's absence or disability, the vice chairperson shall preside at all meetings of the interstate commission. The officers so elected shall serve without compensation or remuneration from the interstate commission, except that, subject to the availability of budgeted funds, the officers shall be reimbursed for any ordinary and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the interstate commission.

2. The interstate commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions, and for such compensation as the interstate commission may consider appropriate. The executive director shall serve as secretary to the interstate commission, but may not be a member of the interstate commission, and shall hire and supervise such other staff as may be authorized by the interstate commission.

(c) *Qualified immunity, defense, and indemnification.* 1. The executive director, employees, and representatives of the interstate commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property, personal injury, or other civil liability caused by, arising out of, or relating to any actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that the person had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities, except that this subdivision does not protect any person from suit or liability for any damage, loss, injury, or liability that is caused by the intentional or willful and wanton misconduct of that person.

2. The liability of any commissioner, or the employee or agent of a commissioner, acting within the scope of that person's employment or duties for any act, error, or omission occurring within that person's state may not exceed the limits of liability specified under the constitution and laws of that state for state officials, employees, and agents, except that this subdivision does not protect any person from suit or liability for any damage, loss, injury, or liability that is caused by the intentional or willful and wanton misconduct of that person.

3. The interstate commission shall defend the executive director, employees, and representatives of the interstate commission, and, subject to the approval of the attorney general of the state represented by any commissioner of a compacting state, shall defend a commissioner and a commissioner's employees and agents, in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that the person had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities, if the actual or alleged act, error, or omission

did not result from the intentional or willful and wanton misconduct of that person.

4. The interstate commission shall indemnify and hold harmless the commissioner of a compacting state, the commissioner's employees and agents, and the interstate commission's executive director, employees, and representatives in the amount of any settlement or judgment obtained against those persons arising out of any actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that the person had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities, if the actual or alleged act, error, or omission did not result from the intentional or willful and wanton misconduct of that person.

(6) ARTICLE VI — RULE-MAKING FUNCTION OF THE INTERSTATE COMMISSION. (a) The interstate commission shall promulgate and publish rules in order to effectively and efficiently achieve the purposes of the compact.

(b) Rule making shall occur under the criteria specified in this subsection and the bylaws and rules adopted under this subsection. Rule making shall substantially conform to the principles of the Model State Administrative Procedure Act, 1981 Act, Uniform Laws Annotated, volume 15, page 1, (2000), or any other administrative procedure act that the interstate commission considers appropriate, consistent with the due process requirements under the U.S. Constitution. All rules and amendments to the rules shall become binding as of the date specified in the final rule or amendment.

(c) When promulgating a rule, the interstate commission shall do all of the following:

1. Publish the entire text of the proposed rule and state the reason for the proposed rule.

2. Allow and invite persons to submit written data, facts, opinions, and arguments, which shall be added to the rule-making record and be made publicly available.

3. Provide an opportunity for an informal hearing, if petitioned by 10 or more persons.

4. Promulgate a final rule and its effective date, if appropriate, based on the rule-making record, including input from state or local officials and other interested parties.

(d) Not later that 60 days after a rule is promulgated, any interested person may file a petition in the U. S. district court for the District of Columbia or in the federal district court for the district in which the interstate commission's principal office is located for judicial review of that rule. If the court finds that the interstate commission's action is not supported by substantial evidence in the rule-making record, the court shall hold the rule unlawful and set the rule aside. For purposes of this paragraph, evidence is substantial if the evidence would be considered substantial evidence under the Model State Administrative Procedure Act.

(e) If a majority of the legislatures of the compacting states reject a rule by enactment of a statute or resolution in the same manner used to adopt the compact, the rule shall have no further effect in any compacting state.

(f) The rules governing the operation of the Interstate Compact on Juveniles under ss. 938.991 to 938.998 shall be void 12 months after the first meeting of the interstate commission.

(g) If the interstate commission determines that an emergency exists, the interstate commission may promulgate an emergency rule that shall become effective immediately upon promulgation, except that the usual rule-making procedures provided under this subsection shall be retroactively applied to the rule as soon as is reasonably possible, but no later than 90 days after the effective date of the emergency rule.

(7) ARTICLE VII — OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION BY THE INTERSTATE COMMISSION. (a) *Oversight and enforcement.* 1. The interstate commission shall oversee the administration and operations of the interstate movement of juveniles who are subject to this compact in the compacting states and shall monitor those activities being administered in noncompacting states that may significantly affect compacting states.

2. The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions that are necessary to effectuate the purposes and intent of the compact. This compact and the rules shall be received by all of the judges, public officers, commissions, and departments of each compacting state as evidence of the authorized statute and administrative rules. All courts shall take judicial notice of the compact and rules. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact that may affect the powers, responsibilities, or actions of the interstate commission, the interstate commission shall be entitled to receive all service of process in the proceeding and shall have standing to intervene in the proceeding for all purposes.

(b) *Dispute resolution.* 1. The compacting states shall report to the interstate commission on all issues and activities that are necessary for the administration of the compact and on all issues and activities that pertain to compliance with this compact, the bylaws, and the rules.

2. The interstate commission shall attempt, upon the request of a compacting state, to resolve any dispute or other issue that is subject to the compact and that may arise among compacting states or between compacting states and noncompacting states. The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

3. The interstate commission, in the reasonable exercise of its discretion, shall enforce this compact and the rules, using any or all of the means specified in sub. (11) (b) and (c).

(8) FINANCE. (a) The interstate commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.

(b) The interstate commission shall levy on and collect from each compacting state an annual assessment to cover the cost of the internal operations and activities of the interstate commission and its staff. The aggregate amount of the annual assessment shall be in an amount that is sufficient to cover the annual budget of the interstate commission as approved each year and shall be allocated among the compacting states based upon a formula to be determined by the interstate commission, taking into consideration the population of each compacting state and the volume of interstate movement of juveniles in each compacting state. The interstate commission shall promulgate a rule binding on all compacting states that governs the assessment.

(c) The interstate commission may not incur any obligations of any kind before securing funds adequate to meet those obligations; nor may the interstate commission pledge the credit of any compacting state, except by and with the authority of the compacting state.

(d) The interstate commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the interstate commission shall be subject to the audit and accounting procedures established under the bylaws. All receipts and disbursements of funds handled by the interstate commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the interstate commission.

(9) ARTICLE IX — THE STATE BOARD. Each compacting state shall create a state board. Although each compacting state may determine the membership of its own state board, the membership of the state board of each compacting state shall include the compact administrator, the deputy compact administrator, or a designee, at least one representative from the legislative, judicial, and executive branches of government, and one representative of victims groups. Each compacting state retains the right to determine the qualifications of the compact administrator and deputy compact administrator. Each state board shall advise and may exercise oversight and advocacy concerning that state's participation in interstate commission activities and may exercise any other duties as may be determined by that state, including the development of policy concerning the operations and procedures of the compact within that state.

(10) ARTICLE X — COMPACTING STATES, EFFECTIVE DATE, AND AMENDMENT. (a) Any state is eligible to become a compacting state.

(b) The compact shall become effective and binding upon legislative enactment of the compact into law by no less than 35 of the states. The initial effective date of the compact shall be July 1, 2005, or upon enactment into law by the 35th state, whichever is later. After that initial effective date, the compact shall become effective and binding as to any other compacting state upon enactment of the compact into law by that compacting state. The governors of noncompacting states or their designees shall be invited to participate in the activities of the interstate commission on a nonvoting basis before adoption of the compact by all states.

NOTE: On August 26, 2008, Illinois became the 35th state to ratify.

(c) The interstate commission may propose amendments to the compact for enactment by the compacting states. An amendment does not become effective and binding upon the interstate commission and the compacting states until the amendment is enacted into law by the unanimous consent of the compacting states.

(11) ARTICLE XI — WITHDRAWAL, DEFAULT, JUDICIAL ENFORCEMENT, AND DISSOLUTION. (a) *Withdrawal.* 1. Once effective, the compact shall continue in effect and remain binding upon each compacting state, except that a compacting state may withdraw from the compact by specifically repealing the statute that enacted the compact into law in that state and a compacting state's membership in the compact may be suspended or terminated as provided in par. (b) 1. d. and 3. The effective date of a withdrawal by a compacting state is the effective date of the repeal of the statute that enacted the compact into law in that state.

2. A withdrawing state shall immediately notify the chairperson of the interstate commission in writing upon the introduction of legislation repealing the compact in the withdrawing state. The interstate commission shall notify the other compacting states of the withdrawing state's intent to withdraw within 60 days after receiving the written notice of intent to withdraw.

3. A withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal, including any obligations the performance of which extend beyond the effective date of the withdrawal.

4. Reinstatement in the compact following the withdrawal of any compacting state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the interstate commission.

(b) *Default.* 1. If the interstate commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this compact, the bylaws, or the rules, the interstate commission may impose on the compacting state any or all of the following penalties:

a. Remedial training and technical assistance as directed by the interstate commission.

b. Alternate dispute resolution.

c. Forfeitures, fees, and costs in such amounts as are considered to be reasonable and as are fixed by the interstate commission.

d. Suspension or termination of membership in the compact, which may be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted and the interstate commission has determined that the offending state is in default. Immediate notice of suspension shall be given by the interstate commission to the governor of the defaulting state, the chief justice of the supreme court or the chief judicial officer of that state, the majority and minority leaders of the legislature of that state, and the state board of that state.

2. The grounds for default include the failure of a compacting state to perform any obligations or responsibilities imposed upon the compacting state by this compact, the bylaws, or the rules and any other ground designated in the bylaws or rules.

3. If the interstate commission determines that a compacting state has defaulted, the interstate commission shall immediately notify the defaulting state in writing of the default and of the penalty imposed by the interstate commission pending a cure of the default. The interstate commission shall stipulate the conditions under which and the time period within which the defaulting state shall cure its default. If the defaulting state fails to cure the default within the time period specified by the interstate commission, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the compacting states, and all rights, privileges, and benefits conferred by this compact shall be terminated beginning on the effective date of termination. Within 60 days after the effective date of termination of a defaulting state, the interstate commission shall notify the governor of the defaulting state, the chief justice of the supreme court or the chief judicial

officer of that state, the majority and minority leaders of the legislature of that state, and the state board of that state of the termination.

4. A defaulting state is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including any obligations the performance of which extends beyond the effective date of termination.

5. The interstate commission shall not bear any costs relating to a defaulting state unless otherwise mutually agreed upon in writing between the interstate commission and the defaulting state.

6. Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the interstate commission under the rules.

(c) *Judicial enforcement.* The interstate commission may, by a majority vote of the members, initiate legal action in the U.S. district court for the District of Columbia or, at the discretion of the interstate commission, in the federal district court for the district in which the interstate commission has its offices to enforce compliance with the compact, the bylaws, and the rules against any compacting state that is in default. If judicial enforcement is necessary, the prevailing party shall be awarded all costs of the litigation, including reasonable attorney fees.

(d) *Dissolution.* The compact dissolves effective upon the date of a withdrawal or default of a compacting state that reduces membership in the compact to one compacting state. Upon dissolution of the compact, the compact becomes void and shall be of no further effect, the business and affairs of the interstate commission shall be concluded, and any surplus funds shall be distributed in accordance with the bylaws.

(12) ARTICLE XII — CONSTRUCTION. The provisions of this compact shall be liberally construed to effectuate the purposes of the compact.

(13) ARTICLE XIII — BINDING EFFECT OF COMPACT AND OTHER LAWS. (a) *Other laws.* This compact does not prevent the enforcement of any other law of a compacting state that is not inconsistent with this compact. All compacting states' laws, other than state constitutions and other interstate compacts, that conflict with this compact are superseded to the extent of the conflict.

(b) *Binding effect of the compact.* 1. All lawful actions of the interstate commission, including the bylaws and rules, are binding upon the compacting states.

2. All agreements between the interstate commission and the compacting states are binding in accordance with their terms.

3. Upon the request of a party to a conflict over the meaning or interpretation of an interstate commission action and upon a majority vote of the compacting states, the interstate commission may issue an advisory opinion regarding that meaning or interpretation.

4. If a provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by that provision upon the interstate commission shall be ineffective, and those obligations, duties, powers, or jurisdiction shall remain in the compacting state and shall be exercised by the agency of the compacting state to which those obligations, duties, powers, or jurisdiction are delegated by the law that is in effect at the time that this compact becomes effective.

History: 2005 a. 234; 2009 a. 339.

CHAPTER 939

CRIMES — GENERAL PROVISIONS

Cross-reference: See definitions in s. 939.22.

NOTE: 1987 Wis. Act 399 included changes in homicide and lesser included offenses. The sections affected had previously passed the senate as 1987 Senate Bill 191, which was prepared by the Judicial Council and contained explanatory notes. These notes have been inserted following the sections affected and are credited to SB 191 as "Bill 191-S".

SUBCHAPTER I

PRELIMINARY PROVISIONS

939.01 Name and interpretation. Chapters 939 to 951 may be referred to as the criminal code but shall not be interpreted as a unit. Crimes committed prior to July 1, 1956, are not affected by chs. 939 to 951.

History: 1979 c. 89; 1987 a. 332 s. 64.

939.03 Jurisdiction of state over crime. (1) A person is subject to prosecution and punishment under the law of this state if any of the following applies:

(a) The person commits a crime, any of the constituent elements of which takes place in this state.

(b) While out of this state, the person aids and abets, conspires with, or advises, incites, commands, or solicits another to commit a crime in this state.

(c) While out of this state, the person does an act with intent that it cause in this state a consequence set forth in a section defining a crime.

(d) While out of this state, the person steals and subsequently brings any of the stolen property into this state.

(e) The person violates s. 943.201 or 943.203 and the victim, at the time of the violation, is an individual who resides in this state, a deceased individual who resided in this state immediately before his or her death, or an entity, as defined in s. 943.203 (1) (a), that is located in this state.

(f) The person violates s. 943.89 and the matter or thing is deposited for delivery within this state or is received or taken within this state.

(g) The person violates s. 943.90 and the transmission is from within this state, the transmission is received within this state, or it is reasonably foreseeable that the transmission will be accessed by a person or machine within this state.

(2) In this section "state" includes area within the boundaries of the state, and area over which the state exercises concurrent jurisdiction under article IX, section 1, of the constitution.

History: 1983 a. 192; 1993 a. 486; 2003 a. 36; 2005 a. 212.

Jurisdiction over a crime committed by a Menominee Indian while on the Menominee Indian Reservation is discussed. State ex rel. Pyatskowit v. Montour, 72 Wis. 2d 277, 240 N.W.2d 186 (1976).

Treaties between the federal government and Menominee tribe do not deprive the state of criminal subject matter jurisdiction over a crime committed by a Menominee outside the reservation. Sturdevant v. State, 76 Wis. 2d 247, 251 N.W.2d 50 (1977).

Trial courts do not have subject matter jurisdiction to convict defendants under unconstitutionally vague statutes. State ex rel. Skinkis v. Treffert, 90 Wis. 2d 528, 280 N.W.2d 316 (Ct. App. 1979).

A fisherman who violated Minnesota and Wisconsin fishing laws while standing on the Minnesota bank of the Mississippi River was subject to Wisconsin prosecution. State v. Nelson, 92 Wis. 2d 855, 285 N.W.2d 924 (Ct. App. 1979)

The state has exclusive jurisdiction over 2nd-offense drunk driving. A 2nd offender may not be charged as a 1st offender under a local ordinance. County of Walworth v. Rohner, 108 Wis. 2d 713, 324 N.W.2d 682 (1982).

An unlawful arrest does not deprive a court of personal jurisdiction over a defendant. State v. Smith, 131 Wis. 2d 220, 388 N.W.2d 601 (1986).

Jurisdiction in a criminal nonsupport action under s. 948.22 does not require that the child to be supported be a resident of Wisconsin during the charged period. State v. Gantt, 201 Wis. 2d 206, 548 N.W.2d 134 (Ct. App. 1996), 95-2469.

Objections to subject matter jurisdiction that turn on a question of law may not be waived by a guilty plea, but objections to subject matter jurisdiction based on a factual dispute do not survive. State v. Bratrud, 204 Wis. 2d 445, 555 N.W.2d 662 (Ct. App. 1995), 94-3402.

A trial court did not lose subject matter jurisdiction over a count in a criminal complaint when an oral amendment of the count did not include one of the elements of the new offense. State v. Diehl, 205 Wis. 2d 1, 555 N.W.2d 174 (Ct. App. 1996), 95-2444.

A sentencing court is accorded incidental powers necessary to carry out its judicial functions and may modify an improper sentence, but it is not competent to enter a money judgment against the state for the recovery of improperly collected restitution under an improper sentence. State v. Minniecheske, 223 Wis. 2d 493, 590 N.W.2d 17 (Ct. App. 1998), 98-1369.

For purposes of jurisdictional analysis, the defendant father's concealment in Canada of a child taken from the child's mother in Wisconsin was inseparable from the consequences of the concealment in Wisconsin, thus giving a Wisconsin court jurisdiction under sub. (1) (c) to try the defendant for a violation of s. 948.31. State v. Inglin, 224 Wis. 2d 764, 592 N.W.2d 666 (Ct. App. 1999), 97-3091.

This section relates to both personal and territorial jurisdiction. When a trial court validly acquired territorial jurisdiction over the charged crime, it could not lose jurisdiction over a lesser-included crime. State v. Randle, 2002 WI App 116, 2002 WI App 116, 252 Wis. 2d 743, 647 N.W.2d 324, 01-1448.

If there is no serious evidentiary dispute that the trial court has territorial jurisdiction, a special instruction on territorial jurisdiction need not be given to the jury. A person may be prosecuted for doing an act outside this state that has a criminally proscribed consequence within the state. State v. Brown, 2003 WI App 34, 260 Wis. 2d 125, 659 N.W.2d 110, 02-1000.

The constituent elements of an offense under sub. (1) (a) are those elements of the criminal offense that the state is required to prove beyond a reasonable doubt in the prosecution of the offense. A constituent element of a criminal offense may be either the wrongful deed that comprises the physical component or the state of mind that the prosecution must prove that a defendant had. For 1st-degree homicide, sub. (1) (a) is satisfied upon proof that the defendant committed an act in Wisconsin manifesting the intent to kill. State v. Anderson, 2005 WI 54, 280 Wis. 2d 104, 695 N.W.2d 731, 03-3478.

939.05 Parties to crime. (1) Whoever is concerned in the commission of a crime is a principal and may be charged with and convicted of the commission of the crime although the person did not directly commit it and although the person who directly committed it has not been convicted or has been convicted of some other degree of the crime or of some other crime based on the same act.

(2) A person is concerned in the commission of the crime if the person:

(a) Directly commits the crime; or

(b) Intentionally aids and abets the commission of it; or

(c) Is a party to a conspiracy with another to commit it or advises, hires, counsels or otherwise procures another to commit it. Such a party is also concerned in the commission of any other crime which is committed in pursuance of the intended crime and which under the circumstances is a natural and probable consequence of the intended crime. This paragraph does not apply to a person who voluntarily changes his or her mind and no longer desires that the crime be committed and notifies the other parties concerned of his or her withdrawal within a reasonable time before the commission of the crime so as to allow the others also to withdraw.

History: 1993 a. 486.

It is desirable, but not mandatory, that an information refer to this section if the district attorney knows in advance that a conviction can only be based on participation and the court can instruct and the defendant can be convicted on the basis of this section in the absence of a showing of adverse effect on the defendant. Bethards v. State, 45 Wis. 2d 606, 173 N.W.2d 634 (1970).

It is not error that an information charging a crime does not also charge the defendant with being a party to a crime. Nicholas v. State, 49 Wis. 2d 683, 183 N.W.2d 11 (1973).

Under sub. (2) (c), a conspirator is one who is concerned with a crime prior to its actual commission. State v. Haugen, 52 Wis. 2d 791, 191 N.W.2d 12.

A complaint charging the defendant as a party to the crime of theft that alleged that an unidentified man stole property and gave it to the defendant who passed it on was insufficient. There must be an allegation that the defendant knew of the commission of the crime. State v. Haugen, 52 Wis. 2d 791, 191 N.W.2d 12 (1971).

An information charging the defendant with being a party to a crime need not set forth the particular subsection relied upon. A defendant can be convicted of 1st-degree murder under this statute even though the defendant claimed only intending to rob and that an accomplice did the shooting. State v. Cydzik, 60 Wis. 2d 683, 211 N.W.2d 421 (1973).

The state need not elect as to which of the elements of the charge it is relying on. Hardison v. State, 61 Wis. 2d 262, 212 N.W.2d 103 (1973).

Conduct undertaken to intentionally aid another in the commission of a crime that yields such assistance constitutes aiding and abetting the crime and whatever it entails as a natural consequence. State v. Asfoor, 75 Wis. 2d 411, 249 N.W.2d 529 (1977).

Defendants may be found guilty under sub. (2) if, between them, they perform all of the necessary elements of the crime with awareness of what the others are doing; each defendant need not be present at the scene of the crime. Roehl v. State, 77 Wis. 2d 398, 253 N.W.2d 210 (1977).

There are 2 party-to-a-crime theories. Aiding and abetting under sub. (2) (b) and conspiracy under sub. (2) (c). State v. Charbarneau, 82 Wis. 2d 644, 264 N.W.2d 227 (1978).

Withdrawal from a conspiracy under sub. (2) (c) must be timely. Zelenka v. State, 83 Wis. 2d 601, 266 N.W.2d 279 (1978).

This section applies to all crimes unless legislative intent clearly indicates otherwise. State v. Tronca, 84 Wis. 2d 68, 267 N.W.2d 216 (1978).

Proof of a "stake in the venture" is not needed to convict under sub. (2) (b). Krueger v. State, 84 Wis. 2d 272, 267 N.W.2d 602 (1978).

Multiple conspiracies and single conspiracies are distinguished. Bergeron v. State, 85 Wis. 2d 595, 271 N.W.2d 386 (1978).

A jury need not unanimously agree whether the defendant: 1) directly committed the crime; 2) aided and abetted its commission; or 3) conspired with another to commit it. Holland v. State, 91 Wis. 2d 134, 280 N.W.2d 288 (1979).

An aider and abettor who withdraws from a conspiracy does not remove himself or herself from aiding and abetting. May v. State, 97 Wis. 2d 175, 293 N.W.2d 478 (1980).

A party to a crime is guilty of that crime whether or not that party intended the crime or had the intent of its perpetrator. State v. Stanton, 106 Wis. 2d 172, 316 N.W.2d 134 (Ct. App. 1982.)

The elements of aiding and abetting are undertaking conduct that will aid another in the execution of the crime and a conscious desire that the conduct will yield that aid. State v. Hecht, 116 Wis. 2d 605, 342 N.W.2d 721 (1984).

The jury need not unanimously agree as to in which of the alternative ways under sub. (2) a defendant has committed the offense under the party to the crime theory. While there may be distinctions between aiding abetting and conspiracy, the distinctions are often blurred. State v. Hecht, 116 Wis. 2d 605, 342 N.W.2d 721 (1984).

Testimony concerning a party to the crime defendant's whereabouts during planning sessions for the crime was not an alibi and did not require a notice of alibi under s. 971.23 (8). State v. Horenberger, 119 Wis. 2d 237, 349 N.W.2d 692 (1984).

Depending on the facts of the case, armed robbery can be a natural and probable consequence of a robbery. In that case, an aider and abettor need not have had actual knowledge that the principals would be armed. State v. Ivey, 119 Wis. 2d 591, 350 N.W.2d 622 (1984).

Sub. (2) (c) may be violated where the defendant solicits a 2nd person to procure a 3rd person to commit a crime. State v. Yee, 160 Wis. 2d 15, 465 N.W.2d 260 (Ct. App. 1990).

Individual officers are personally responsible for criminal acts committed in the name of a corporation. State v. Kuhn, 178 Wis. 2d 428, 504 N.W.2d 405 (Ct. App. 1993).

A defendant may be guilty of felony murder, party to a crime, if the defendant participates with an accomplice in a felony listed in s. 940.03 and the accomplice kills another. There is no requirement that the defendant have an intent to kill or

directly cause the death. State v. Rivera, 184 Wis. 2d 485, 516 N.W.2d 391 (1994), State v. Chambers, 183 Wis. 2d 316, 515 N.W.2d 531 (Ct. App. 1994), State v. Oimen, 184 Wis. 2d 423, 516 N.W.2d 399 (Ct. App. 1994).

There is a distinction between conspiracy as a substantive inchoate crime under s. 939.31 and conspiracy as a theory of prosecution for a substantive crime under s. 939.05 (2) (c). State v. Jackson, 2005 WI App 104, 281 Wis. 2d 137, 701 N.W.2d 42, 04-1603.

The unanimity requirement was satisfied when the jury unanimously found that the accused participated in the crime. Lampkins v. Gagnon, 710 F. 2d 374 (1983).

This section does not shift the burden of proof. The prosecution need not specify which paragraph of sub. (2) it intends to proceed under. Madden v. Israel, 478 F. Supp. 1234 (1979).

Liability for coconspirator's crimes in the Wisconsin party to a crime statute. 66 MLR 344 (1983).

Application of Gipson's unanimous verdict rationale to the Wisconsin party to a crime statute. 1980 WLR 597.

Wisconsin's party to a crime statute: The mens rea element under the aiding and abetting subsection, and the aiding and abetting-choate conspiracy distinction. 1984 WLR 769.

939.10 Common law crimes abolished; common law rules preserved. Common law crimes are abolished. The common law rules of criminal law not in conflict with chs. 939 to 951 are preserved.

History: 1979 c. 89; 1987 a. 332 s. 64; 2007 a. 97.

The common law privilege to forcibly resist an unlawful arrest is abrogated. State v. Hobson, 218 Wis. 2d 350, 577 N.W.2d 825 (1998), 96-0914.

939.12 Crime defined. A crime is conduct which is prohibited by state law and punishable by fine or imprisonment or both. Conduct punishable only by a forfeiture is not a crime.

939.14 Criminal conduct or contributory negligence of victim no defense. It is no defense to a prosecution for a crime that the victim also was guilty of a crime or was contributorily negligent.

A jury instruction that a defrauded party had no duty to investigate fraudulent representations was correct. Lambert v. State, 73 Wis. 2d 590, 243 N.W.2d 524 (1976).

This section does not prevent considering the victim's negligence in relation to causation. This section only means that a defendant is not immune from prosecution merely because the victim has been negligent. State v. Lohmeier, 205 Wis. 2d 183, 556 N.W.2d 90 (1996), 94-2187.

939.20 Provisions which apply only to chapters 939 to 951. Sections 939.22 to 939.25 apply only to crimes defined in chs. 939 to 951. Other sections in ch. 939 apply to crimes defined in other chapters of the statutes as well as to those defined in chs. 939 to 951.

History: 1979 c. 89; 1987 a. 332 s. 64; 1987 a. 399, 403.

939.22 Words and phrases defined. In chs. 939 to 948 and 951, the following words and phrases have the designated meanings unless the context of a specific section manifestly requires a different construction or the word or phrase is defined in s. 948.01 for purposes of ch. 948:

(2) "Airgun" means a weapon which expels a missile by the expansion of compressed air or other gas.

(3) "Alcohol concentration" has the meaning given in s. 340.01 (1v).

(4) "Bodily harm" means physical pain or injury, illness, or any impairment of physical condition.

(5) "Commission warden" means a conservation warden employed by the Great Lakes Indian Fish and Wildlife Commission.

(6) "Crime" has the meaning designated in s. 939.12.

(9) "Criminal gang" means an ongoing organization, association or group of 3 or more persons, whether formal or informal, that has as one of its primary activities the commission of one or more of the criminal acts, or acts that would be criminal if the actor were an adult, specified in s. 939.22 (21) (a) to (s); that has a common name or a common identifying sign or symbol; and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

(9g) "Criminal gang member" means any person who participates in criminal gang activity, as defined in s. 941.38 (1) (b), with a criminal gang.

(9r) "Criminal intent" has the meaning designated in s. 939.23.

(10) "Dangerous weapon" means any firearm, whether loaded or unloaded; any device designed as a weapon and capable of producing death or great bodily harm; any ligature or other instrumentality used on the throat, neck, nose, or mouth of another person to impede, partially or completely, breathing or circulation of blood; any electric weapon, as defined in s. 941.295 (1c) (a); or any other device or instrumentality which, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm.

(11) "Drug" has the meaning specified in s. 450.01 (10).

(12) "Felony" has the meaning designated in s. 939.60.

(14) "Great bodily harm" means bodily injury which creates a substantial risk of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury.

(16) "Human being" when used in the homicide sections means one who has been born alive.

(18) "Intentionally" has the meaning designated in s. 939.23.

(19) "Intimate parts" means the breast, buttock, anus, groin, scrotum, penis, vagina or pubic mound of a human being.

(20) "Misdemeanor" has the meaning designated in s. 939.60.

(20d) "Offense against an elderly or vulnerable person" means a violation of s. 940.285 (2) (a) that caused death, great bodily harm, or bodily harm to the victim or s. 940.295 (3) (b) that caused death, great bodily harm, or bodily harm to the victim.

(20m) "Offense related to ethical government" means a violation of s. 13.69 (6m), 19.58 (1) (b), or 946.12.

(20s) "Offense related to school safety" means a violation of s. 948.605 or 948.61 (2) (b).

(21) "Pattern of criminal gang activity" means the commission of, attempt to commit or solicitation to commit 2 or more of the following crimes, or acts that would be crimes if the actor were an adult, at least one of those acts or crimes occurs after December 25, 1993, the last of those acts or crimes occurred within 3 years after a prior act or crime, and the acts or crimes are committed, attempted or solicited on separate occasions or by 2 or more persons:

(a) Manufacture, distribution or delivery of a controlled substance or controlled substance analog, as prohibited in s. 961.41 (1).

(b) First-degree intentional homicide, as prohibited in s. 940.01.

(c) Second-degree intentional homicide, as prohibited in s. 940.05.

(d) Battery, as prohibited in s. 940.19 or 940.195.

(e) Battery, special circumstances, as prohibited in s. 940.20.

(em) Battery or threat to witness, as prohibited in s. 940.201.

(f) Mayhem, as prohibited in s. 940.21.

(g) Sexual assault, as prohibited in s. 940.225.

(h) False imprisonment, as prohibited in s. 940.30.

(i) Taking hostages, as prohibited in s. 940.305.

(j) Kidnapping, as prohibited in s. 940.31.

(k) Intimidation of witnesses, as prohibited in s. 940.42 or 940.43.

(L) Intimidation of victims, as prohibited in s. 940.44 or 940.45.

(m) Criminal damage to property, as prohibited in s. 943.01.

(mg) Criminal damage to or threat to criminally damage the property of a witness, as prohibited in s. 943.011 or 943.017 (2m).

(n) Arson of buildings or damage by explosives, as prohibited in s. 943.02.

(o) Burglary, as prohibited in s. 943.10.

(p) Theft, as prohibited in s. 943.20.

(q) Taking, driving or operating a vehicle, or removing a part or component of a vehicle, without the owner's consent, as prohibited in s. 943.23.

(r) Robbery, as prohibited in s. 943.32.

(s) Sexual assault of a child, as prohibited in s. 948.02.

(t) Repeated acts of sexual assault of the same child, as prohibited in s. 948.025.

(u) Sexual assault of a child placed in substitute care under s. 948.085.

(22) "Peace officer" means any person vested by law with a duty to maintain public order or to make arrests for crime, whether that duty extends to all crimes or is limited to specific crimes. "Peace officer" includes a commission warden.

(23) "Petechia" means a minute colored spot that appears on the skin, eye, eyelid, or mucous membrane of a person as a result of localized hemorrhage or rupture to a blood vessel or capillary.

(24) "Place of prostitution" means any place where a person habitually engages, in public or in private, in nonmarital acts of sexual intercourse, sexual gratification involving the sex organ of one person and the mouth or anus of another, masturbation or sexual contact for anything of value.

(28) "Property of another" means property in which a person other than the actor has a legal interest which the actor has no right to defeat or impair, even though the actor may also have a legal interest in the property.

(30) "Public officer"; "public employee". A "public officer" is any person appointed or elected according to law to discharge a public duty for the state or one of its subordinate governmental units. A "public employee" is any person, not an officer, who performs any official function on behalf of the state or one of its subordinate governmental units and who is paid from the public treasury of the state or subordinate governmental unit.

(32) "Reasonably believes" means that the actor believes that a certain fact situation exists and such belief under the circumstances is reasonable even though erroneous.

(33) "Restricted controlled substance" means any of the following:

(a) A controlled substance included in schedule I under ch. 961 other than a tetrahydrocannabinol.

(b) A controlled substance analog, as defined in s. 961.01 (4m), of a controlled substance described in par. (a).

(c) Cocaine or any of its metabolites.

(d) Methamphetamine.

(e) Delta-9-tetrahydrocannabinol.

(34) "Sexual contact" means any of the following if done for the purpose of sexual humiliation, degradation, arousal, or gratification:

(a) The intentional touching by the defendant or, upon the defendant's instruction, by a third person of the clothed or unclothed intimate parts of another person with any part of the body, clothed or unclothed, or with any object or device.

(b) The intentional touching by the defendant or, upon the defendant's instruction, by a third person of any part of the body, clothed or unclothed, of another person with the intimate parts of the body, clothed or unclothed.

(c) The intentional penile ejaculation of ejaculate or the intentional emission of urine or feces by the defendant or, upon the defendant's instruction, by a third person upon any part of the body, clothed or unclothed, of another person.

(d) Intentionally causing another person to ejaculate or emit urine or feces on any part of the actor's body, whether clothed or unclothed.

(36) "Sexual intercourse" requires only vulvar penetration and does not require emission.

(37) "State-certified commission warden" means a commission warden who meets the requirements of s. 165.85 (4) (b) 1., (bn) 1., and (c) and has agreed to accept the duties of a law enforcement officer under the laws of this state.

(38) "Substantial bodily harm" means bodily injury that causes a laceration that requires stitches, staples, or a tissue adhesive; any fracture of a bone; a broken nose; a burn; a petechia; a temporary loss of consciousness, sight or hearing; a concussion; or a loss or fracture of a tooth.

(40) "Transfer" means any transaction involving a change in possession of any property, or a change of right, title, or interest to or in any property.

(42) "Under the influence of an intoxicant" means that the actor's ability to operate a vehicle or handle a firearm or airgun is materially impaired because of his or her consumption of an alcohol beverage, of a controlled substance or controlled substance analog under ch. 961, of any combination of an alcohol beverage, controlled substance and controlled substance analog, or of any other drug or of an alcohol beverage and any other drug.

(44) "Vehicle" means any self-propelled device for moving persons or property or pulling implements from one place to another, whether such device is operated on land, rails, water, or in the air.

(46) "With intent" has the meaning designated in s. 939.23.

(48) "Without consent" means no consent in fact or that consent is given for one of the following reasons:

(a) Because the actor put the victim in fear by the use or threat of imminent use of physical violence on the victim, or on a person in the victim's presence, or on a member of the victim's immediate family; or

(b) Because the actor purports to be acting under legal authority; or

(c) Because the victim does not understand the nature of the thing to which the victim consents, either by reason of ignorance or mistake of fact or of law other than criminal law or by reason of youth or defective mental condition, whether permanent or temporary.

History: 1971 c. 219; 1973 c. 336; 1977 c. 173; 1979 c. 89, 221; 1981 c. 79 s. 17; 1981 c. 89, 348; 1983 a. 17, 459; 1985 a. 146 s. 8; 1987 a. 332, 399; 1993 a. 98, 213, 227, 441, 486; 1995 a. 69, 436, 448; 1997 a. 143, 295; 2001 a. 109; 2003 a. 97, 223; 2005 a. 273, 277, 435; 2007 a. 27, 97, 127; 2009 a. 28, 276; 2011 a. 35.

It was for the jury to determine whether a soft drink bottle, with which the victim was hit on the head, constituted a dangerous weapon. Actual injury to the victim is not required. Langston v. State, 61 Wis. 2d 288, 212 N.W.2d 113 (1973).

An unloaded pellet gun qualified as a "dangerous weapon" under sub. (10) in that it was designed as a weapon and, when used as a bludgeon, was capable of producing great bodily harm. State v. Antes, 74 Wis. 2d 317, 246 N.W.2d 671 (1976).

A jury could reasonably find that numerous cuts and stab wounds constituted "serious bodily injury" under sub. (14) even though there was no probability of death, no permanent injury, and no damage to any member or organ. The phrase, "or other serious bodily injury," was designed as an intentional broadening of the scope of the statute to include bodily injuries that were serious, although not of the same type or category as those recited in the statute. La Barge v. State, 74 Wis. 2d 327, 246 N.W.2d 794 (1976).

A jury must find that acts of prostitution were repeated or were continued in order to find that premises are "a place of prostitution" under sub. (24). Johnson v. State, 76 Wis. 2d 672, 251 N.W.2d 834 (1977).

Sub. (14), either on its face or as construed in *La Barge*, is not unconstitutionally vague. Cheatham v. State, 85 Wis. 2d 112, 270 N.W.2d 194 (1978).

Definitions of "under the influence" in this section and in s. 346.63 (1) (a) are equivalent. State v. Waalen, 130 Wis. 2d 18, 386 N.W.2d 47 (1986).

To determine whether an infant was "born alive" under sub. (16), the s. 146.71 standard to determine death is applied, as, "if one is not dead he is indeed alive." State v. Cornelius, 152 Wis. 2d 272, 448 N.W.2d 434 (Ct. App. 1989).

A dog may be a dangerous weapon under sub. (10). State v. Sinks, 168 Wis. 2d 245, 483 N.W.2d 286 (Ct. App. 1992).

Portions of the defendant's anatomy are not dangerous weapons under sub. (10). State v. Frey, 178 Wis. 2d 729, 505 N.W.2d 786 (Ct. App. 1993).

An automobile may constitute a dangerous weapon under sub. (10). State v. Bidwell, 200 Wis. 2d 200, 546 N.W.2d 507 (Ct. App. 1996), 95-0791.

A firearm with a trigger lock is within the definition of a dangerous weapon under sub. (10). State v. Norris, 214 Wis. 2d 25, 571 N.W.2d 857 (Ct. App. 1997), 96-2158.

When a mother agreed to the father taking a child on a camping trip, but the father actually intended to permanently take the child and did abscond to Canada with the child, the child was taken based on the mother's "mistake of fact," which under s. 939.22 (48) rendered the taking of the child to be "without consent" and in violation of s. 948.31. State v. Inglin, 224 Wis. 2d 764, 592 N.W.2d 666 (Ct. App. 1999), 97-3091.

The definitions in subs. (9) and (9g) are sufficiently specific that when incorporated into a probation condition they provide fair and adequate notice as to the expected course of conduct and provide an adequate standard of enforcement. State v. Lo, 228 Wis. 2d 531, 599 N.W.2d 659 (Ct. App. 1999), 98-2490.

Sub. (19) includes female and male breasts as each is "the breast of a human being." The touching of a boy's breast constitutes "sexual contact" within the meaning of s. 948.02 (2). State v. Forster, 2003 WI App 29, 260 Wis. 2d 149, 659 N.W.2d 144, 02-0602.

"Materially impaired" as used in sub. (42) does not have a technical or peculiar meaning in the law beyond the time-tested explanations in standard jury instructions. Therefore, the circuit court's response to the jury question to give all words not otherwise defined their ordinary meaning was not error, comported with s. 990.01, and did not constitute an erroneous exercise of discretion. State v. Hubbard, 2008 WI 92, 313 Wis. 2d 1, 752 N.W.2d 839, 06-2753.

Shooting a person in the thigh at a range of 16 to 18 feet with a shotgun is practically certain to cause at least a protracted loss or impairment of the function of the victim's leg, and is injury constituting "great bodily harm" within the meaning of sub. (14). The fact that the defendant's conduct was intended to neutralize the threat posed by the victim did not negate the fact that, by firing the shotgun at the victim's thigh, the defendant intended to cause great bodily harm by committing an act that he was aware was practically certain to result in great bodily harm to the victim. State v. Miller, 2009 WI App 111, 320 Wis. 2d 724, 772 N.W.2d 188, 07-1052.

939.23 Criminal intent. (1) When criminal intent is an element of a crime in chs. 939 to 951, such intent is indicated by the term "intentionally", the phrase "with intent to", the phrase "with intent that", or some form of the verbs "know" or "believe".

(2) "Know" requires only that the actor believes that the specified fact exists.

(3) "Intentionally" means that the actor either has a purpose to do the thing or cause the result specified, or is aware that his or her conduct is practically certain to cause that result. In addition, except as provided in sub. (6), the actor must have knowledge of those facts which are necessary to make his or her conduct criminal and which are set forth after the word "intentionally".

(4) "With intent to" or "with intent that" means that the actor either has a purpose to do the thing or cause the result specified, or is aware that his or her conduct is practically certain to cause that result.

(5) Criminal intent does not require proof of knowledge of the existence or constitutionality of the section under which the actor is prosecuted or the scope or meaning of the terms used in that section.

(6) Criminal intent does not require proof of knowledge of the age of a minor even though age is a material element in the crime in question.

History: 1979 c. 89; 1987 a. 332 s. 64; 1987 a. 399; 1993 a. 486.

Judicial Council Note, 1988: Subs. (3) and (4) are conformed to the formulation of s. 2.02 (2) (b) ii of the model penal code. [Bill 191-S]

A person need not foresee or intend the specific consequences of an act in order to possess the requisite criminal intent and is presumed to intend the natural and probable consequences of the act. State v. Gould, 56 Wis. 2d 808, 202 N.W.2d 903 (1973).

Instructions on intent to kill created a permissible rebuttable presumption that shifted the burden of production to the defendant, but not the burden of persuasion. Muller v. State, 94 Wis. 2d 450, 289 N.W.2d 570 (1980).

The court properly refused to instruct the jury on a "mistake of fact" defense when the accused claimed that the victim moved into the path of a gunshot intended only to frighten the victim. State v. Bougneit, 97 Wis. 2d 687, 294 N.W.2d 675 (Ct. App. 1980).

The constitutionality of sub. (3) is upheld. State v. Smith, 170 Wis. 2d 701, 490 N.W.2d 40 (Ct. App. 1992).

The trial court's wholesale exclusion of the defendant's proffered expert and lay testimony regarding posttraumatic stress disorder from the guilt phase of a murder trial without valid justification violated the defendant's right to present a defense and to testify on her own behalf. Morgan v. Krenke, 72 F. Supp. 2d 980 (1999).

939.24 Criminal recklessness. (1) In this section, "criminal recklessness" means that the actor creates an unreasonable and substantial risk of death or great bodily harm to another human being and the actor is aware of that risk, except that for purposes of ss. 940.02 (1m), 940.06 (2) and 940.23 (1) (b) and (2) (b), "criminal recklessness" means that the actor creates an unreasonable and substantial risk of death or great bodily harm to an unborn child, to the woman who is pregnant with that unborn child or to another and the actor is aware of that risk.

(2) Except as provided in ss. 940.285, 940.29, 940.295, and 943.76, if criminal recklessness is an element of a crime in chs. 939 to 951, the recklessness is indicated by the term "reckless" or "recklessly".

(3) A voluntarily produced intoxicated or drugged condition is not a defense to liability for criminal recklessness if, had the actor not been in that condition, he or she would have been aware of creating an unreasonable and substantial risk of death or great bodily harm to another human being.

History: 1987 a. 399; 1989 a. 56 s. 259; 1993 a. 445; 1997 a. 295; 2001 a. 109.

Judicial Council Note, 1988: This section is new. It provides a uniform definition of criminal recklessness, the culpable mental state of numerous offenses. Recklessness requires both the creation of an objectively unreasonable and substantial risk of human death or great bodily harm and the actor's subjective awareness of that risk.

Sub. (3) continues the present rule that a voluntarily produced intoxicated or drugged condition is not a defense to liability for criminal recklessness. Ameen v. State, 51 Wis. 2d 175, 185 (1971). Patterned on s. 2.08 of the model penal code, it premises liability on whether the actor would have been aware if not in such condition of the risk of death or great bodily harm. The commentaries to s. 2.08, model penal code, state the rationale of this rule in extended fashion. [Bill 191-S]

939.25 Criminal negligence. (1) In this section, "criminal negligence" means ordinary negligence to a high degree, consisting of conduct that the actor should realize creates a substantial and unreasonable risk of death or great bodily harm to another, except that for purposes of ss. 940.08 (2), 940.10 (2) and 940.24 (2), "criminal negligence" means ordinary negligence to a high degree, consisting of conduct that the actor should realize creates a substantial and unreasonable risk of death or great bodily harm to an unborn child, to the woman who is pregnant with that unborn child or to another.

(2) If criminal negligence is an element of a crime in chs. 939 to 951 or s. 346.62, the negligence is indicated by the term "negligent" or "negligently".

History: 1987 a. 399; 1989 a. 56 s. 259; 1997 a. 180, 295.

Judicial Council Note, 1988: This section is new. It provides a uniform definition of criminal negligence, patterned on prior ss. 940.08 (2), 940.24 (2) and 941.01 (2). Criminal negligence means the creation of a substantial and unreasonable risk of death or great bodily harm to another, of which the actor should be aware. [Bill 191-S]

The definition of criminal negligence as applied to homicide by negligent operation of a vehicle is not unconstitutionally vague. State v. Barman, 183 Wis. 2d 180, 515 N.W.2d 493 (Ct. App. 1994).

SUBCHAPTER II

INCHOATE CRIMES

939.30 Solicitation. (1) Except as provided in sub. (2) and s. 961.455, whoever, with intent that a felony be committed, advises another to commit that crime under circumstances that indicate unequivocally that he or she has the intent is guilty of a Class H felony.

(2) For a solicitation to commit a crime for which the penalty is life imprisonment, the actor is guilty of a Class F felony. For a solicitation to commit a Class I felony, the actor is guilty of a Class I felony.

History: 1977 c. 173; 1989 a. 121; 1991 a. 153; 1995 a. 448; 2001 a. 109.

Prosecuting for solicitation under s. 939.30, rather than under s. 944.30 for prostitution, did not deny equal protection. Sears v. State, 94 Wis. 2d 128, 287 N.W.2d 785 (1980).

Section 939.05 (2) (c) does not make renunciation or withdrawal a defense to the crime of solicitation. State v. Boehm, 127 Wis. 2d 351, 379 N.W.2d 874 (Ct. App. 1985).

When "A" solicits "B" to solicit "A" to commit perjury, "A" is guilty of solicitation. State v. Manthey, 169 Wis. 2d 673, 487 N.W.2d 44 (Ct. App. 1992).

939.31 Conspiracy. Except as provided in ss. 940.43 (4), 940.45 (4) and 961.41 (1x), whoever, with intent that a crime be committed, agrees or combines with another for the purpose of committing that crime may, if one or more of the parties to the conspiracy does an act to effect its object, be fined or imprisoned or both not to exceed the maximum provided for the completed crime; except that for a conspiracy to commit a crime for which the penalty is life imprisonment, the actor is guilty of a Class B felony.

History: 1977 c. 173; 1981 c. 118; 1985 a. 328; 1995 a. 448.

A conspiracy may be unilateral; a person can enter into a conspiracy to accomplish a criminal objective in which only the defendant has a criminal intent. State v. Sample, 215 Wis. 2d 487, 573 N.W.2d 187 (1998), 96-2184.

When the object of a conspiracy is the commission of multiple crimes, separate charges and convictions for each intended crime are permissible. State v. Jackson, 2004 WI App 190, 276 Wis. 2d 697, 688 N.W.2d 688, 03-2066.

There is a distinction between conspiracy as a substantive inchoate crime under s. 939.31 and conspiracy as a theory of prosecution for a substantive crime under s. 939.05 (2) (c). State v. Jackson, 2005 WI App 104, 281 Wis. 2d 137; 701 N.W.2d 42, 04-1603.

The agreement to commit a crime that is necessary for a conspiracy may be demonstrated by circumstantial evidence and need not be express; a tacit understanding of a shared goal is sufficient. The intent to commit the crime may be inferred from the person's conduct. A stake in the venture is not a necessary element of the crime although evidence of a stake in the venture may be persuasive of the degree of the party's involvement in the crime. State v. Routon, 2007 WI App 178, 304 Wis. 2d 480, 736 N.W.2d 530, 06-2557.

A person may be a member of a conspiracy — in particular, a conspiracy to manufacture a controlled substance — based on the person's sale of goods that are not illegal to sell or possess. One does not become a party to a conspiracy by aiding and abetting it, through sales of supplies or otherwise, unless he or she knows of the conspiracy, the inference of which knowledge cannot be drawn from mere knowledge that the buyer will use the goods illegally. The gist of the conspiracy is the seller's intent, when given effect by an overt act to further, promote, and cooperate in the buyer's intended illegal use. There must be clear, unequivocal evidence of the seller's knowledge of the buyer's intended illegal use. State v. Routon, 2007 WI App 178, 304 Wis. 2d 480, 736 N.W.2d 530, 06-2557.

Under a unilateral conspiracy, a person who intends to accomplish the objects of the conspiracy is guilty even though the other members of the conspiracy never intended that a crime be committed. This same logic applies to the next step: that is, when the fulfillment of the conspiracy is not only highly unlikely, but is legally impossible. State v. Huff, 2009 WI App 92, 319 Wis. 2d 258, 769 N.W.2d 154, 08-2664.

For an act to performed by one of the conspirators in furtherance of the conspiracy, an overt act must be done toward the commission of the intended crime that must go beyond mere planning and agreement. However, the act need not, by itself, be an unlawful act or an attempt to commit the crime. If there was an act that was a step toward accomplishing the criminal objective, that is sufficient. In this case, the defendant's act of communicating to a detective that cocaine was available for immediate delivery was such an overt act. State v. Peralta, 2011 WI App 81, 334 Wis. 2d 159, 800 N.W.2d 512, 10-0563.

939.32 Attempt. (1) GENERALLY. Whoever attempts to commit a felony or a crime specified in s. 940.19, 940.195, 943.20, or 943.74 may be fined or imprisoned or both as provided under sub. (1g), except:

(a) Whoever attempts to commit a crime for which the penalty is life imprisonment is guilty of a Class B felony.

(bm) Whoever attempts to commit a Class I felony, other than one to which a penalty enhancement statute listed in s. 973.01 (2) (c) 2. a. or b. is being applied, is guilty of a Class A misdemeanor.

(c) Whoever attempts to commit a crime under ss. 940.42 to 940.45 is subject to the penalty for the completed act, as provided in s. 940.46.

(cm) Whoever attempts to commit a crime under s. 941.21 is subject to the penalty provided in that section for the completed act.

(cr) Whoever attempts to commit a crime under s. 948.055 (1) is subject to the penalty for the completed act, as provided in s. 948.055 (2).

(d) Whoever attempts to commit a crime under s. 948.07 is subject to the penalty provided in that section for the completed act.

(de) Whoever attempts to commit a crime under s. 948.075 (1r) is subject to the penalty provided in that subsection for the completed act.

(e) Whoever attempts to commit a crime under s. 948.605 (3) (a) is subject to the penalty provided in that paragraph for the completed act.

(f) Whoever attempts to commit a crime under s. 946.79 is subject to the penalty provided in that section for the completed act.

(g) Whoever attempts to commit a crime under s. 101.10 (3) (e) is subject to the penalty for the completed act, as provided in s. 101.10 (4) (b).

(1g) MAXIMUM PENALTY. The maximum penalty for an attempt to commit a crime that is punishable under sub. (1) (intro.) is as follows:

(a) The maximum fine is one-half of the maximum fine for the completed crime.

(b) 1. If neither s. 939.62 (1) nor s. 961.48 is being applied, the maximum term of imprisonment is one-half of the maximum term of imprisonment, as increased by any penalty enhancement statute listed in s. 973.01 (2) (c) 2. a. and b., for the completed crime.

2. If either s. 939.62 (1) or 961.48 is being applied, the maximum term of imprisonment is determined by the following method:

a. Multiplying by one-half the maximum term of imprisonment, as increased by any penalty enhancement statute listed in s. 973.01 (2) (c) 2. a. and b., for the completed crime.

b. Applying s. 939.62 (1) or 961.48 to the product obtained under subd. 2. a.

(1m) BIFURCATED SENTENCES. If the court imposes a bifurcated sentence under s. 973.01 (1) for an attempt to commit a crime that is punishable under sub. (1) (intro.), the following requirements apply:

(a) *Maximum term of confinement for attempt to commit classified felony.* 1. Subject to the minimum term of extended supervision required under s. 973.01 (2) (d), if the crime is a classified felony and neither s. 939.62 (1) nor s. 961.48 is being applied, the maximum term of confinement in prison is one-half of the maximum term of confinement in prison specified in s. 973.01 (2) (b), as increased by any penalty enhancement statute listed in s. 973.01 (2) (c) 2. a. and b., for the classified felony.

2. Subject to the minimum term of extended supervision required under s. 973.01 (2) (d), if the crime is a classified felony and either s. 939.62 (1) or 961.48 is being applied, the court shall determine the maximum term of confinement in prison by the following method:

a. Multiplying by one-half the maximum term of confinement in prison specified in s. 973.01 (2) (b), as increased by any penalty enhancement statutes listed in s. 973.01 (2) (c) 2. a. and b., for the classified felony.

b. Applying s. 939.62 (1) or 961.48 to the product obtained under subd. 2. a.

(b) *Maximum term of extended supervision for attempt to commit classified felony.* The maximum term of extended supervision for an attempt to commit a classified felony is one-half of the maximum term of extended supervision for the completed crime under s. 973.01 (2) (d).

(c) *Maximum term of confinement for attempt to commit unclassified felony or misdemeanor.* The court shall determine the maximum term of confinement in prison for an attempt to commit a crime other than a classified felony by applying s. 973.01 (2) (b) 10. to the maximum term of imprisonment calculated under sub. (1g) (b).

(2) MISDEMEANOR COMPUTER CRIMES. Whoever attempts to commit a misdemeanor under s. 943.70 is subject to:

(a) A Class D forfeiture if it is the person's first violation under s. 943.70.

(b) A Class C forfeiture if it is the person's 2nd violation under s. 943.70.

(c) A Class B forfeiture if it is the person's 3rd violation under s. 943.70.

(d) A Class A forfeiture if it is the person's 4th or subsequent violation under s. 943.70.

(2m) MISDEMEANOR CRIMES AGAINST FINANCIAL INSTITUTION. Whoever attempts to commit a crime under s. 943.81, 943.82 (1), 943.83, or 943.84 that is a Class A misdemeanor under s. 943.91 (1) is subject to the penalty for a Class B misdemeanor.

(3) REQUIREMENTS. An attempt to commit a crime requires that the actor have an intent to perform acts and attain a result which, if accomplished, would constitute such crime and that the actor does acts toward the commission of the crime which demonstrate unequivocally, under all the circumstances, that the actor formed that intent and would commit the crime except for the intervention of another person or some other extraneous factor.

History: 1977 c. 173; 1981 c. 118; 1983 a. 438; 1987 a. 332; 1989 a. 336; 1991 a. 17; 1993 a. 98, 486; 1997 a. 295; 2001 a. 91, 109; 2003 a. 36, 321; 2005 a. 14, 212; 2009 a. 180; 2011 a. 284; s. 35.17 correction in (1m) (a) 1.

There is no crime of "attempted homicide by reckless conduct" since the completed offense does not require intent while any attempt must demonstrate intent. State v. Melvin, 49 Wis. 2d 246, 181 N.W.2d 490 (1970).

Attempted 1st-degree murder was shown when only the fact of the gun misfiring and the action of the intended victim prevented completion of the crime. Austin v. State, 52 Wis. 2d 716, 190 N.W.2d 887 (1971).

The victim's kicking of the defendant in the mouth and other resistance was a valid extraneous factor preventing the completion of a crime, an essential requirement for the crime of attempted rape. Adams v. State, 57 Wis. 2d 515, 204 N.W.2d 657 (1973).

The screams and struggles of an intended rape victim were an effective intervening extrinsic force not under the defendant's control. Leach v. State, 83 Wis. 2d 199, 265 N.W.2d 495 (1978).

The failure to consummate the crime is not an essential element of criminal attempt under sub. (2). Berry v. State, 90 Wis. 2d 316, 280 N.W.2d 204 (1979).

The intervention of an extraneous factor is not an essential element of criminal attempt. Hamiel v. State, 92 Wis. 2d 656, 285 N.W.2d 639 (1979).

To prove attempt, the state must prove intent to commit a specific crime accompanied by sufficient acts to demonstrate unequivocally that it was improbable that the accused would have desisted of his or her own free will. State v. Stewart, 143 Wis. 2d 28, 420 N.W.2d 44 (1988).

Subs. (1) and (2) enumerate all offenses that may be prosecuted as attempts. State v. Cvorovic, 158 Wis. 2d 630, 462 N.W.2d 897 (Ct. App. 1990).

The meaning of "have an intent to" in sub. (3) should be defined and interpreted in relation to all criminal statutes. State v. Weeks, 165 Wis. 2d 200, 477 N.W.2d 642 (Ct. App. 1991).

When a sentence for an attempted crime is subject to repeater enhancement, the maximum penalty for the underlying crime is halved under sub. (1), then the enhancer is added to that penalty. State v. Bush, 185 Wis. 2d 716, 519 N.W.2d 645 (Ct. App. 1994).

The intervention of an extraneous factor that prevents the commission of a crime is irrelevant to an attempt to commit the crime unless the factor may negate the intent to commit the crime. That a defendant believed he was acquiring stolen property when the property was not actually stolen did not prevent the prosecution of the defendant for attempt to receive stolen property. State v. Kordas, 191 Wis. 2d 124, 528 N.W.2d 483 (Ct. App. 1995).

Attempted felony murder, s. 940.03, does not exist. Attempt requires intent, and the crime of felony murder is complete without specific intent. State v. Briggs, 218 Wis. 2d 61, 579 N.W.2d 783 (Ct. App. 1998), 97-1558.

The conduct element of sub. (3) is satisfied when the accused engages in conduct that demonstrates that only a circumstance beyond the accused's control could prevent the crime; that it has become too late to repent and withdraw. State v. Henthorn, 218 Wis. 2d 526, 581 N.W.2d 544 (Ct. App. 1998), 97-2235.

Some crimes include attempt and cannot be combined with the general attempt statue. One cannot attempt to attempt to cause. State v. DeRango, 229 Wis. 2d 1, 599 N.W.2d 27 (Ct. App. 1999), 98-0642.

SUBCHAPTER III

DEFENSES TO CRIMINAL LIABILITY

939.42 Intoxication. An intoxicated or a drugged condition of the actor is a defense only if such condition:

(1) Is involuntarily produced and renders the actor incapable of distinguishing between right and wrong in regard to the alleged criminal act at the time the act is committed; or

(2) Negatives the existence of a state of mind essential to the crime, except as provided in s. 939.24 (3).

History: 1987 a. 399.

To be relieved from responsibility for criminal acts, it is not enough for a defendant to establish that he or she was under the influence of intoxicating beverages; the defendant must establish that degree of intoxication that means he or she was utterly incapable of forming the intent requisite to the commission of the crime charged. State v. Guiden, 46 Wis. 2d 328, 174 N.W.2d 488 (1970).

This section does not afford a defense when drugs were taken voluntarily and the facts demonstrate that there was an intent to kill and conceal the crime. Gibson v. State, 55 Wis. 2d 110, 197 N.W.2d 813 (1972).

Evidence of addiction was properly excluded as a basis for showing "involuntariness." Loveday v. State, 74 Wis. 2d 503, 247 N.W.2d 116 (1976).

Voluntary intoxication instructions were proper when the defendant, suffering from a non-temporary pre-psychotic condition, precipitated a temporary psychotic state by voluntary intoxication. State v. Kolisnitschenko, 84 Wis. 2d 492, 267 N.W.2d 321 (1978).

The intoxication instruction did not impermissibly shift the burden of proof to the accused. State v. Reynosa, 108 Wis. 2d 499, 322 N.W.2d 504 (Ct. App. 1982).

A correct statement of the law under this section should be conveyed to the jury by instructing it that it must consider the evidence regarding whether the defendant was intoxicated at the time of the alleged offense. State v. Foster, 191 Wis. 2d 14, 528 N.W.2d 22 (Ct. App. 1995).

It is not a requirement of the defense of involuntary intoxication when intoxication is caused by prescription drugs that the defendant did not know of the drug's intoxicating effect. Intoxication resulting from compliance with a physician's advice will not be deemed voluntary just because the defendant was aware of potential adverse side effects. State v. Gardner, 230 Wis. 2d 32, 601 N.W.2d 670 (Ct. App. 1999), 98-2655.

To be entitled to an instruction on involuntary intoxication, the defendant must come forward with credible and sufficient evidence of intoxication to the extent that the defendant was unable to distinguish right from wrong. State v. Gardner, 230 Wis. 2d 32, 601 N.W.2d 670 (Ct. App. 1999), 98-2655.

Alcoholism as a defense. 53 MLR 445.

939.43 Mistake. (1) An honest error, whether of fact or of law other than criminal law, is a defense if it negatives the existence of a state of mind essential to the crime.

(2) A mistake as to the age of a minor or as to the existence or constitutionality of the section under which the actor is prosecuted or the scope or meaning of the terms used in that section is not a defense.

The prosecution of an individual who relied on a governmental official's statutorily required legal opinion would impose an unconscionable rigidity in the law. State v. Davis, 63 Wis. 2d 75, 216 N.W.2d 31 (1974).

Mistake is not a defense to criminal negligence. A defendant's subjective state of mind is not relevant to determining criminal negligence. State v. Lindvig, 205 Wis. 2d 100, 555 N.W.2d 197 (Ct. App. 1996), 96-0235.

939.44 Adequate provocation. (1) In this section:

(a) "Adequate" means sufficient to cause complete lack of self-control in an ordinarily constituted person.

(b) "Provocation" means something which the defendant reasonably believes the intended victim has done which causes the defendant to lack self-control completely at the time of causing death.

(2) Adequate provocation is an affirmative defense only to first-degree intentional homicide and mitigates that offense to 2nd-degree intentional homicide.

History: 1987 a. 399.

Judicial Council Note, 1988: Sub. (1) codifies Wisconsin decisions defining "heat of passion" under prior s. 940.05. Ryan v. State, 115 Wis. 488 (1902); Johnson v. State, 129 Wis. 146 (1906); Carlone v. State, 150 Wis. 38 (1912); Zenou v. State, 4 Wis. 2d 655 (1958); State v. Bond, 41 Wis. 2d 219 (1969); State v. Williford, 103 Wis. 2d 98 (1981).

Traditionally, provocation had 2 essential requirements. State v. Williford, supra., at 113. The first reflected in sub. (1) (b), is subjective. The defendant must have acted in response to provocation. This necessitates an assessment of the particular defendant's state of mind at the time of the killing. The 2nd requirement, reflected in sub. (1) (a), is objective. Only provocation sufficient to cause a reasonable person to lose self-control completely is legally adequate to mitigate the severity of the offense.

Sub. (2) clarifies that adequate provocation is an affirmative defense to first-degree intentional homicide. Although adequate provocation does not negate the intent to kill such that the burden of persuasion rests on the state by constitutional principles (Mullaney v. Wilbur, 421 U.S. 684, (1975), Wisconsin has chosen to place the burden of disproving this defensive matter on the prosecution beyond a reasonable doubt. State v. Lee, 108 Wis. 2d 1 (1982). Since adequate provocation is not an affirmative defense to 2nd-degree intentional homicide, its effect is to mitigate the severity of an intentional homicide from first to 2nd degree. [Bill 191-S]

939.45 Privilege. The fact that the actor's conduct is privileged, although otherwise criminal, is a defense to prosecution for any crime based on that conduct. The defense of privilege can be claimed under any of the following circumstances:

(1) When the actor's conduct occurs under circumstances of coercion or necessity so as to be privileged under s. 939.46 or 939.47; or

(2) When the actor's conduct is in defense of persons or property under any of the circumstances described in s. 939.48 or 939.49; or

(3) When the actor's conduct is in good faith and is an apparently authorized and reasonable fulfillment of any duties of a public office; or

(4) When the actor's conduct is a reasonable accomplishment of a lawful arrest; or

(5) (a) In this subsection:

1. "Child" has the meaning specified in s. 948.01 (1).

3. "Person responsible for the child's welfare" includes the child's parent, stepparent or guardian; an employee of a public or private residential home, institution or agency in which the child resides or is confined or that provides services to the child; or any other person legally responsible for the child's welfare in a residential setting.

(b) When the actor's conduct is reasonable discipline of a child by a person responsible for the child's welfare. Reasonable discipline may involve only such force as a reasonable person believes is necessary. It is never reasonable discipline to use force which is intended to cause great bodily harm or death or creates an unreasonable risk of great bodily harm or death.

(6) When for any other reason the actor's conduct is privileged by the statutory or common law of this state.

History: 1979 c. 110 s. 60 (1); 1987 a. 332; 1989 a. 31; 1995 a. 214.

The privilege under sub. (3) for public officials acting with apparent authority did not apply to a volunteer fire fighter driving while under the influence of an intoxicant. State v. Schoenheide, 104 Wis. 2d 114, 310 N.W.2d 650 (Ct. App. 1981).

A foster parent is a "person legally responsible for the child's welfare" under sub. (5). State v. West, 183 Wis. 2d 46, 515 N.W.2d 484 (Ct. App. 1994).

A mother's live-in boyfriend did not have parental immunity under sub. (5). The boyfriend did not have legal responsibility for the mother's children, and the term "parent" will not be interpreted to include persons *in loco parentis*. State v. Dodd, 185 Wis. 2d 560, 518 N.W.2d 300 (Ct. App. 1994)

A convicted felon's possession of a firearm is privileged under sub. (6) in limited enumerated circumstances. State v. Coleman, 206 Wis. 2d 199, 556 N.W.2d 701 (1996), 95-0917.

The common law privilege to forcibly resist an unlawful arrest is abrogated. State v. Hobson, 218 Wis. 2d 350, 577 N.W.2d 825 (1998), 96-0914.

There is no statutory or common law privilege for the crime of carrying a concealed weapon under s. 941.23. State v. Dundon, 226 Wis. 2d 654, 594 N.W.2d 780 (1999), 97-1423.

Under the facts of the case, the privilege of self-defense was inapplicable to a charge of carrying a concealed weapon. State v. Nollie, 2002 WI 4, 249 Wis. 2d 538, 638 N.W.2d 280, 00-0744.

Sub. (6) incorporates excusable homicide by accident or misfortune. Accident is a defense that negatives intent. If a person kills another by accident, the killing could not have been intentional. Accident must be disproved beyond a reasonable doubt when a defendant raises it as a defense. When the state proves intent to kill beyond a reasonable doubt, it necessarily disproves accident. State v. Watkins, 2002 WI 101, 255 Wis. 2d 265, 647 N.W.2d 244, 00-0064.

A defendant may demonstrate that he or she was acting lawfully, a necessary element of an accident defense, by showing that he or she was acting in lawful self-defense. Although intentionally pointing a firearm at another constitutes a violation of s. 941.20, under s. 939.48 (1) a person is privileged to point a gun at another person in self-defense if the person reasonably believes that the threat of force is necessary to prevent or terminate what he or she reasonably believes to be an unlawful interference. State v. Watkins, 2002 WI 101, 255 Wis. 2d 265, 647 N.W.2d 244, 00-0064.

To overcome the privilege of parental discipline in sub. (5), the state must prove beyond a reasonable doubt that only one of the following is not met: 1) the use of force must be reasonably necessary; 2) the amount and nature of the force used must be reasonable; and 3) the force used must not be known to cause, or create a substantial risk of, great bodily harm or death. Whether a reasonable person would have believed the amount of force used was necessary and not excessive must be determined from the standpoint of the defendant at the time of the defendant's acts. The standard is what a person of ordinary intelligence and prudence would have believed in the defendant's position under the circumstances

that existed at the time of the alleged offense. State v. Kimberly B. 2005 WI App 115, 283 Wis. 2d 731, 699 N.W.2d 641, 04-1424.

Testimony supporting the defendant father's assertion that he was beaten with a belt as a child was not relevant to whether the amount of force he used in spanking his daughter was objectively reasonable. A parent may not abuse his or her child and claim that conduct is reasonable based on his or her history of being similarly abused. State v. Williams, 2006 WI App 212, 296 Wis. 2d 834, 723 N.W.2d 719, 05-2282.

939.46 Coercion. (1) A threat by a person other than the actor's coconspirator which causes the actor reasonably to believe that his or her act is the only means of preventing imminent death or great bodily harm to the actor or another and which causes him or her so to act is a defense to a prosecution for any crime based on that act, except that if the prosecution is for first-degree intentional homicide, the degree of the crime is reduced to 2nd-degree intentional homicide.

(1m) A victim of a violation of s. 940.302 (2) or 948.051 has an affirmative defense for any offense committed as a direct result of the violation of s. 940.302 (2) or 948.051 without regard to whether anyone was prosecuted or convicted for the violation of s. 940.302 (2) or 948.051.

(2) It is no defense to a prosecution of a married person that the alleged crime was committed by command of the spouse nor is there any presumption of coercion when a crime is committed by a married person in the presence of the spouse.

History: 1975 c. 94; 1987 a. 399; 2007 a. 116.

Judicial Council Note, 1988: Sub. (1) is amended by conforming references to the statute titles created by this bill. Since coercion mitigates first-degree intentional homicide to 2nd degree, it is obviously not a defense to prosecution for the latter crime. [Bill 191-S]

The state must disprove an asserted coercion defense beyond a reasonable doubt. Moes v. State, 91 Wis. 2d 756, 284 N.W.2d 66 (1979).

The coercion defense is limited to the most severe form of inducement. It requires finding that the actor believed he or she was threatened with immediate death or great bodily harm with no possible escape other than the commission of a criminal act. A defendant seeking a coercion defense instruction must meet the initial burden of producing evidence to support giving an instruction. That the defendant reasonably believed that a companion would attempt to harm him or her if he if he or she did not comply with the companion's orders only suggests that the safest course was to comply with companion's orders, not that it was the only course. State v. Keeran, 2004 WI App 4, 268 Wis. 2d 761, 674 N.W.2d 570, 01-1892.

939.47 Necessity. Pressure of natural physical forces which causes the actor reasonably to believe that his or her act is the only means of preventing imminent public disaster, or imminent death or great bodily harm to the actor or another and which causes him or her so to act, is a defense to a prosecution for any crime based on that act, except that if the prosecution is for first-degree intentional homicide, the degree of the crime is reduced to 2nd-degree intentional homicide.

History: 1987 a. 399.

Judicial Council Note, 1988: This section is amended by conforming references to the statute titles created by this bill. Since necessity mitigates first-degree intentional homicide to 2nd degree, it is obviously not a defense to prosecution for the latter crime. [Bill 191-S]

The defense of necessity was unavailable to a demonstrator who sought to stop a shipment of nuclear fuel on the grounds of safety. State v. Olsen, 99 Wis. 2d 572, 299 N.W.2d 632 (Ct. App. 1980).

Heroin addiction is not a "natural physical force" as used in this section. An addict, caught injecting heroin in jail, who was not provided methadone as had been promised, was not entitled to assert necessity against a charge of possession of heroin because his addiction ultimately resulted from his conscious decision to start using illegal drugs. State v. Anthuber, 201 Wis. 2d 512, 549 N.W.2d 477 (Ct. App. 1996), 95-1365.

939.48 Self-defense and defense of others. (1) A person is privileged to threaten or intentionally use force against another for the purpose of preventing or terminating what the person reasonably believes to be an unlawful interference with his or her person by such other person. The actor may intentionally use only such force or threat thereof as the actor reasonably believes is necessary to prevent or terminate the interference. The actor may not intentionally use force which is intended or likely to cause death or great bodily harm unless the actor reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself.

(1m) (a) In this subsection:

1. "Dwelling" has the meaning given in s. 895.07 (1) (h).

2. "Place of business" means a business that the actor owns or operates.

(ar) If an actor intentionally used force that was intended or likely to cause death or great bodily harm, the court may not consider whether the actor had an opportunity to flee or retreat before he or she used force and shall presume that the actor reasonably believed that the force was necessary to prevent imminent death or great bodily harm to himself or herself if the actor makes such a claim under sub. (1) and either of the following applies:

1. The person against whom the force was used was in the process of unlawfully and forcibly entering the actor's dwelling, motor vehicle, or place of business, the actor was present in the dwelling, motor vehicle, or place of business, and the actor knew or reasonably believed that an unlawful and forcible entry was occurring.

2. The person against whom the force was used was in the actor's dwelling, motor vehicle, or place of business after unlawfully and forcibly entering it, the actor was present in the dwelling, motor vehicle, or place of business, and the actor knew or reasonably believed that the person had unlawfully and forcibly entered the dwelling, motor vehicle, or place of business.

(b) The presumption described in par. (ar) does not apply if any of the following applies:

1. The actor was engaged in a criminal activity or was using his or her dwelling, motor vehicle, or place of business to further a criminal activity at the time.

2. The person against whom the force was used was a public safety worker, as defined in s. 941.375 (1) (b), who entered or attempted to enter the actor's dwelling, motor vehicle, or place of business in the performance of his or her official duties. This subdivision applies only if at least one of the following applies:

a. The public safety worker identified himself or herself to the actor before the force described in par. (ar) was used by the actor.

b. The actor knew or reasonably should have known that the person entering or attempting to enter his or her dwelling, motor vehicle, or place of business was a public safety worker.

(2) Provocation affects the privilege of self-defense as follows:

(a) A person who engages in unlawful conduct of a type likely to provoke others to attack him or her and thereby does provoke an attack is not entitled to claim the privilege of self-defense against such attack, except when the attack which ensues is of a type causing the person engaging in the unlawful conduct to reasonably believe that he or she is in imminent danger of death or great bodily harm. In such a case, the

person engaging in the unlawful conduct is privileged to act in self-defense, but the person is not privileged to resort to the use of force intended or likely to cause death to the person's assailant unless the person reasonably believes he or she has exhausted every other reasonable means to escape from or otherwise avoid death or great bodily harm at the hands of his or her assailant.

(b) The privilege lost by provocation may be regained if the actor in good faith withdraws from the fight and gives adequate notice thereof to his or her assailant.

(c) A person who provokes an attack, whether by lawful or unlawful conduct, with intent to use such an attack as an excuse to cause death or great bodily harm to his or her assailant is not entitled to claim the privilege of self-defense.

(3) The privilege of self-defense extends not only to the intentional infliction of harm upon a real or apparent wrongdoer, but also to the unintended infliction of harm upon a 3rd person, except that if the unintended infliction of harm amounts to the crime of first-degree or 2nd-degree reckless homicide, homicide by negligent handling of dangerous weapon, explosives or fire, first-degree or 2nd-degree reckless injury or injury by negligent handling of dangerous weapon, explosives or fire, the actor is liable for whichever one of those crimes is committed.

(4) A person is privileged to defend a 3rd person from real or apparent unlawful interference by another under the same conditions and by the same means as those under and by which the person is privileged to defend himself or herself from real or apparent unlawful interference, provided that the person reasonably believes that the facts are such that the 3rd person would be privileged to act in self-defense and that the person's intervention is necessary for the protection of the 3rd person.

(5) A person is privileged to use force against another if the person reasonably believes that to use such force is necessary to prevent such person from committing suicide, but this privilege does not extend to the intentional use of force intended or likely to cause death.

(6) In this section "unlawful" means either tortious or expressly prohibited by criminal law or both.

History: 1987 a. 399; 1993 a. 486; 2005 a. 253; 2011 a. 94.

Judicial Council Note, 1988: Sub. (3) is amended by conforming references to the statute titles as affected by this bill. [Bill 191-S]

When a defendant testified that he did not intend to shoot or use force, he could not claim self-defense. Cleghorn v. State, 55 Wis. 2d 466, 198 N.W.2d 577 (1972).

Sub. (2) (b) is inapplicable to a defendant if the nature of the initial provocation is a gun-in-hand confrontation of an intended victim by a self-identified robber. Under these circumstances the intended victim is justified in the use of force in the exercise of the right of self-defense. Ruff v. State, 65 Wis. 2d 713, 223 N.W.2d 446 (1974).

Whether a defendant's belief was reasonable under subs. (1) and (4) depends, in part, upon the parties' personal characteristics and histories and whether events were continuous. State v. Jones, 147 Wis. 2d 806, 434 N.W.2d 380 (1989).

Evidence of prior specific instances of violence that were known to the accused may be presented to support a defense of self-defense. The evidence is not limited to the accused's own testimony, but the evidence may not be extended to the point that it is being offered to prove that the victim acted in conformity with his or her violent tendencies. State v. Daniels, 160 Wis. 2d 85, 465 N.W.2d 633 (1991).

Imperfect self-defense contains an initial threshold element requiring a reasonable belief that the defendant was terminating an unlawful interference with his or her person. State v. Camacho, 176 Wis. 2d 860, 501 N.W.2d 380 (1993).

The reasonableness of a person's belief under sub. (1) is judged from the position of a person of ordinary intelligence and prudence in the same situation as the defendant, not a person identical to the defendant placed in the same situation as the defendant. A defendant's psycho-social history showing past violence toward the defendant is generally not relevant to this objective standard, although it may be relevant, as in spousal abuse cases, where the actors are the homicide victim and defendant. State v. Hampton, 207 Wis. 2d 369, 558 N.W.2d 884 (Ct. App. 1996).

The right to resist unlawful arrest is not part of the statutory right to self-defense. It is a common law privilege that is abrogated. State v. Hobson, 218 Wis. 2d 350, 577 N.W.2d 825 (1998), 96-0914.

While there is no statutory duty to retreat, whether the opportunity to retreat was available goes to whether the defendant reasonably believed the force used was necessary to prevent an interference with his or her person. A jury instruction to that effect was proper. State v. Wenger, 225 Wis. 2d 495, 593 N.W.2d 467 (Ct. App. 1999), 98-1739.

When a defendant fails to establish a factual basis to raise self-defense, prior specific acts of violence by the victim have no probative value. The presentation of subjective testimony by an accused, going to a belief that taking steps in self-defense was necessary, is not sufficient for the admission of self-defense evidence. State v. Head, 2000 WI App 275, 240 Wis. 2d 162, 622 N.W.2d 9, 99-3071.

Although intentionally pointing a firearm at another constitutes a violation of s. 941.20, under sub. (1) a person is privileged to point a gun at another person in self-defense if the person reasonably believes that the threat of force is necessary to prevent or terminate what he or she reasonably believes to be an unlawful interference. State v. Watkins, 2002 WI 101, 255 Wis. 2d 265, 647 N.W.2d 244, 00-0064.

A defendant asserting perfect self-defense against a charge of 1st-degree murder must meet an objective threshold showing that he or she reasonably believed that he or she was preventing or terminating an unlawful interference with his or her person and that the force used was necessary to prevent imminent death or great bodily harm. A defendant asserting the defense of unnecessary defensive force s. 940.01 (2) (b) to a charge of 1st-degree murder is not required to satisfy the objective threshold showing. State v. Head, 2002 WI 99, 255 Wis. 2d 194, 648 N.W.2d 413, 99-3071.

A person may employ deadly force against another, if the person reasonably believes that force is necessary to protect a 3rd-person or one's self from imminent death or great bodily harm, without incurring civil liability for injury to the other. Clark v. Ziedonis, 513 F. 2d 79 (1975).

Self-defense — prior acts of the victim. 1974 WLR 266.

State v. Camacho: The Judicial Creation of an Objective Element to Wisconsin's Law of Imperfect Self-defense Homicide. Leiser. 1995 WLR 742.

939.49 Defense of property and protection against retail theft. **(1)** A person is privileged to threaten or intentionally use force against another for the purpose of preventing or terminating what the person reasonably believes to be an unlawful interference with the person's property. Only such degree of force or threat thereof may intentionally be used as the actor reasonably believes is necessary to prevent or terminate the interference. It is not reasonable to intentionally use force intended or likely to cause death or great bodily harm for the sole purpose of defense of one's property.

(2) A person is privileged to defend a 3rd person's property from real or apparent unlawful interference by another under the same conditions and by the same means as those under and by which the person is privileged to defend his or her own property from real or apparent unlawful interference, provided that the person reasonably believes that the facts are such as would give the 3rd person the privilege to defend his or her own property, that his or her intervention is necessary for the protection of the 3rd person's property, and that the 3rd person whose property the person is protecting is a member of his or her immediate family or household or a person whose property the person has a legal duty to protect, or is a merchant and the actor is the merchant's employee or agent. An official or adult employee or agent of a library is privileged to defend the property of the library in the manner specified in this subsection.

(3) In this section "unlawful" means either tortious or expressly prohibited by criminal law or both.

History: 1979 c. 245; 1981 c. 270; 1993 a. 486.

Flight on the part of one suspected of a felony does not, of itself, warrant the use of deadly force by an arresting officer, and it is only in certain aggravated circumstances that a police officer may shoot a fleeing suspect. Clark v. Ziedonis, 368 F. Supp. 544 (1973).

SUBCHAPTER IV

PENALTIES

939.50 Classification of felonies. (1) Felonies in the statutes are classified as follows:

(a) Class A felony.

(b) Class B felony.

(c) Class C felony.

(d) Class D felony.

(e) Class E felony.

(f) Class F felony.

(g) Class G felony.

(h) Class H felony.

(i) Class I felony.

(2) A felony is a Class A, B, C, D, E, F, G, H, or I felony when it is so specified in the statutes.

(3) Penalties for felonies are as follows:

(a) For a Class A felony, life imprisonment.

(b) For a Class B felony, imprisonment not to exceed 60 years.

(c) For a Class C felony, a fine not to exceed $100,000 or imprisonment not to exceed 40 years, or both.

(d) For a Class D felony, a fine not to exceed $100,000 or imprisonment not to exceed 25 years, or both.

(e) For a Class E felony, a fine not to exceed $50,000 or imprisonment not to exceed 15 years, or both.

(f) For a Class F felony, a fine not to exceed $25,000 or imprisonment not to exceed 12 years and 6 months, or both.

(g) For a Class G felony, a fine not to exceed $25,000 or imprisonment not to exceed 10 years, or both.

(h) For a Class H felony, a fine not to exceed $10,000 or imprisonment not to exceed 6 years, or both.

(i) For a Class I felony, a fine not to exceed $10,000 or imprisonment not to exceed 3 years and 6 months, or both.

History: 1977 c. 173; 1981 c. 280; 1987 a. 332 s. 64; 1993 a. 194; 1995 a. 69; 1997 a. 283; 1999 a. 188; 2001 a. 109.

939.51 Classification of misdemeanors. (1) Misdemeanors in chs. 939 to 951 are classified as follows:

(a) Class A misdemeanor.

(b) Class B misdemeanor.

(c) Class C misdemeanor.

(2) A misdemeanor is a Class A, B or C misdemeanor when it is so specified in chs. 939 to 951.

(3) Penalties for misdemeanors are as follows:

(a) For a Class A misdemeanor, a fine not to exceed $10,000 or imprisonment not to exceed 9 months, or both.

(b) For a Class B misdemeanor, a fine not to exceed $1,000 or imprisonment not to exceed 90 days, or both.

(c) For a Class C misdemeanor, a fine not to exceed $500 or imprisonment not to exceed 30 days, or both.

History: 1977 c. 173; 1987 a. 332 s. 64; 1997 a. 35.

939.52 Classification of forfeitures. (1) Except as provided in ss. 946.86 and 946.87, forfeitures in chs. 939 to 951 are classified as follows:

(a) Class A forfeiture.

(b) Class B forfeiture.

(c) Class C forfeiture.

(d) Class D forfeiture.

(e) Class E forfeiture.

(2) A forfeiture is a Class A, B, C, D or E forfeiture when it is so specified in chs. 939 to 951.

(3) Penalties for forfeitures are as follows:

(a) For a Class A forfeiture, a forfeiture not to exceed $10,000.

(b) For a Class B forfeiture, a forfeiture not to exceed $1,000.

(c) For a Class C forfeiture, a forfeiture not to exceed $500.

(d) For a Class D forfeiture, a forfeiture not to exceed $200.

(e) For a Class E forfeiture, a forfeiture not to exceed $25.

History: 1977 c. 173; 1981 c. 280; 1987 a. 171; 1987 a. 332 s. 64; 1989 a. 121.

939.60 Felony and misdemeanor defined. A crime punishable by imprisonment in the Wisconsin state prisons is a felony. Every other crime is a misdemeanor.

History: 1977 c. 418 s. 924 (18) (e).

A statutory offense punishable by imprisonment of one year or less in an unspecified place of confinement may result in confinement in a state prison and, therefore, is a felony, regardless of the classification of the offense at the time of the statute's enactment. State ex rel. McDonald v. Douglas County Circuit Ct. 100 Wis. 2d 569, 302 N.W.2d 462 (1981).

939.61 Penalty when none expressed. (1) If a person is convicted of an act or omission prohibited by statute and for which no penalty is expressed, the person shall be subject to a forfeiture not to exceed $200.

(2) If a person is convicted of a misdemeanor under state law for which no penalty is expressed, the person may be fined not more than $500 or imprisoned not more than 30 days or both.

(3) Common law penalties are abolished.

History: 1977 c. 173.

939.615 Lifetime supervision of serious sex offenders. (1) DEFINITIONS. In this section:

(a) "Department" means the department of corrections.

(b) "Serious sex offense" means any of the following:

1. A violation, or the solicitation, conspiracy, or attempt to commit a violation, of s. 940.22 (2), 940.225 (1), (2), or (3), 948.02 (1) or (2), 948.025 (1), 948.05 (1) or (1m), 948.051, 948.055 (1), 948.06, 948.07, 948.075, 948.08, 948.085, 948.11 (2) (a), 948.12, or 948.13 or of s. 940.302 (2) if s. 940.302 (2) (a) 1. b. applies.

2. A violation, or the solicitation, conspiracy or attempt to commit a violation, under ch. 940, 943, 944 or 948 other than a violation specified in subd. 1., if the court determines that one of the purposes for the conduct constituting the violation was for the actor's sexual arousal or gratification.

(2) WHEN LIFETIME SUPERVISION MAY BE ORDERED. (a) Except as provided in par. (b), if a person is convicted of a serious sex offense or found not guilty of a serious sex offense by reason of mental disease or defect, the court may, in addition to sentencing the person, placing the person on probation or, if

applicable, committing the person under s. 971.17, place the person on lifetime supervision by the department if notice concerning lifetime supervision was given to the person under s. 973.125 and if the court determines that lifetime supervision of the person is necessary to protect the public.

(b) A court may not place a person on lifetime supervision under this section if the person was previously placed on lifetime supervision under this section for a prior conviction for a serious sex offense or a prior finding of not guilty of a serious sex offense by reason of mental disease or defect and that previous placement on lifetime supervision has not been terminated under sub. (6).

(c) If the prosecutor is seeking lifetime supervision for a person who is charged with committing a serious sex offense specified in sub. (1) (b) 2., the court shall direct that the trier of fact find a special verdict as to whether the conduct constituting the offense was for the actor's sexual arousal or gratification.

(3) WHEN LIFETIME SUPERVISION BEGINS. Subject to sub. (4), the period of lifetime supervision on which a person is placed under this section shall begin at whichever of the following times is applicable:

(a) If the person is placed on probation for the serious sex offense, upon his or her discharge from probation.

(b) If the person is sentenced to prison for the serious sex offense, upon his or her discharge from parole or extended supervision.

(c) If the person is sentenced to prison for the serious sex offense and is being released from prison because he or she has reached the expiration date of his or her sentence, upon his or her release from prison.

(d) If the person has been committed to the department of health services under s. 971.17 for the serious sex offense, upon the termination of his or her commitment under s. 971.17 (5) or his or her discharge from the commitment under s. 971.17 (6), whichever is applicable.

(e) If par. (a), (b), (c) or (d) does not apply, upon the person being sentenced for the serious sex offense.

(4) ONLY ONE PERIOD OF LIFETIME SUPERVISION MAY BE IMPOSED. If a person is being sentenced for more than one conviction for a serious sex offense, the court may place the person on one period of lifetime supervision only. A period of lifetime supervision ordered for a person sentenced for more than one conviction begins at whichever of the times specified in sub. (3) is the latest.

(5) STATUS OF PERSON PLACED ON LIFETIME SUPERVISION; POWERS AND DUTIES OF DEPARTMENT. (a) A person placed on lifetime supervision under this section is subject to the control of the department under conditions set by the court and regulations established by the department that are necessary to protect the public and promote the rehabilitation of the person placed on lifetime supervision.

(am) The department may temporarily take a person on lifetime supervision into custody if the department has reasonable grounds to believe that the person has violated a condition or regulation of lifetime supervision. Custody under this paragraph may last only as long as is reasonably necessary to investigate whether the person violated a condition or regulation of lifetime supervision and, if warranted, to refer the person to the appropriate prosecuting agency for commencement of prosecution under sub. (7).

(b) The department shall charge a fee to a person placed on lifetime supervision to partially reimburse the department for the costs of providing supervision and services. The department shall set varying rates for persons placed on lifetime supervision based on ability to pay and with the goal of receiving at least $1 per day, if appropriate, from each person placed on lifetime supervision. The department may decide not to charge a fee while a person placed on lifetime supervision is exempt as provided under par. (c). The department shall collect moneys for the fees charged under this paragraph and credit those moneys to the appropriation account under s. 20.410 (1) (gh).

(c) The department may decide not to charge a fee under par. (b) to any person placed on lifetime supervision while he or she meets any of the following conditions:

1. Is unemployed.

2. Is pursuing a full-time course of instruction approved by the department.

3. Is undergoing treatment approved by the department and is unable to work.

4. Has a statement from a physician certifying to the department that the person should be excused from working for medical reasons.

(6) PETITION FOR TERMINATION OF LIFETIME SUPERVISION. (a) Subject to par. (b), a person placed on lifetime supervision under this section may file a petition requesting that lifetime supervision be terminated. A person shall file a petition requesting termination of lifetime supervision with the court that ordered the lifetime supervision.

(b) 1. A person may not file a petition requesting termination of lifetime supervision if he or she has been convicted of a crime that was committed during the period of lifetime supervision.

2. A person may not file a petition requesting termination of lifetime supervision earlier than 15 years after the date on which the period of lifetime supervision began. If a person files a petition requesting termination of lifetime supervision at any time earlier than 15 years after the date on which the period of lifetime supervision began, the court shall deny the petition without a hearing.

(c) Upon receiving a petition requesting termination of lifetime supervision, the court shall send a copy of the petition to the district attorney responsible for prosecuting the serious sex offense that was the basis for the order of lifetime supervision. Upon receiving a copy of a petition sent to him or her under this paragraph, a district attorney shall conduct a criminal history record search to determine whether the person has been convicted of a criminal offense that was committed during the period of lifetime supervision. No later than 30 days after the date on which he or she receives the copy of the petition, the district attorney shall report the results of the criminal history record search to the court and may provide a written response to the petition.

(d) After reviewing the report of the district attorney submitted under par. (c) concerning the results of a criminal history record search, the court shall do whichever of the following is applicable:

1. If the report of the district attorney indicates that the person filing the petition has been convicted of a criminal offense that was committed during the period of lifetime

supervision, the court shall deny the person's petition without a hearing.

2. If the report of the district attorney indicates that the person filing the petition has not been convicted of a criminal offense that was committed during the period of lifetime supervision, the court shall order the person to be examined under par. (e), shall notify the department that it may submit a report under par. (em) and shall schedule a hearing on the petition to be conducted as provided under par. (f).

(e) A person filing a petition requesting termination of lifetime supervision who is entitled to a hearing under par. (d) 2. shall be examined by a person who is either a physician or a psychologist licensed under ch. 455 and who is approved by the court. The physician or psychologist who conducts an examination under this paragraph shall prepare a report of his or her examination that includes his or her opinion of whether the person petitioning for termination of lifetime supervision is a danger to public. The physician or psychologist shall file the report of his or her examination with the court within 60 days after completing the examination, and the court shall provide copies of the report to the person filing the petition and the district attorney who received a copy of the person's petition under par. (c). The contents of the report shall be confidential until the physician or psychologist testifies at a hearing under par. (f). The person petitioning for termination of lifetime supervision shall pay the cost of an examination required under this paragraph.

(em) After it receives notification from the court under par. (d) 2., the department may prepare and submit to the court a report concerning a person who has filed a petition requesting termination of lifetime supervision. If the department prepares and submits a report under this paragraph, the report shall include information concerning the person's conduct while on lifetime supervision and an opinion as to whether lifetime supervision of the person is still necessary to protect the public. When a report prepared under this paragraph has been received by the court, the court shall, before the hearing under par. (f), disclose the contents of the report to the attorney for the person who filed the petition and to the district attorney. When the person who filed the petition is not represented by an attorney, the contents shall be disclosed to the person.

(f) A hearing on a petition requesting termination of lifetime supervision may not be conducted until the person filing the petition has been examined and a report of the examination has been filed as provided under par. (e). At the hearing, the court shall take evidence it considers relevant to determining whether lifetime supervision should be continued because the person who filed the petition is a danger to the public. The person who filed the petition and the district attorney who received the petition under par. (c) may offer evidence relevant to the issue of the person's dangerousness and the continued need for lifetime supervision.

(g) The court may grant a petition requesting termination of lifetime supervision if it determines after a hearing under par. (f) that lifetime supervision is no longer necessary to protect the public.

(h) If a petition requesting termination of lifetime supervision is denied after a hearing under par. (f), the person may not file a subsequent petition requesting termination of lifetime supervision until at least 3 years have elapsed since the most recent petition was denied.

(i) If the court grants a petition requesting termination of lifetime supervision and the person is registered with the department under s. 301.45, the court may also order that the person is no longer required to comply with the reporting requirements under s. 301.45. This paragraph does not apply to a person who must continue to comply with the reporting requirements for life under s. 301.45 (5) (b) or for as long as he or she is in this state under s. 301.45 (5m) (b).

(7) PENALTY FOR VIOLATION OF A CONDITION OF LIFETIME SUPERVISION. (a) No person placed on lifetime supervision under this section may knowingly violate a condition or regulation of lifetime supervision established by the court or by the department.

(b) 1. Except as provided in subd. 2., whoever violates par. (a) is guilty of a Class A misdemeanor.

2. Whoever violates par. (a) is guilty of a Class I felony if the same conduct that violates par. (a) also constitutes a crime that is a felony.

History: 1997 a. 275; 1999 a. 3, 89; 2001 a. 109; 2005 a. 277; 2007 a. 20 s. 9121 (6) (a); 2007 a. 116.

939.616 Mandatory minimum sentence for child sex offenses. (1g) If a person is convicted of a violation of s. 948.02 (1) (am) or 948.025 (1) (a), notwithstanding s. 973.014 (1g) (a) 1. and 2., the court may not make an extended supervision eligibility date determination on a date that will occur before the person has served a 25-year term of confinement in prison.

(1r) If a person is convicted of a violation of s. 948.02 (1) (b) or (c) or 948.025 (1) (b), the court shall impose a bifurcated sentence under s. 973.01. The term of confinement in prison portion of the bifurcated sentence shall be at least 25 years. Otherwise the penalties for the crime apply, subject to any applicable penalty enhancement.

(2) If a person is convicted of a violation of s. 948.02 (1) (d) or 948.025 (1) (c), the court shall impose a bifurcated sentence under s. 973.01. The term of confinement in prison portion of the bifurcated sentence shall be at least 5 years. Otherwise the penalties for the crime apply, subject to any applicable penalty enhancement.

(3) This section does not apply if s. 939.62 (2m) (c) applies. The mandatory minimum sentences in this section do not apply to an offender who was under 18 years of age when the violation occurred.

History: 2005 a. 430 s. 1; 2007 a. 80; 2007 a. 97 s. 309.

939.617 Minimum sentence for certain child sex offenses. (1) Except as provided in subs. (2) and (3), if a person is convicted of a violation of s. 948.05, 948.075, or 948.12, the court shall impose a bifurcated sentence under s. 973.01. The term of confinement in prison portion of the bifurcated sentence shall be at least 5 years for violations of s. 948.05 or 948.075 and 3 years for violations of s. 948.12. Otherwise the penalties for the crime apply, subject to any applicable penalty enhancement.

(2) If the court finds that the best interests of the community will be served and the public will not be harmed and if the court places its reasons on the record, the court may impose a sentence that is less than the sentence required under sub. (1) or

may place the person on probation under any of the following circumstances:

(a) If the person is convicted of a violation of s. 948.05, the person is no more than 48 months older than the child who is the victim of the violation.

(b) If the person is convicted of a violation of s. 948.12, the person is no more than 48 months older than the child who engaged in the sexually explicit conduct.

(3) This section does not apply if the offender was under 18 years of age when the violation occurred.

History: 2005 a. 433; 2011 a.272; s. 35.17 correction in (2) (a).

939.618 Mandatory minimum sentence for repeat serious sex crimes. (1) In this section, "serious sex crime" means a violation of s. 940.225 (1) or (2).

(2) (a) Except as provided in par. (b), if a person has one or more prior convictions for a serious sex crime and subsequently commits a serious sex crime, the court shall impose a bifurcated sentence under s. 973.01. The term of confinement in prison portion of a bifurcated sentence imposed under this subsection may not be less than 3 years and 6 months, but otherwise the penalties for the crime apply, subject to any applicable penalty enhancement. The court may not place the defendant on probation.

(b) If a person has one or more prior convictions for a violation of s. 940.225 (1) or for a comparable crime under federal law or the law of any state and subsequently is convicted of a violation of s. 940.225 (1), the maximum term of imprisonment for the violation of s. 940.225 (1) is life imprisonment without the possibility of parole or extended supervision.

History: 1993 a. 97, 227; 1997 a. 326; 2001 a. 109; 2005 a. 271; 2005 a. 433 s. 16; Stats. 2005 s. 939.618.

939.619 Mandatory minimum sentence for repeat serious violent crimes. (1) In this section, "serious violent crime" means a violation of s. 940.03 or 940.05.

(2) If a person has one or more prior convictions for a serious violent crime or a crime punishable by life imprisonment and subsequently commits a serious violent crime, the court shall impose a bifurcated sentence under s. 973.01. The term of confinement in prison portion of a bifurcated sentence imposed under this subsection may not be less than 3 years and 6 months, but otherwise the penalties for the crime apply, subject to any applicable penalty enhancement. The court may not place the defendant on probation.

History: 1993 a. 97; 2001 a. 109; 2005 a. 433 s. 17; Stats. 2005 s. 939.619.

939.62 Increased penalty for habitual criminality. (1) If the actor is a repeater, as that term is defined in sub. (2), and the present conviction is for any crime for which imprisonment may be imposed, except for an escape under s. 946.42 or a failure to report under s. 946.425, the maximum term of imprisonment prescribed by law for that crime may be increased as follows:

(a) A maximum term of imprisonment of one year or less may be increased to not more than 2 years.

(b) A maximum term of imprisonment of more than one year but not more than 10 years may be increased by not more than 2 years if the prior convictions were for misdemeanors and by not more than 4 years if the prior conviction was for a felony.

(c) A maximum term of imprisonment of more than 10 years may be increased by not more than 2 years if the prior convictions were for misdemeanors and by not more than 6 years if the prior conviction was for a felony.

(2) The actor is a repeater if the actor was convicted of a felony during the 5-year period immediately preceding the commission of the crime for which the actor presently is being sentenced, or if the actor was convicted of a misdemeanor on 3 separate occasions during that same period, which convictions remain of record and unreversed. It is immaterial that sentence was stayed, withheld or suspended, or that the actor was pardoned, unless such pardon was granted on the ground of innocence. In computing the preceding 5-year period, time which the actor spent in actual confinement serving a criminal sentence shall be excluded.

(2m) (a) In this subsection:

1m. "Serious child sex offense" means any of the following:

a. A violation of s. 948.02, 948.025, 948.05, 948.051, 948.055, 948.06, 948.07, 948.08, 948.085, or 948.095 or 948.30 or, if the victim was a minor and the convicted person was not the victim's parent, a violation of s. 940.31.

b. A crime at any time under federal law or the law of any other state or, prior to July 16, 1998, under the law of this state that is comparable to a crime specified in subd. 1m. a.

2m. "Serious felony" means any of the following:

a. Any felony under s. 961.41 (1), (1m) or (1x) that is a Class A, B, or C felony or, if the felony was committed before February 1, 2003, that is or was punishable by a maximum prison term of 30 years or more.

am. A crime under s. 961.65.

b. Any felony under s. 940.09 (1), 1999 stats., s. 943.23 (1m) or (1r), 1999 stats., s. 948.35 (1) (b) or (c), 1999 stats., or s. 948.36, 1999 stats., or s. 940.01, 940.02, 940.03, 940.05, 940.09 (1c), 940.16, 940.19 (5), 940.195 (5), 940.21, 940.225 (1) or (2), 940.305, 940.31, 941.327 (2) (b) 4., 943.02, 943.10 (2), 943.23 (1g), 943.32 (2), 946.43 (1m), 948.02 (1) or (2), 948.025, 948.03 (2) (a) or (c), 948.05, 948.06, 948.07, 948.075, 948.08, 948.085, or 948.30 (2).

c. The solicitation, conspiracy or attempt, under s. 939.30, 939.31 or 939.32, to commit a Class A felony.

d. A crime at any time under federal law or the law of any other state or, prior to April 28, 1994, under the law of this state that is comparable to a crime specified in this subd. 2m. a., am., b., or c.

(b) The actor is a persistent repeater if one of the following applies:

1. The actor has been convicted of a serious felony on 2 or more separate occasions at any time preceding the serious felony for which he or she presently is being sentenced under ch. 973, which convictions remain of record and unreversed and, of the 2 or more previous convictions, at least one conviction occurred before the date of violation of at least one of the other felonies for which the actor was previously convicted.

2. The actor has been convicted of a serious child sex offense on at least one occasion at any time preceding the date of violation of the serious child sex offense for which he or she

presently is being sentenced under ch. 973, which conviction remains of record and unreversed.

(bm) For purposes of counting a conviction under par. (b), it is immaterial that the sentence for the previous conviction was stayed, withheld or suspended, or that the actor was pardoned, unless the pardon was granted on the ground of innocence.

(c) If the actor is a persistent repeater, the term of imprisonment for the felony for which the persistent repeater presently is being sentenced under ch. 973 is life imprisonment without the possibility of parole or extended supervision.

(d) If a prior conviction is being considered as being covered under par. (a) 1m. b. or 2m. d. as comparable to a felony specified under par. (a) 1m. a. or 2m. a., am., b., or c., the conviction may be counted as a prior conviction under par. (b) only if the court determines, beyond a reasonable doubt, that the violation relating to that conviction would constitute a felony specified under par. (a) 1m. a. or 2m. a., am., b., or c. if committed by an adult in this state.

(3) In this section "felony" and "misdemeanor" have the following meanings:

(a) In case of crimes committed in this state, the terms do not include motor vehicle offenses under chs. 341 to 349 and offenses handled through proceedings in the court assigned to exercise jurisdiction under chs. 48 and 938, but otherwise have the meanings designated in s. 939.60.

(b) In case of crimes committed in other jurisdictions, the terms do not include those crimes which are equivalent to motor vehicle offenses under chs. 341 to 349 or to offenses handled through proceedings in the court assigned to exercise jurisdiction under chs. 48 and 938. Otherwise, felony means a crime which under the laws of that jurisdiction carries a prescribed maximum penalty of imprisonment in a prison or penitentiary for one year or more. Misdemeanor means a crime which does not carry a prescribed maximum penalty sufficient to constitute it a felony and includes crimes punishable only by a fine.

History: 1977 c. 449; 1989 a. 85; 1993 a. 289, 483, 486; 1995 a. 77, 448; 1997 a. 219, 283, 295, 326; 1999 a. 32, 85, 188; 2001 a. 109; 2005 a. 14, 277; 2007 a. 116.

Cross-reference: For procedure, see s. 973.12.

Imposition of a 3-year sentence as a repeater was not cruel and unusual even though the conviction involved the stealing of 2 boxes of candy, which carried a maximum sentence of 6 months. Hanson v. State, 48 Wis. 2d 203, 179 N.W.2d 909 (1970).

A repeater charge must be withheld from the jury's knowledge since it is relevant only to sentencing. Mulkovich v. State, 73 Wis. 2d 464, 243 N.W.2d 198 (1976).

This section authorizes penalty enhancement only when the maximum underlying sentence is imposed. The enhancement portion of a sub-maximum sentence is vacated as an abuse of sentencing discretion. State v. Harris, 119 Wis. 2d 612, 350 N.W.2d 633 (1984).

In sub. (2), "convicted of a misdemeanor on 3 separate occasions" requires 3 separate misdemeanors, not 3 separate court appearances. State v. Wittrock, 119 Wis. 2d 664, 350 N.W.2d 647 (1984).

A court's acceptance of a guilty plea or verdict is sufficient to trigger the operation of this section; completion of sentencing is not a prerequisite. State v. Wimmer, 152 Wis. 2d 654, 449 N.W.2d 621 (Ct. App. 1989).

Felony convictions entered following a waiver from juvenile court are a proper basis for a repeater allegation. State v. Kastner, 156 Wis. 2d 371, 457 N.W.2d 331 (Ct. App. 1990).

Sub. (1) is applicable when concurrent maximum sentences are imposed for multiple offenses. Consecutive sentences are not required. State v. Davis, 165 Wis. 2d 78, 477 N.W.2d 307 (Ct. App. 1991).

For offenses under ch. 161 [now ch. 961], the court may apply s. 961.48 or 939.62, but not both. State v. Ray, 166 Wis. 2d 855, 481 N.W.2d 288 (Ct. App. 1992).

Each conviction for a misdemeanor constitutes a "separate occasion" for purposes of sub. (2). State v. Hopkins, 168 Wis. 2d 802, 484 N.W.2d 549 (1992).

Enhancement of a sentence under this section does not violate double jeopardy. State v. James, 169 Wis. 2d 490, 485 N.W.2d 436 (Ct. App. 1992).

This section does not grant a trial court authority to increase a punitive sanction for contempt of court. State v. Carpenter, 179 Wis. 2d 838, 508 N.W.2d 69 (Ct. App. 1993).

The state is charged with proving a prior conviction and that it lies within the 5-year window of sub. (2). State v. Goldstein, 182 Wis. 2d 251, 513 N.W.2d 631 (Ct. App. 1994).

A guilty plea without a specific admission to repeater allegations is not sufficient to establish the facts necessary to impose the repeater penalty enhancer. State v. Zimmermann, 185 Wis. 2d 549, 518 N.W.2d 303 (Ct. App. 1994).

When a defendant does not admit to habitual criminality, the state must prove the alleged repeater status beyond a reasonable doubt. State v. Theriault, 187 Wis. 2d 125, 522 N.W.2d 264 (Ct. App. 1994).

A commitment under the Sex Crimes Law, ch. 975, is not a sentence under sub. (2). State v. Kruzycki, 192 Wis. 2d 509, 531 N.W.2d 429 (Ct. App. 1995).

Sub. (2m) (b) is constitutional. It does not violate the guaranty against cruel and unusual punishment, the principal of separation of powers, or the guaranty of equal protection. State v. Lindsey, 203 Wis. 2d 423, 554 N.W.2d 215 (Ct. App. 1996), 95-3392.

A conviction for purposes of sub. (2) occurs when the judgment of conviction under s. 972.13 is entered, not the date that guilt is found. Mikrut v. State, 212 Wis. 2d 859, 569 N.W.2d 765 (Ct. App. 1997), 96-2703.

Section 973.13 commands that all sentences in excess of that authorized by law be declared void, including the repeater portion of a sentence. Prior postconviction motions that failed to challenge the validity of the sentence do not bar seeking relief from faulty repeater sentences. State v. Flowers, 221 Wis. 2d 20, 586 N.W.2d 175 (Ct. App. 1998), 97-3682.

Sub. (2m) (b) does not violate constitutional equal protection requirements. State v. Block, 222 Wis. 2d 586, 587 N.W.2d 914 (Ct. App. 1998), 97-3265.

When the state charged the defendant as a repeater under subs. (1) (c) and (2), then charged the defendant as a repeater under sub. (2m) in the information, it abandoned the earlier charges and could not resurrect them when the latter charge proved to be invalid. State v. Thoms, 228 Wis. 2d 868, 599 N.W.2d 84 (Ct. App. 1999), 98-3260.

Confinement time spent on various parole holds qualifies as actual confinement serving a criminal sentence thereby extending the 5-year period under sub. (2). State v. Price, 231 Wis. 2d 229, 604 N.W.2d 898 (Ct. App. 1999), 99-0746.

Jail time served as a condition of probation is time spent in confinement under sub. (2) and is excluded from calculating the statute's time period. State v. Crider, 2000 WI App 84, 234 Wis. 2d 195, 610 N.W.2d 198, 99-1158.

Because s. 941.29 (2m), the second offense felon in possession of a firearm statute, defines an additional element to the crime in s. 941.29 (2), felon in possession of a firearm, it creates a separate offense, and not a penalty enhancer, and will support the application of this section. State v. Gibson, 2000 WI App 207, 238 Wis. 2d 547, 618 N.W.2d 248, 99-2612.

A circuit court may not determine the validity of a prior conviction during an enhanced sentencing proceeding predicated on the prior conviction unless the offender alleges that a violation of the right to a lawyer occurred in the prior conviction. The offender may use whatever means are available to challenge the other conviction in another forum, and if successful, seek to reopen the enhanced sentence. State v. Hahn, 2000 WI 118, 238 Wis. 2d 889, 618 N.W.2d 528, 99-0554.

When two penalty enhancers are applicable to the same crime, the length of the second penalty enhancer is based on the maximum term for the base crime as extended by the first penalty enhancer. State v. Quiroz, 2002 WI App 52, 251 Wis. 2d 245, 641 N.W.2d 715, 01-1549.

For purposes of applying this section, the definition of "crime" in s. 939.12 as "conduct which is prohibited by state law and punishable by fine or imprisonment or both" is applicable to statutes outside of chs. 939 to 948 and 951. State v. Sveum, 2002 WI App 105, 254 Wis. 2d 868, 648 N.W.2d 496, 01-0230.

An uncertified copy of a prior judgment of conviction may be used to prove a convicted defendant's status as a habitual criminal. The rules of evidence do not apply to documents offered during a circuit court's presentence determination of whether a qualifying prior conviction exists. The state has the burden of proof and must offer proof beyond a reasonable doubt of the conviction. State v. Saunders, 2002 WI 107, 255 Wis. 2d 589, 649 N.W.2d 263, 01-0271.

A defendant's admission that an out-of-state crime is a serious felony does not relieve a court of its obligation to make an independent determination on that issue. The trial court's failure to make that finding did not prevent the appellate court from making it. State v. Collins, 2002 WI App 177, 256 Wis. 2d 697, 649 N.W.2d 325, 01-2185.

Sub. (2m) is constitutional. State v. Radke, 2003 WI 7, 259 Wis. 2d 13, 657 N.W.2d 66, 01-1879.

A defendant convicted of a second or subsequent OWI is subject to the penalty enhancements provided for in both ss. 346.65 (2) and 939.62, if the application of each enhancer is based on a separate and distinct prior conviction or convictions. State v. Delaney, 2003 WI 9, 259 Wis. 2d 77, 658 N.W.2d 416, 01-1051.

A defendant convicted of a second or subsequent controlled substance offense is subject to the penalty enhancements provided for in both ss. 939.62 and 961.48 (2) if the application of each enhancer is based on a separate and distinct prior conviction or convictions. State v. Maxey, 2003 WI App 94, 264 Wis. 2d 878, 663 N.W.2d 811, 02-1171.

In determining whether a prior offense was a serious child sex offense under sub. (2m), a court may apply an elements only test but may also conduct a comparable analysis by considering whether the defendant's conduct under the statute governing the prior conviction would constitute a felony under the current statute. State v. Wield, 2003 WI App 179, 266 Wis. 2d 872, 668 N.W.2d 823, 02-2242.

For purposes of computation of the 5-year period under sub. (2), time spent in the least restrictive phase of the intensive sanctions program is time spent in actual confinement serving a criminal sentence that is excluded. The intensive sanctions program operates as a correctional institution, is deemed a confinement classification, and is more restrictive than ordinary probation or parole supervision or extended supervision. State v. Pfeil, 2007 WI App 241, 306 Wis. 2d 237, 742 N.W.2d 573, 06-2771.

A trial court judge, rather than a jury, is allowed to determine the applicability of a defendant's prior conviction for sentence enhancement purposes when the necessary information concerning the prior conviction can be readily determined from an existing judicial record. State v. LaCount, 2008 WI 59, 310 Wis. 2d 85, 750 N.W.2d 780, 06-0672.

Evidence of repeater status may be submitted any time following the jury verdict up until the actual sentencing. State v. Kashney, 2008 WI App 164, 314 Wis. 2d 623, 761 N.W.2d 672, 07-2687.

The application of the persistent repeater statute requires a particular sequence of convictions: 1) the conviction date for the first offense must have preceded the violation date for the second offense, and 2) the conviction date for the second offense must have preceded the violation date for the current Wisconsin offense. State v. Long, 2009 WI 36, 317 Wis. 2d 92, 765 N.W.2d 557, 07-2307.

939.621 Increased penalty for certain domestic abuse offenses. (1) In this section, "domestic abuse repeater" means either of the following:

(a) A person who commits, during the 72 hours immediately following an arrest for a domestic abuse incident as set forth in s. 968.075 (5), an act of domestic abuse, as defined in s. 968.075 (1) (a) that constitutes the commission of a crime. For the purpose of the definition under this paragraph, the 72-hour period applies whether or not there has been a waiver by the victim under s. 968.075 (5) (c).

(b) A person who was convicted, on 2 separate occasions, of a felony or a misdemeanor for which a court imposed a domestic abuse surcharge under s. 973.055 (1) or waived a domestic abuse surcharge pursuant to s. 973.055 (4), during the 10-year period immediately prior to the commission of the crime for which the person presently is being sentenced, if the convictions remain of record and unreversed. For the purpose of the definition under this paragraph, it is immaterial that sentence was stayed, withheld or suspended, or that the person was pardoned, unless such pardon was granted on the ground of innocence. In computing the preceding 10-year period, time that the person spent in actual confinement serving a criminal sentence shall be excluded.

(2) If a person commits an act of domestic abuse, as defined in s. 968.075 (1) (a) and the act constitutes the commission of a crime, the maximum term of imprisonment for that crime may be increased by not more than 2 years if the person is a domestic abuse repeater. The victim of the domestic abuse crime does not have to be the same as the victim of the domestic abuse incident that resulted in the prior arrest or conviction. The penalty increase under this section changes the status of a misdemeanor to a felony.

History: 1987 a. 346; 1995 a. 304; 2011 a. 277.

When two penalty enhancers are applicable to the same crime, the length of the second penalty enhancer is based on the maximum term for the base crime as extended by the first penalty enhancer. State v. Quiroz, 2002 WI App 52, 251 Wis. 2d 245, 641 N.W.2d 715, 01-1549.

939.63 Penalties; use of a dangerous weapon. (1) If a person commits a crime while possessing, using or threatening to use a dangerous weapon, the maximum term of imprisonment prescribed by law for that crime may be increased as follows:

(a) The maximum term of imprisonment for a misdemeanor may be increased by not more than 6 months.

(b) If the maximum term of imprisonment for a felony is more than 5 years or is a life term, the maximum term of imprisonment for the felony may be increased by not more than 5 years.

(c) If the maximum term of imprisonment for a felony is more than 2 years, but not more than 5 years, the maximum term of imprisonment for the felony may be increased by not more than 4 years.

(d) The maximum term of imprisonment for a felony not specified in par. (b) or (c) may be increased by not more than 3 years.

(2) The increased penalty provided in this section does not apply if possessing, using or threatening to use a dangerous weapon is an essential element of the crime charged.

(3) This section applies only to crimes specified under chs. 939 to 951 and 961.

History: 1979 c. 114; 1981 c. 212; 1987 a. 332 s. 64; 1995 a. 448; 2001 a. 109.

The fact that the maximum term for a misdemeanor may exceed one year under sub. (1) (a) 1. does not upgrade the crime to felony status. State v. Denter, 121 Wis. 2d 118, 357 N.W.2d 555 (1984).

Possession encompasses both actual and constructive possession. To prove a violation of this section, the state must prove that the defendant possessed the weapon to facilitate the predicate offense. State v. Peete, 185 Wis. 2d 255, 517 N.W.2d 149 (1994). See also State v. Howard, 211 Wis. 2d 269, 564 N.W.2d 753 (1997), 95-0770.

An automobile may constitute a dangerous weapon under s. 939.22 (10). State v. Bidwell, 200 Wis. 2d 200, 546 N.W.2d 507 (Ct. App. 1996).

Under *Peete*, there is sufficient evidence of possession if the evidence allows a reasonable jury to find beyond a reasonable doubt that the defendant possessed a dangerous weapon in order to use it or threaten to use it, even if the defendant did not use or threaten to use it in the commission of the crime. State v. Page, 2000 WI App 267, 240 Wis. 2d 276, 622 N.W.2d 285, 99-2015.

When two penalty enhancers are applicable to the same crime, the length of the second penalty enhancer is based on the maximum term for the base crime as extended by the first penalty enhancer. State v. Quiroz, 2002 WI App 52, 251 Wis. 2d 245, 641 N.W.2d 715, 01-1549.

939.632 Penalties; violent crime in a school zone. (1) In this section:

(a) "School" means a public school, parochial or private school, or tribal school, as defined in s. 115.001 (15m), that provides an educational program for one or more grades between grades 1 and 12 and that is commonly known as an elementary school, middle school, junior high school, senior high school, or high school.

(b) "School bus" has the meaning given in s. 340.01 (56).

(c) "School premises" means any school building, grounds, recreation area or athletic field or any other property owned, used or operated for school administration.

(d) "School zone" means any of the following:

1. On the premises of a school.

2. Within 1,000 feet from the premises of a school.

3. On a school bus or public transportation transporting students to and from a public or private school or to and from a tribal school, as defined in s. 115.001 (15m).

3m. At school bus stops where students are waiting for a school bus or are being dropped off by a school bus.

(e) "Violent crime" means any of the following:

1. Any felony under s. 940.01, 940.02, 940.03, 940.05, 940.09 (1c), 940.19 (2), (4) or (5), 940.21, 940.225 (1), (2) or (3), 940.235, 940.305, 940.31, 941.20, 941.21, 943.02, 943.06, 943.10 (2), 943.23 (1g), 943.32 (2), 948.02 (1) or (2), 948.025, 948.03 (2) (a) or (c), 948.05, 948.051, 948.055, 948.07, 948.08, 948.085, or 948.30 (2) or under s. 940.302 (2) if s. 940.302 (2) (a) 1. b. applies.

2. The solicitation, conspiracy or attempt, under s. 939.30, 939.31 or 939.32, to commit a Class A felony.

3. Any misdemeanor under s. 940.19 (1), 940.225 (3m), 940.32 (2), 940.42, 940.44, 941.20 (1), 941.23, 941.235, 941.24 or 941.38 (3).

(2) If a person commits a violent crime in a school zone, the maximum term of imprisonment is increased as follows:

(a) If the violent crime is a felony, the maximum term of imprisonment is increased by 5 years.

(b) If the violent crime is a misdemeanor, the maximum term of imprisonment is increased by 3 months and the place of imprisonment is the county jail.

(3) (a) In addition to any other penalties that may apply to the crime under sub. (2), the court may require the person to complete 100 hours of community service work for a public agency or a nonprofit charitable organization. The court shall ensure that the defendant is provided a written statement of the terms of the community service order. Any organization or agency acting in good faith to which a defendant is assigned under an order under this paragraph has immunity from any civil liability in excess of $25,000 for acts or omissions by or impacting on the defendant.

(b) The court shall not impose the requirement under par. (a) if the court determines that the person would pose a threat to public safety while completing the requirement.

(4) This section provides for the enhancement of the penalties applicable for the underlying crime. The court shall direct that the trier of fact find a special verdict as to all of the issues specified in sub. (2).

History: 1995 a. 22; 2001 a. 109; 2005 a. 277; 2007 a. 116, 127; 2009 a. 180, 302.

The violent crime in a school zone penalty enhancer is not unconstitutional as applied to the defendant. The legislature seeks to deter violent crime near schools in an effort to create a safety zone around schools. The 1,000-foot perimeter is a reasonable distance to try to accomplish this legislative goal. State v. Quintana, 2007 WI App 29, 299 Wis. 2d 234, 729 N.W.2d 776, 06-0499.

939.635 Increased penalty for certain crimes against children committed by a child care provider. If a person commits a violation of s. 948.02, 948.025, or 948.03 (2) or (3) against a child for whom the person was providing child care for compensation, the maximum term of imprisonment for that crime may be increased by not more than 5 years.

History: 2011 a. 82.

939.645 Penalty; crimes committed against certain people or property. (1) If a person does all of the following, the penalties for the underlying crime are increased as provided in sub. (2):

(a) Commits a crime under chs. 939 to 948.

(b) Intentionally selects the person against whom the crime under par. (a) is committed or selects the property that is damaged or otherwise affected by the crime under par. (a) in whole or in part because of the actor's belief or perception regarding the race, religion, color, disability, sexual orientation, national origin or ancestry of that person or the owner or occupant of that property, whether or not the actor's belief or perception was correct.

(2) (a) If the crime committed under sub. (1) is ordinarily a misdemeanor other than a Class A misdemeanor, the revised maximum fine is $10,000 and the revised maximum term of imprisonment is one year in the county jail.

(b) If the crime committed under sub. (1) is ordinarily a Class A misdemeanor, the penalty increase under this section changes the status of the crime to a felony and the revised maximum fine is $10,000 and the revised maximum term of imprisonment is 2 years.

(c) If the crime committed under sub. (1) is a felony, the maximum fine prescribed by law for the crime may be increased by not more than $5,000 and the maximum term of imprisonment prescribed by law for the crime may be increased by not more than 5 years.

(3) This section provides for the enhancement of the penalties applicable for the underlying crime. The court shall direct that the trier of fact find a special verdict as to all of the issues specified in sub. (1).

(4) This section does not apply to any crime if proof of race, religion, color, disability, sexual orientation, national origin or ancestry or proof of any person's perception or belief regarding another's race, religion, color, disability, sexual orientation, national origin or ancestry is required for a conviction for that crime.

History: 1987 a. 348; 1991 a. 291; 2001 a. 109.

When two penalty enhancers are applicable to the same crime, the length of the second penalty enhancer is based on the maximum term for the base crime as extended by the first penalty enhancer. State v. Quiroz, 2002 WI App 52, 251 Wis. 2d 245, 641 N.W.2d 715, 01-1549.

The "hate crimes" law, s. 939.645, does not unconstitutionally infringe upon free speech. State v. Mitchell, 508 U.S. 476, 124 L. Ed. 2d 436 (1993); 178 Wis. 2d 597, 504 N.W.2d 610 (1993).

Hate Crimes: New Limits on the Scope of the 1st Amendment. Resler. 77 MLR 415 (1993).

Put to the Proof: Evidentiary Considerations in Wisconsin Hate Crime Prosecutions. Read. 89 MLR 453 (2005).

Talking about Hate Speech: A Rhetorical Analysis of American and Canadian Regulation of Hate Speech. Moran. 1994 WLR 1425.

Hate Crimes. Kassel. Wis. Law. Oct. 1992.

SUBCHAPTER V

RIGHTS OF THE PROSECUTION

939.65 Prosecution under more than one section permitted. Except as provided in s. 948.025 (3), if an act forms the basis for a crime punishable under more than one statutory provision, prosecution may proceed under any or all such provisions.

History: 1993 a. 227.

Due process does not require that a person know with certainty which crime, among several, the person is committing, at least until the prosecution exercises its charging discretion. Harris v. State, 78 Wis. 2d 357, 254 N.W.2d 291 (1977).

939.66 Conviction of included crime permitted. Upon prosecution for a crime, the actor may be convicted of either the crime charged or an included crime, but not both. An included crime may be any of the following:

(1) A crime which does not require proof of any fact in addition to those which must be proved for the crime charged.

(2) A crime which is a less serious type of criminal homicide than the one charged.

(2m) A crime which is a less serious or equally serious type of battery than the one charged.

(2p) A crime which is a less serious or equally serious type of violation under s. 948.02 than the one charged.

(2r) A crime which is a less serious type of violation under s. 943.23 than the one charged.

(3) A crime which is the same as the crime charged except that it requires recklessness or negligence while the crime charged requires a criminal intent.

(4) An attempt in violation of s. 939.32 to commit the crime charged.

(4m) A crime of failure to timely pay child support under s. 948.22 (3) when the crime charged is failure to pay child support for more than 120 days under s. 948.22 (2).

(5) The crime of attempted battery when the crime charged is sexual assault, sexual assault of a child, robbery, mayhem or aggravated battery or an attempt to commit any of them.

(6) A crime specified in s. 940.285 (2) (b) 4. or 5. when the crime charged is specified in s. 940.19 (2) to (6), 940.225 (1), (2) or (3) or 940.30.

(6c) A crime that is a less serious type of violation under s. 940.285 than the one charged.

(6e) A crime that is a less serious type of violation under s. 940.295 than the one charged.

(7) The crime specified in s. 940.11 (2) when the crime charged is specified in s. 940.11 (1).

History: 1985 a. 29, 144, 306, 332; 1987 a. 332 s. 64; 1987 a. 349, 403; 1989 a. 31 s. 2909b; 1989 a. 250; 1991 a. 205; 1993 a. 441, 445, 491; 2005 a. 430.

To submit a lesser included offense, there must be some reasonable ground in the evidence for conviction on the lesser and acquittal on the greater. A lesser offense is permissible when the evidence requires the jury to find a disputed factual element in the charged offense that is not required for the lesser and the jury might find the disputed fact either way. State v. Melvin, 49 Wis. 2d 246, 181 N.W.2d 490 (1970).

Attempted battery can only be an included crime as to the specific offenses listed. State v. Melvin, 49 Wis. 2d 246, 181 N.W.2d 490 (1970).

A charge of possession of a pistol by a minor is not an included crime in a charge of attempted first-degree murder because it includes the element of minority that the greater crime does not. State v. Melvin, 49 Wis. 2d 246, 181 N.W.2d 490 (1970).

Disorderly conduct is not a lesser included offense of criminal damage to property. State v. Chacon, 50 Wis. 2d 73, 183 N.W.2d 84 (1971).

While attempted aggravated battery is not an included crime of aggravated battery under sub. (1), it is under sub. (4). The reduced charge does not put the defendant in double jeopardy. Dunn v. State, 55 Wis. 2d 192, 197 N.W.2d 749 (1972).

Under sub. (1), the emphasis is on the proof, not the pleading, and the "stricken word test" stated in *Eastway v. State*, 189 Wis. 56, is not incorporated in the statute. Martin v. State, 57 Wis. 2d 499, 204 N.W.2d 499 (1973).

Section 947.015, bomb scares, is not an included crime in s. 941.30, recklessly endangering safety. State v. Van Ark, 62 Wis. 2d 155, 215 N.W.2d 41 (1974).

When the evidence overwhelmingly showed that a shooting was intentional, failure to include negligent homicide under ss. 940.06 and 940.08 as a lesser included offenses was not error. Hayzes v. State, 64 Wis. 2d 189, 218 N.W.2d 717 (1974).

In order to justify the submission of an instruction on a lesser degree of homicide than that with which the defendant is charged, there must be a reasonable basis in the evidence for acquittal on the greater charge and for conviction on the lesser charge. Harris v. State, 68 Wis. 2d 436, 228 N.W.2d 645 (1975).

For one crime to be included in another, it must be utterly impossible to commit the greater crime without committing the lesser. Randolph v. State, 83 Wis. 2d 630, 266 N.W.2d 334 (1978).

The test under sub. (1) concerns legal, statutorily defined elements of the crime, not peculiar facts of case. State v. Verhasselt, 83 Wis. 2d 647, 266 N.W.2d 342 (1978).

The trial court erred in denying the defendant's request for the submission of a verdict of endangering safety by conduct regardless of life as a lesser included offense of attempted murder. Hawthorne v. State, 99 Wis. 2d 673, 299 N.W.2d 866 (1981).

Without clear legislative intent to the contrary, multiple punishment may not be imposed for felony-murder and the underlying felony. State v. Gordon, 111 Wis. 2d 133, 330 N.W.2d 564 (1983).

When a defendant charged with 2nd-degree murder denied firing the fatal shot, a manslaughter instruction was properly denied. State v. Sarabia, 118 Wis. 2d 655, 348 N.W.2d 527 (1984).

Under the "elements only" test, offenses that require proof of nonconsent are not lesser included offenses of offenses for which proof of nonconsent is not required. State v. Richards, 123 Wis. 2d 1, 365 N.W.2d 7 (1985).

When police confiscated a large quantity of drugs from an empty home and the next day searched the defendant upon his return home, confiscating a small quantity of the same drugs, the defendant's conviction for a lesser-included offense of possession and a greater offense of possession with intent to deliver did not violate double jeopardy. State v. Stevens, 123 Wis. 2d 303, 367 N.W.2d 788 (1985).

Reckless use of weapons under s. 941.20 (1) (a), 1983 stats., was not a lesser included offense of crime of endangering safety by conduct regardless of life while armed under ss. 939.63 (1) (a) 3. and 941.30, 1983 stats. State v. Carrington, 134 Wis. 2d 260, 397 N.W.2d 484 (1986).

The court must instruct the jury on a properly requested lesser offense even though the statute of limitations bars the court from entering a conviction on the lesser offense. State v. Muentner, 138 Wis. 2d 374, 406 N.W.2d 415 (1987).

The court of appeals may not direct the circuit court to enter a judgment of conviction for a lesser included offense when a jury verdict of guilty on a greater offense is reversed for insufficiency of evidence and the jury was not instructed on the lesser included offense. State v. Myers, 158 Wis. 2d 356, 461 N.W.2d 777 (1990).

Convictions for both first-degree murder and burglary/battery are permissible. State v. Kuntz, 160 Wis. 2d 722, 467 N.W.2d 531 (1991).

Evidence at trial may suggest to the state that an instruction on a lesser included offense is appropriate; it is unreasonable for a defendant to assume at the outset of trial that evidence may not affect the state's prosecuting position. State v. Fleming, 181 Wis. 2d 546, 510 N.W.2d 837 (Ct. App. 1993).

This section does not bar multiple convictions when homicides are "equally serious." Two Class C felonies with the same maximum penalty were equally serious although one carried additional sanctions of driver license revocation and an additional penalty assessment that the other did not. State v. Lechner, 217 Wis. 2d 392, 576 N.W.2d 912 (1998), 96-2830.

Misdemeanor battery is an included crime of felony battery, but they are not the same offense. Acquittal on felony battery charges does not prevent subsequent prosecution for misdemeanor battery. State v. Vassos, 218 Wis. 2d 330, 579 N.W.2d 35 (1998), 97-0938.

There is no rule that when a more specific crime could have been charged, the defendant loses the right to a lesser-included instruction on a more general offense. That retail theft, which was not a lesser-included offense of armed robbery, could have been charged did not prevent the giving of an instruction on theft as a lesser included offense of armed robbery. State v. Jones, 228 Wis. 2d 593, 598 N.W.2d 259 (Ct. App. 1999), 98-1681.

A lesser included offense must be both lesser and included. An offense with a heavier penalty cannot be regarded as a lesser offense than one with a lighter penalty. State v. Smits, 2001 WI App 45, 241 Wis. 2d 374, 626 N.W.2d 42, 00-1158.

When a jury returned a verdict finding the defendant guilty of both a greater and a lesser included offense, although it had been instructed that it could only find one or the other, it was not error for the court to enter judgment on the greater offense after polling the jury to confirm the result. State v. Hughes, 2001 WI App 239, 248 Wis. 2d 133, 635 N.W.2d 661, 00-3176. See also State v. Cox, 2007 WI App 38, 300 Wis. 2d 236, 730 N.W.2d 452, 06-0419.

Separate prosecutions for a carjacking that occurred on one day and operating the same car without the owner's consent on the next did not violate sub. (2r) or the constitutional protection against double jeopardy. State v. McKinnie, 2002 WI App 82, 252 Wis. 2d 172, 642 N.W.2d 617, 01-2764.

Sub. (2m) only applies to battery under s. 940.19 and not to battery by a prisoner under s. 940.20. Charging both was not multiplicitous and not a double

jeopardy violation. State v. Davison, 2003 WI 89, 263 Wis. 2d 145, 666 N.W.2d 1, 01-0826.

Section 948.40 (1) and (4) (a), contributing to the delinquency of a child with death as a consequence, is not a "type of criminal homicide" included under sub. (2). It provides a more serious punishment when "death is a consequence" of its violation. In contrast, the homicide statutes in ch. 940 target those who "cause the death" of another. State v. Patterson, 2010 WI 130, 329 Wis. 2d 599, 790 N.W.2d 909, 08-1968.

Multiple Punishment in Wisconsin and the *Wolske* Decision: Is It Desirable to Permit Two Homicide Convictions for Causing a Single Death? 1990 WLR 553.

NOTE: See also notes to Art. I, sec. 8, Double Jeopardy.

SUBCHAPTER VI

RIGHTS OF THE ACCUSED

939.70 Presumption of innocence and burden of proof. No provision of chs. 939 to 951 shall be construed as changing the existing law with respect to presumption of innocence or burden of proof.

History: 1979 c. 89; 1987 a. 332 s. 64.

939.71 Limitation on the number of convictions. If an act forms the basis for a crime punishable under more than one statutory provision of this state or under a statutory provision of this state and the laws of another jurisdiction, a conviction or acquittal on the merits under one provision bars a subsequent prosecution under the other provision unless each provision requires proof of a fact for conviction which the other does not require.

Misdemeanor battery is an included crime of felony battery, but they are not the same offense. Acquittal on felony battery charges does not prevent subsequent prosecution for misdemeanor battery. State v. Vassos, 218 Wis. 2d 330, 579 N.W.2d 35 (1998), 97-0938.

This section does not bar a subsequent prosecution for an offense arising from the same acts that could not have been charged at the time of the first prosecution and thus did not bar prosecuting a defendant for 1st-degree intentional homicide for the same act which led to battery convictions when the victim died after having been in a coma for 4 years. State v. McKee, 2002 WI App 148, 256 Wis. 2d 547, 648 N.W.2d 34, 01-1966.

Under this section, a subsequent prosecution is not prohibited if each provision requires proof of a fact for conviction that the other does not require, even if the same conduct was involved in the two prosecutions. In contrast, s. 961.45 provides that if a violation of ch. 961 is a violation of a federal law or the law of another state, a conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this state. The difference in the 2 statutes does not violate equal protection. State v. Swinson, 2003 WI App 45, 261 Wis. 2d 633, 660 N.W.2d 12, 02-0395.

939.72 No conviction of both inchoate and completed crime. A person shall not be convicted under both:

(1) Section 939.30 for solicitation and s. 939.05 as a party to a crime which is the objective of the solicitation; or

(2) Section 939.31 for conspiracy and s. 939.05 as a party to a crime which is the objective of the conspiracy; or

(3) Section 939.32 for attempt and the section defining the completed crime.

History: 1991 a. 153; 2001 a. 109.

Sub. (3) does not bar convicting the defendant who shot at one person but killed another of both murder and attempted murder. Austin v. State, 86 Wis. 2d 213, 271 N.W.2d 668 (1978).

Sub. (3) does not bar convictions for possession of burglarious tools and burglary arising out of a single transaction. Dumas v. State, 90 Wis. 2d 518, 280 N.W.2d 310 (Ct. App. 1979).

This section refers to convictions, not charges. The state may properly charge a defendant with both being a party to an attempt to commit a crime and conspiracy to commit the crime. State v. Moffett, 2000 WI 130, 239 Wis. 2d 629, 619 N.W.2d 918, 99-1768.

939.73 Criminal penalty permitted only on conviction. A penalty for the commission of a crime may be imposed only after the actor has been duly convicted in a court of competent jurisdiction.

939.74 Time limitations on prosecutions. (1) Except as provided in subs. (2) and (2d) and s. 946.88 (1), prosecution for a felony must be commenced within 6 years and prosecution for a misdemeanor or for adultery within 3 years after the commission thereof. Within the meaning of this section, a prosecution has commenced when a warrant or summons is issued, an indictment is found, or an information is filed.

(2) Notwithstanding that the time limitation under sub. (1) has expired:

(a) 1. A prosecution under s. 940.01, 940.02, 940.03, 940.05, 940.225 (1), 948.02 (1), or 948.025 (1) (a), (b), (c), or (d) may be commenced at any time.

2. A prosecution for an attempt to commit a violation of s. 940.01, 940.05, 940.225 (1), or 948.02 (1) may be commenced at any time.

(am) A prosecution under s. 940.06 may be commenced within 15 years after the commission of the violation.

(b) A prosecution for theft against one who obtained possession of the property lawfully and subsequently misappropriated it may be commenced within one year after discovery of the loss by the aggrieved party, but in no case shall this provision extend the time limitation in sub. (1) by more than 5 years.

(c) A prosecution for violation of s. 948.02 (2), 948.025 (1) (b), 948.03 (2) (a), 948.05, 948.051, 948.06, 948.07 (1), (2), (3), or (4), 948.075, 948.08, 948.085, or 948.095 shall be commenced before the victim reaches the age of 45 years or be barred, except as provided in sub. (2d).

(cm) A prosecution for violation of s. 948.03 (2) (b) or (c), (3) or (4), 948.04 or 948.07 (5) or (6) shall be commenced before the victim reaches the age of 26 years or be barred, except as provided in sub. (2d).

NOTE: 2007 Wis. Act 80 repealed and recreated s. 948.025 (1), replacing the former s. 948.025 (1) (ag), (ar), and (b) with s. 948.025 (1) (a) to (e). Act 80 inserted cross-references to s. 948.025 (1) (a) to (d) in par. (a) 1. and left unchanged an existing cross-reference to s. 948.025 (1) (b) in par. (c), resulting in 2 references to s. 948.025 (1) (b) and no references to s. 948.025 (1) (e) in this subsection. Corrective legislation is pending.

(2d) (a) In this subsection, "deoxyribonucleic acid profile" means an individual's patterned chemical structure of genetic information identified by analyzing biological material that contains the individual's deoxyribonucleic acid.

(am) For purposes of this subsection, crimes are related if they are committed against the same victim, are proximate in time, and are committed with the same intent, purpose, or opportunity so as to be part of the same course of conduct.

(c) If, before the applicable time limitation under sub. (1) or (2) (am), (c), or (cm) for commencing prosecution of a felony under ch. 940 or 948, other than a felony specified in sub. (2) (a), expires, the state collects biological material that is evidence of the identity of the person who committed the felony, identifies a deoxyribonucleic acid profile from the biological material, and compares the deoxyribonucleic acid profile to deoxyribonucleic acid profiles of known persons, the state may commence prosecution of the person who is the source of the biological material for the felony or a crime that is

related to the felony or both within 12 months after comparison of the deoxyribonucleic acid profile relating to the felony results in a probable identification of the person or within the applicable time under sub. (1) or (2), whichever is latest.

NOTE: Par. (c) is shown as affected by 2011 Wis. Acts 271 and 282 and as merged by the legislative reference bureau under s. 13.92 (2) (i).

(e) If, within 6 years after commission of a felony specified under sub. (2) (a), the state collects biological material that is evidence of the identity of the person who committed the felony, identifies a deoxyribonucleic acid profile from the biological material, and compares the deoxyribonucleic acid profile to deoxyribonucleic acid profiles of known persons, the state may commence prosecution of the person who is the source of the biological material for a crime that is related to the felony within 12 months after comparison of the deoxyribonucleic acid profile relating to the felony results in a probable identification of the person or within the applicable time under sub. (1) or (2), whichever is latest.

(3) In computing the time limited by this section, the time during which the actor was not publicly a resident within this state or during which a prosecution against the actor for the same act was pending shall not be included. A prosecution is pending when a warrant or a summons has been issued, an indictment has been found, or an information has been filed.

(4) In computing the time limited by this section, the time during which an alleged victim under s. 940.22 (2) is unable to seek the issuance of a complaint under s. 968.02 due to the effects of the sexual contact or due to any threats, instructions or statements from the therapist shall not be included.

History: 1981 c. 280; 1985 a. 275; 1987 a. 332, 380, 399, 403; 1989 a. 121; 1991 a. 269; 1993 a. 219, 227, 486; 1995 a. 456; 1997 a. 237; 2001 a. 16, 109; 2003 a. 196, 279, 326; 2005 a. 60, 276, 277; 2007 a. 80, 97, 116; 2009 a. 203; 2011 a. 271, 282; s. 13.92 (2) (i).

While courts have no duty to secure informed waivers of possible statutory defenses when accepting a guilty plea, under the unique facts of the case, the defendant was entitled to withdraw a guilty plea to a charge barred by the statute of limitations. State v. Pohlhammer, 82 Wis. 2d 1, 260 N.W.2d 678 (1978).

Sub. (3) tolls the running of statutes of limitation during the period in which a defendant is not a state resident and violates neither the privileges and immunities clause nor the equal protection clause of the U.S. constitution. State v. Sher, 149 Wis. 2d 1, 437 N.W.2d 878 (1989).

A person is not "publicly a resident within this state" under sub. (3) when living outside the state but retaining state residence for voting and tax purposes. State v. Whitman, 160 Wis. 2d 260, 466 N.W.2d 193 (Ct. App. 1990).

An arrest warrant is issued for purposes of sub. (1) when it is signed by a judge with the intent that it be executed and leaves the possession of the judge. That the warrant is never executed is irrelevant. State v. Mueller, 201 Wis. 2d 121, 549 N.W.2d 455 (Ct. App. 1996), 93-3227.

The statute of limitations for a continuing offense does not run until the last act is done, which, viewed alone, is a crime. Otherwise, a prosecution for a felony offense must be commenced within 6 years. State v. Miller, 2002 WI App 197, 257 Wis. 2d. 124, 650 N.W.2d 850, 01-1406.

When the jury found the defendant guilty of having sexual contact with the minor victim during the period outside the statute of limitations, but also found that the victim was unable to seek the issuance of a complaint due to the effects of the sexual contact or due to statements or instructions by the defendant, the statute of limitations was tolled under sub. (4). The jury was required to agree upon a specific act committed within a specific time period but was not required to determine exactly when the agreed-upon offense was committed. When the date of the crime is not a material element of the offense charged, it need not be precisely alleged or determined. State v. Miller, 2002 WI App 197, 257 Wis. 2d. 124, 650 N.W.2d 850, 01-1406.

When a defendant is already in custody due to his or her incarceration, the filing of a criminal complaint is sufficient to commence a prosecution. State v. Jennings, 2003 WI 10, 259 Wis. 2d 523, 657 N.W.2d 393, 01-0507.

The common law "year-and-a-day rule" that no homicide is committed unless the victim dies within a year and a day after the injury is inflicted is abrogated, with prospective application only. State v. Picotte, 2003 WI 42, 261 Wis. 2d 249, 661 N.W.2d 381, 01-3063.

When sub. (2) (c) was created in 1987, it only applied prospectively. Subsequent amendments did not change this conclusion because they did not change the initial applicability of sub. (2) (c). Rather, the language in the subsequent amendments, which stated these amendments apply to offenses not yet barred, was clearly meant to apply to offenses that sub. (2) (c) had not already barred. State v. MacArthur, 2008 WI 72, 310 Wis. 2d 550, 750 N.W.2d 910, 06-1379.

The circuit judge decides the tolling issue under sub. (3) in a pretrial proceeding wherein the state must prove that the defendant was not a public resident by a preponderance of the evidence. State v. MacArthur, 2008 WI 72, 310 Wis. 2d 550, 750 N.W.2d 910, 06-1379.

A plaintiff's allegations of the defendant district attorney's bad faith presented no impediment to application of the general principle prohibiting federal court interference with pending state prosecutions when the only factual assertion in support of the claim was the district attorney's delay in completing the prosecution, and there were no facts alleged that could support any conclusion other than that the district attorney had acted consistently with state statutes and constitution. Smith v. McCann, 381 F. Supp. 1027 (1974).

The 36-year tolling of the statute of limitations under sub. (3) was not unconstitutional in this case. It did not violate the Privileges and Immunities, Due Process, or Equal Protection provisions of the U.S. Constitution. Sub. (3) does not burden a fundamental right, and it is rationally related to the legitimate governmental interests of detecting crimes and apprehending criminals. State v. McGuire, 2010 WI 91, 328 Wis. 2d 289; 786 N.W.2d 227, 07-2711.

Sub. (2) (a) does not apply to a prosecution for attempted first-degree intentional homicide, which must instead be commenced within six years in accordance with sub. (1). State v. Larson, 2011 WI App 106, 336 Wis. 2d 419, 801 N.W.2d 343, 10-1666.

The Perils of Plain Language: Statute of Limitations for Child Sexual Assault Defendants. Flynn. Wis. Law. March 2009.

939.75 Death or harm to an unborn child. (1) In this section and ss. 939.24 (1), 939.25 (1), 940.01 (1) (b), 940.02 (1m), 940.05 (2g) and (2h), 940.06 (2), 940.08 (2), 940.09 (1) (c) to (e) and (1g) (c), (cm), and (d), 940.10 (2), 940.195, 940.23 (1) (b) and (2) (b), 940.24 (2) and 940.25 (1) (c) to (e), "unborn child" means any individual of the human species from fertilization until birth that is gestating inside a woman.

(2) (a) In this subsection, "induced abortion" means the use of any instrument, medicine, drug or other substance or device in a medical procedure with the intent to terminate the pregnancy of a woman and with an intent other than to increase the probability of a live birth, to preserve the life or health of the infant after live birth or to remove a dead fetus.

(b) Sections 940.01 (1) (b), 940.02 (1m), 940.05 (2g) and (2h), 940.06 (2), 940.08 (2), 940.09 (1) (c) to (e) and (1g) (c), (cm), and (d), 940.10 (2), 940.195, 940.23 (1) (b) and (2) (b), 940.24 (2) and 940.25 (1) (c) to (e) do not apply to any of the following:

1. An act committed during an induced abortion. This subdivision does not limit the applicability of ss. 940.04, 940.13, 940.15 and 940.16 to an induced abortion.

2. An act that is committed in accordance with the usual and customary standards of medical practice during diagnostic testing or therapeutic treatment performed by, or under the supervision of, a physician licensed under ch. 448.

2h. An act by any health care provider, as defined in s. 155.01 (7), that is in accordance with a pregnant woman's power of attorney for health care instrument under ch. 155 or in accordance with a decision of a health care agent who is acting under a pregnant woman's power of attorney for health care instrument under ch. 155.

3. An act by a woman who is pregnant with an unborn child that results in the death of or great bodily harm, substantial bodily harm or bodily harm to that unborn child.

4. The prescription, dispensation or administration by any person lawfully authorized to do so and the use by a woman of

any medicine, drug or device that is used as a method of birth control or is intended to prevent pregnancy.

(3) When the existence of an exception under sub. (2) 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 s. 940.01 (1) (b), 940.02 (1m), 940.05 (2g), 940.06 (2), 940.08 (2), 940.09 (1) (c) to (e) or (1g) (c), (cm), or (d), 940.10 (2), 940.195, 940.23 (1) (b) or (2) (b), 940.24 (2) or 940.25 (1) (c) to (e).

History: 1997 a. 295; 2001 a. 109; 2003 a. 97.

CHAPTER 940

CRIMES AGAINST LIFE AND BODILY SECURITY

Cross-reference: See definitions in s. 939.22.

NOTE: 1987 Wis. Act 399 included changes in homicide and lesser included offenses. The sections affected had previously passed the senate as 1987 Senate Bill 191, which was prepared by the Judicial Council and contained explanatory notes. These notes have been inserted following the sections affected and are credited to SB 191 as "Bill 191-S".

SUBCHAPTER I

LIFE

940.01 First-degree intentional homicide. (1) OFFENSES. (a) Except as provided in sub. (2), whoever causes the death of another human being with intent to kill that person or another is guilty of a Class A felony.

(b) Except as provided in sub. (2), whoever causes the death of an unborn child with intent to kill that unborn child, kill the woman who is pregnant with that unborn child or kill another is guilty of a Class A felony.

(2) MITIGATING CIRCUMSTANCES. The following are affirmative defenses to prosecution under this section which mitigate the offense to 2nd-degree intentional homicide under s. 940.05:

(a) *Adequate provocation.* Death was caused under the influence of adequate provocation as defined in s. 939.44.

(b) *Unnecessary defensive force.* Death was caused because the actor believed he or she or another was in imminent danger of death or great bodily harm and that the force used was necessary to defend the endangered person, if either belief was unreasonable.

(c) *Prevention of felony.* Death was caused because the actor believed that the force used was necessary in the exercise of the privilege to prevent or terminate the commission of a felony, if that belief was unreasonable.

(d) *Coercion; necessity.* Death was caused in the exercise of a privilege under s. 939.45 (1).

(3) BURDEN OF PROOF. When the existence of an affirmative defense under sub. (2) has been placed in issue by the trial evidence, the state must prove beyond a reasonable doubt that the facts constituting the defense did not exist in order to sustain a finding of guilt under sub. (1).

History: 1987 a. 399; 1997 a. 295.

Judicial Council Note, 1988: First-degree intentional homicide is analogous to the prior offense of first-degree murder. Sub. (2) formerly contained a narrower definition of "intent to kill" than the general definition of criminal intent. That narrower definition has been eliminated in the interest of uniformity. Section 939.23 now defines the intent referred to.

The affirmative defenses specified in sub. (2) were formerly treated in s. 940.05. This caused confusion because they seemed to be elements of manslaughter rather than defenses to first-degree murder. Sub. (2) specifies only those affirmative defenses which mitigate an intentional homicide from first to 2nd degree. Other affirmative defenses are a defense to 2nd-degree intentional homicide also, such as self-defense, i.e., when both beliefs specified in sub. (2) (b) are reasonable. Section 939.48.

The prosecution is required to prove only that the defendant's acts were a substantial factor in the victim's death; not the sole cause. State v. Block, 170 Wis. 2d 676, 489 N.W.2d 715 (Ct. App. 1992).

The trial court must apply an objective reasonable view of the evidence test to determine whether under sub. (3) a mitigating affirmative defense "has been placed in issue" before submitting the issue to the jury. In Interest of Shawn B. N. 173 Wis. 2d 343, 497 N.W.2d 141 (Ct. App. 1992).

Imperfect self-defense contains an initial threshold element requiring a reasonable belief that the defendant was terminating an unlawful interference with his or her person. State v. Camacho, 176 Wis. 2d 860, 501 N.W.2d 380 (1993).

Sub. (1) (a) cannot be applied against a mother for actions taken against a fetus while pregnant as the applicable definition of human being under s. 939.22 (16) is limited to one who is born alive. Sub. (1) (b) does not apply because s. 939.75 (2) (b) excludes from its application actions by a pregnant woman. State v. Deborah J.Z. 228 Wis. 2d 468, 596 N.W.2d 490 (Ct. App. 1999), 96-2797.

Barring psychiatric or psychological opinion testimony on the defendant's capacity to form an intent to kill is constitutional. Haas v. Abrahamson, 910 F. 2d 384 (1990) citing Steele v. State, 97 Wis. 2d 72, 294 N.W.2d 2 (1980).

A privilege for excusable homicide by accident or misfortune is incorporated in s. 939.45 (6). Accident is a defense that negatives intent. If a person kills another by accident, the killing could not have been intentional. Accident must be disproved beyond a reasonable doubt when a defendant raises it as a defense. When the state proves intent to kill beyond a reasonable doubt, it necessarily disproves accident. State v. Watkins, 2002 WI 101, 255 Wis. 2d 265, 647 N.W.2d 244, 00-0064.

A defendant may demonstrate that he or she was acting lawfully, a necessary element of an accident defense, by showing that he or she was acting in lawful self-defense. Although intentionally pointing a firearm at another constitutes a violation of s. 941.20, under s. 939.48 (1) a person is privileged to point a gun at another person in self-defense if the person reasonably believes that the threat of force is necessary to prevent or terminate what he or she reasonably believes to be an unlawful interference. State v. Watkins, 2002 WI 101, 255 Wis. 2d 265, 647 N.W.2d 244, 00-0064.

A defendant seeking a jury instruction on perfect self-defense to a charge of first-degree intentional homicide must satisfy an objective threshold showing that he or she reasonably believed that he or she was preventing or terminating an unlawful interference with his or her person and reasonably believed that the force used was necessary to prevent imminent death or great bodily harm. A defendant seeking a jury instruction on unnecessary defensive force under sub. (2) (b) to a charge of first-degree intentional homicide is not required to satisfy the objective threshold. State v. Head, 2002 WI 99, 255 Wis. 2d 194, 648 N.W.2d 413, 99-3071.

A defendant who claims self-defense to a charge of first-degree intentional homicide may use evidence of a victim's violent character and past acts of violence to show a satisfactory factual basis that he or she actually believed he or she was in imminent danger of death or great bodily harm and actually believed that the force used was necessary to defend himself or herself, even if both beliefs were unreasonable. State v. Head, 2002 WI 99, 255 Wis. 2d 194, 648 N.W.2d 413, 99-3071.

The common law "year-and-a-day rule" that no homicide is committed unless the victim dies within a year and a day after the injury is inflicted is abrogated, with prospective application only. State v. Picotte, 2003 WI 42, 261 Wis. 2d 249, 661 N.W.2d 381, 01-3063.

An actor causes death if his or her conduct is a substantial factor in bringing about that result. A substantial factor need not be the sole cause of death for one to be held legally culpable. Whether an intervening act was negligent, intentional or legally wrongful is irrelevant. The state must still prove beyond a reasonable doubt that the defendant's acts were a substantial factor in producing the death. State v. Below, 2011 WI App 64, 333 Wis. 2d 690, 799 N.W.2d 95, 10-0798.

Under the facts of this case, the court did not err in denying an intervening cause instruction. Even if the defendant could have established that the termination of the victim's life support was "wrongful" under Wisconsin law, that wrongful act would not break the chain of causation between the defendant's actions and victim's subsequent death. State v. Below, 2011 WI App 64, 333 Wis. 2d 690, 799 N.W.2d 95, 10-0798.

Importance of clarity in law of homicide: The Wisconsin revision. Dickey, Schultz & Fullin. 1989 WLR 1323 (1989).

State v. Camacho: The Judicial Creation of an Objective Element to Wisconsin's Law of Imperfect Self-defense Homicide. Leiser. 1995 WLR 742.

940.02 First-degree reckless homicide. (1) Whoever recklessly causes the death of another human being under circumstances which show utter disregard for human life is guilty of a Class B felony.

(1m) Whoever recklessly causes the death of an unborn child under circumstances that show utter disregard for the life of that unborn child, the woman who is pregnant with that unborn child or another is guilty of a Class B felony.

(2) Whoever causes the death of another human being under any of the following circumstances is guilty of a Class C felony:

(a) By manufacture, distribution or delivery, in violation of s. 961.41, of a controlled substance included in schedule I or II under ch. 961, of a controlled substance analog of a controlled substance included in schedule I or II under ch. 961 or of ketamine or flunitrazepam, if another human being uses the controlled substance or controlled substance analog and dies as a result of that use. This paragraph applies:

1. Whether the human being dies as a result of using the controlled substance or controlled substance analog by itself or with any compound, mixture, diluent or other substance mixed or combined with the controlled substance or controlled substance analog.

2. Whether or not the controlled substance or controlled substance analog is mixed or combined with any compound, mixture, diluent or other substance after the violation of s. 961.41 occurs.

3. To any distribution or delivery described in this paragraph, regardless of whether the distribution or delivery is made directly to the human being who dies. If possession of the controlled substance included in schedule I or II under ch. 961, of the controlled substance analog of the controlled substance included in schedule I or II under ch. 961 or of the ketamine or flunitrazepam is transferred more than once prior to the death as described in this paragraph, each person who distributes or delivers the controlled substance or controlled substance analog in violation of s. 961.41 is guilty under this paragraph.

(b) By administering or assisting in administering a controlled substance included in schedule I or II under ch. 961, a controlled substance analog of a controlled substance included in schedule I or II of ch. 961 or ketamine or flunitrazepam, without lawful authority to do so, to another human being and that human being dies as a result of the use of the substance. This paragraph applies whether the human being dies as a result of using the controlled substance or controlled substance analog by itself or with any compound, mixture, diluent or other substance mixed or combined with the controlled substance or controlled substance analog.

History: 1987 a. 339, 399; 1995 a. 448; 1997 a. 295; 1999 a. 57; 2001 a. 109.

Judicial Council Note, 1988: [As to sub. (1)] First-degree reckless homicide is analogous to the prior offense of 2nd-degree murder. The concept of "conduct evincing a depraved mind, regardless of human life" has been a difficult one for modern juries to comprehend. To avoid the mistaken connotation that a clinical mental disorder is involved, the offense has been recodified as aggravated reckless homicide. The revision clarifies that a subjective mental state, i.e., criminal recklessness, is required for liability. See s. 939.24. The aggravating element, i.e., circumstances which show utter disregard for human life, is intended to codify judicial interpretations of "conduct evincing a depraved mind, regardless of life". State v. Dolan, 44 Wis. 2d 68 (1969); State v. Weso, 60 Wis. 2d 404 (1973).

Under prior law, adequate provocation mitigated 2nd-degree murder to manslaughter. State v. Hoyt, 21 Wis. 2d 284 (1964). Under this revision, the analogs of those crimes, i.e., first-degree reckless and 2nd-degree intentional homicide, carry the same penalty; thus mitigation is impossible. Evidence of provocation will usually be admissible in prosecutions for crimes requiring criminal recklessness, however, as relevant to the reasonableness of the risk (and, in prosecutions under this section, whether the circumstances show utter disregard for human life). Since provocation is integrated into the calculus of recklessness, it is not an affirmative defense thereto and the burdens of production and persuasion stated in s. 940.01 (3) are inapplicable. [Bill 191-S]

Possession of a controlled substance is not a lesser included offense of sub. (2) (a). State v. Clemons, 164 Wis. 2d 506, 476 N.W.2d 283 (Ct. App. 1991).

Generally expert evidence of personality dysfunction is irrelevant to the issue of intent, although it might be admissible in very limited circumstances. State v. Morgan, 195 Wis. 2d 388, 536 N.W.2d 425 (Ct. App. 1995), 93-2611.

Utter disregard for human life is an objective standard of what a reasonable person in the defendant's position is presumed to have known and is proved through an examination of the acts that caused death and the totality of the circumstances surrounding the conduct. State v. Edmunds, 229 Wis. 2d 67, 598 N.W.2d 290 (Ct. App. 1999), 98-2171.

The common law "year-and-a-day rule" that no homicide is committed unless the victim dies within a year and a day after the injury is inflicted is abrogated,

with prospective application only. State v. Picotte, 2003 WI 42, 261 Wis. 2d 249, 661 N.W.2d 381, 01-3063.

The punishments for first-degree reckless homicide by delivery of a controlled substance under s. 940.02 (2) (a) and contributing to the delinquency of a child with death as a consequence in violation of s. 948.40 (1) and (4) (a) are not multiplicitous when both convictions arise from the same death. State v. Patterson, 2010 WI 130, 329 Wis. 2d 599, 790 N.W.2d 909, 08-1968.

An actor causes death if his or her conduct is a substantial factor in bringing about that result. A substantial factor need not be the sole cause of death for one to be held legally culpable. Whether an intervening act was negligent, intentional or legally wrongful is irrelevant. The state must still prove beyond a reasonable doubt that the defendant's acts were a substantial factor in producing the death. State v. Below, 2011 WI App 64, 333 Wis. 2d 690, 799 N.W.2d 95, 10-0798.

Under the facts of this case, the court did not err in denying an intervening cause instruction. Even if the defendant could have established that the termination of the victim's life support was "wrongful" under Wisconsin law, that wrongful act would not break the chain of causation between the defendant's actions and victim's subsequent death. State v. Below, 2011 WI App 64, 333 Wis. 2d 690, 799 N.W.2d 95, 10-0798.

While swerving has been held to show regard for life, the defendant's conduct must be considered in light of the totality of the circumstances. When the defendant was driving over eighty miles per hour on a major, well-traveled city street after consuming alcohol and prescription pills and never braked or slowed down before running a red light, an ineffectual swerve failed to demonstrate a regard for human life. State v. Geske, 2012 WI App 15, 339 Wis. 2d 170, 810 N.W.2d 226, 10-2808.

Importance of clarity in law of homicide: The Wisconsin revision. Dickey, Schultz & Fullin. 1989 WLR 1323 (1989).

940.03 Felony murder. Whoever causes the death of another human being while committing or attempting to commit a crime specified in s. 940.19, 940.195, 940.20, 940.201, 940.203, 940.225 (1) or (2) (a), 940.30, 940.31, 943.02, 943.10 (2), 943.23 (1g), or 943.32 (2) may be imprisoned for not more than 15 years in excess of the maximum term of imprisonment provided by law for that crime or attempt.

History: 1987 a. 399; 2001 a. 109; 2005 a. 313.

Judicial Council Note, 1988: The prior felony murder statute (s. 940.02 (2)) did not allow enhanced punishment for homicides caused in the commission of a Class B felony. State v. Gordon, 111 Wis. 2d 133, 330 N.W.2d 564 (1983). The revised statute eliminates the "natural and probable consequence" limitation and limits the offense to homicides caused in the commission of or attempt to commit armed robbery, armed burglary, arson, first-degree sexual assault or 2nd-degree sexual assault by use or threat of force or violence. The revised penalty clause allows imposition of up to 20 years' imprisonment more than that prescribed for the underlying felony. Prosecution and punishment for both offenses remain barred by double jeopardy. State v. Carlson, 5 Wis. 2d 595, 93 N.W.2d 355 (1958). [Bill 191-S]

To prove that the defendant caused the death, the state need only prove that the defendant's conduct was a substantial factor. The phrase "while committing or attempting to commit" encompasses the immediate flight from the felony. A defendant may be convicted if another person, including an intended felony victim, fires the fatal shot. State v. Oimen, 184 Wis. 2d 423, 516 N.W.2d 399 (Ct. App. 1994), State v. Rivera, 184 Wis. 2d 485, 516 N.W.2d 391 (1994) and State v. Chambers, 183 Wis. 2d 316, 515 N.W.2d 531 (Ct. App. 1994).

Attempted felony murder does not exist. Attempt requires intent and the crime of felony murder is complete without specific intent. State v. Briggs, 218 Wis. 2d 61, 579 N.W.2d 783 (Ct. App. 1998), 97-1558.

Oimen affirms that felony murder liability exists if a defendant is a party to one of the listed felonies and a death results. State v. Krawczyk, 2003 WI App 6, 259 Wis. 2d 843, 657 N.W.2d 77, 02-0156.

The common law "year-and-a-day rule" that no homicide is committed unless the victim dies within a year and a day after the injury is inflicted is abrogated, with prospective application only. State v. Picotte, 2003 WI 42, 261 Wis. 2d 249, 661 N.W.2d 381, 01-3063.

For purposes of calculating initial confinement, felony murder is a stand-alone unclassified crime, not a penalty enhancer. State v. Mason, 2004 WI App 176, 276 Wis. 2d 434, 687 N.W.2d 526, 03-2693.

An actor causes death if his or her conduct is a substantial factor in bringing about that result. A substantial factor need not be the sole cause of death for one to be held legally culpable. Whether an intervening act was negligent, intentional or legally wrongful is irrelevant. The state must still prove beyond a reasonable doubt that the defendant's acts were a substantial factor in producing the death. State v. Below, 2011 WI App 64, 333 Wis. 2d 690, 799 N.W.2d 95, 10-0798.

Under the facts of this case, the court did not err in denying an intervening cause instruction. Even if the defendant could have established that the termination of the victim's life support was "wrongful" under Wisconsin law, that wrongful act would not break the chain of causation between the defendant's actions and victim's subsequent death. State v. Below, 2011 WI App 64, 333 Wis. 2d 690, 799 N.W.2d 95, 10-0798.

940.04 Abortion. (1) Any person, other than the mother, who intentionally destroys the life of an unborn child is guilty of a Class H felony.

(2) Any person, other than the mother, who does either of the following is guilty of a Class E felony:

(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.

(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.

History: 2001 a. 109; 2011 a. 217.

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

Sub. (2) (a) proscribes feticide. It does not apply to consensual abortions. It was not impliedly repealed by the adoption of s. 940.15 in response to *Roe v. Wade*. State v. Black, 188 Wis. 2d 639, 526 N.W.2d 132 (1994).

The common law "year-and-a-day rule" that no homicide is committed unless the victim dies within a year and a day after the injury is inflicted is abrogated, with prospective application only. State v. Picotte, 2003 WI 42, 261 Wis. 2d 249, 661 N.W.2d 381, 01-3063.

This section is cited as similar to a Texas statute that 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 U.S. 113 (1973).

The state may prohibit first trimester abortions by nonphysicians. Connecticut v. Menillo, 423 U.S. 9 (1975).

The viability of an unborn child is discussed. Colautti v. Franklin, 439 U.S. 379 (1979).

Poverty is not a constitutionally suspect classification. Encouraging childbirth except in the most urgent circumstances is rationally related to the legitimate governmental objective of protecting potential life. Harris v. McRae, 448 U.S. 297 (1980).

Abortion issues are discussed. Akron v. Akron Center for Reproductive Health, 462 U.S. 416 (1983); Planned Parenthood Assn. v. Ashcroft, 462 U.S. 476 (1983); Simopoulas v. Virginia, 462 U.S. 506 (1983).

The essential holding of *Roe v. Wade* allowing abortion is upheld, but various state restrictions on abortion are permissible. Planned Parenthood v. Casey, 505 U.S. 833, 120 L. Ed. 2d 674 (1992).

Wisconsin's abortion statute, 940.04, Stats. 1969, is unconstitutional as applied to the abortion of an embryo that has not quickened. Babbitz v. McCann, 310 F. Supp. 293 (1970).

When U.S. supreme court decisions clearly made Wisconsin's antiabortion statute unenforceable, the issue in a physician's action for injunctive relief against enforcement became mooted, and it no longer presented a case or controversy over which the court could have jurisdiction. Larkin v. McCann, 368 F. Supp. 1352 (1974).

State regulation of abortion. 1970 WLR 933.

940.05 Second-degree intentional homicide. (1) Whoever causes the death of another human being with intent to kill that person or another is guilty of a Class B felony if:

(a) In prosecutions under s. 940.01, the state fails to prove beyond a reasonable doubt that the mitigating circumstances

specified in s. 940.01 (2) did not exist as required by s. 940.01 (3); or

(b) The state concedes that it is unable to prove beyond a reasonable doubt that the mitigating circumstances specified in s. 940.01 (2) did not exist. By charging under this section, the state so concedes.

(2) In prosecutions under sub. (1), it is sufficient to allege and prove that the defendant caused the death of another human being with intent to kill that person or another.

(2g) Whoever causes the death of an unborn child with intent to kill that unborn child, kill the woman who is pregnant with that unborn child or kill another is guilty of a Class B felony if:

(a) In prosecutions under s. 940.01, the state fails to prove beyond a reasonable doubt that the mitigating circumstances specified in s. 940.01 (2) did not exist as required by s. 940.01 (3); or

(b) The state concedes that it is unable to prove beyond a reasonable doubt that the mitigating circumstances specified in s. 940.01 (2) did not exist. By charging under this section, the state so concedes.

(2h) In prosecutions under sub. (2g), it is sufficient to allege and prove that the defendant caused the death of an unborn child with intent to kill that unborn child, kill the woman who is pregnant with that unborn child or kill another.

(3) The mitigating circumstances specified in s. 940.01 (2) are not defenses to prosecution for this offense.

History: 1987 a. 399; 1997 a. 295.

Judicial Council Note, 1988: Second-degree intentional homicide is analogous to the prior offense of manslaughter. The penalty is increased and the elements clarified in order to encourage charging under this section in appropriate cases.

Adequate provocation, unnecessary defensive force, prevention of felony, coercion and necessity, which are affirmative defenses to first-degree intentional homicide but not this offense, mitigate that offense to this. When this offense is charged, the state's inability to disprove their existence is conceded. Their existence need not, however, be pleaded or proved by the state in order to sustain a finding of guilty.

When first-degree intentional homicide is charged, this lesser offense must be submitted upon request if the evidence, reasonably viewed, could support the jury's finding that the state has not borne its burden of persuasion under s. 940.01 (3). State v. Felton, 110 Wis. 2d 465, 508 (1983). [Bill 191-S]

The prosecution is required to prove only that the defendant's acts were a substantial factor in the victim's death; not the sole cause. State v. Block, 170 Wis. 2d 676, 489 N.W.2d 715 (Ct. App. 1992).

The common law "year-and-a-day rule" that no homicide is committed unless the victim dies within a year and a day after the injury is inflicted is abrogated, with prospective application only. State v. Picotte, 2003 WI 42, 261 Wis. 2d 249, 661 N.W.2d 381, 01-3063.

Importance of clarity in law of homicide: The Wisconsin revision. Dickey, Schultz & Fullin. 1989 WLR 1323 (1989).

940.06 Second-degree reckless homicide. (1) Whoever recklessly causes the death of another human being is guilty of a Class D felony.

(2) Whoever recklessly causes the death of an unborn child is guilty of a Class D felony.

History: 1987 a. 399; 1997 a. 295; 2001 a. 109.

Judicial Council Note, 1988: Second-degree reckless homicide is analogous to the prior offense of homicide by reckless conduct. The revised statute clearly requires proof of a subjective mental state, i.e., criminal recklessness. See s. 939.24 and the NOTE thereto. [Bill 191-S]

Second-degree reckless homicide is not a lesser included offense of homicide by intoxicated use of a motor vehicle. State v. Lechner, 217 Wis. 2d 392, 576 N.W.2d 912 (1998), 96-2830.

The common law "year-and-a-day rule" that no homicide is committed unless the victim dies within a year and a day after the injury is inflicted is abrogated, with prospective application only. State v. Picotte, 2003 WI 42, 261 Wis. 2d 249, 661 N.W.2d 381, 01-3063.

Importance of clarity in law of homicide: The Wisconsin revision. Dickey, Schultz & Fullin. 1989 WLR 1323 (1989).

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 G felony.

History: 1977 c. 173; 2001 a. 109.

The common law "year-and-a-day rule" that no homicide is committed unless the victim dies within a year and a day after the injury is inflicted is abrogated, with prospective application only. State v. Picotte, 2003 WI 42, 261 Wis. 2d 249, 661 N.W.2d 381, 01-3063.

940.08 Homicide by negligent handling of dangerous weapon, explosives or fire. (1) Except as provided in sub. (3), whoever causes the death of another human being by the negligent operation or handling of a dangerous weapon, explosives or fire is guilty of a Class G felony.

(2) Whoever causes the death of an unborn child by the negligent operation or handling of a dangerous weapon, explosives or fire is guilty of a Class G felony.

(3) Subsection (1) does not apply to a health care provider acting within the scope of his or her practice or employment.

History: 1977 c. 173; 1985 a. 293; 1987 a. 399; 1997 a. 295; 2001 a. 109; 2011 a. 2.

Judicial Council Note, 1988: The definition of the offense is broadened to include highly negligent handling of fire, explosives and dangerous weapons in addition to firearm, airgun, knife or bow and arrow. See s. 939.22 (10). [Bill 191-S]

The common law "year-and-a-day rule" that no homicide is committed unless the victim dies within a year and a day after the injury is inflicted is abrogated, with prospective application only. State v. Picotte, 2003 WI 42, 261 Wis. 2d 249, 661 N.W.2d 381, 01-3063.

940.09 Homicide by intoxicated use of vehicle or firearm. (1) Any person who does any of the following may be penalized as provided in sub. (1c):

(a) Causes the death of another by the operation or handling of a vehicle while under the influence of an intoxicant.

(am) Causes the death of another by the operation or handling of a vehicle while the person has a detectable amount of a restricted controlled substance in his or her blood.

(b) Causes the death of another by the operation or handling of a vehicle while the person has a prohibited alcohol concentration, as defined in s. 340.01 (46m).

(bm) Causes the death of another by the operation of a commercial motor vehicle while the person has an alcohol concentration of 0.04 or more but less than 0.08.

(c) Causes the death of an unborn child by the operation or handling of a vehicle while under the influence of an intoxicant.

(cm) Causes the death of an unborn child by the operation or handling of a vehicle while the person has a detectable amount of a restricted controlled substance in his or her blood.

(d) Causes the death of an unborn child by the operation or handling of a vehicle while the person has a prohibited alcohol concentration, as defined in s. 340.01 (46m).

(e) Causes the death of an unborn child by the operation of a commercial motor vehicle while the person has an alcohol concentration of 0.04 or more but less than 0.08.

(1c) (a) Except as provided in par. (b), a person who violates sub. (1) is guilty of a Class D felony.

(b) A person who violates sub. (1) is guilty of a Class C felony if the person has one or more prior convictions, suspensions, or revocations, as counted under s. 343.307 (2).

(1d) A person who violates sub. (1) is subject to the requirements and procedures for installation of an ignition interlock device under s. 343.301.

(1g) Any person who does any of the following is guilty of a Class D felony:

(a) Causes the death of another by the operation or handling of a firearm or airgun while under the influence of an intoxicant.

(am) Causes the death of another by the operation or handling of a firearm or airgun while the person has a detectable amount of a restricted controlled substance in his or her blood.

(b) Causes the death of another by the operation or handling of a firearm or airgun while the person has an alcohol concentration of 0.08 or more.

(c) Causes the death of an unborn child by the operation or handling of a firearm or airgun while under the influence of an intoxicant.

(cm) Causes the death of an unborn child by the operation or handling of a firearm or airgun while the person has a detectable amount of a restricted controlled substance in his or her blood.

(d) Causes the death of an unborn child by the operation or handling of a firearm or airgun while the person has an alcohol concentration of 0.08 or more.

(1m) (a) A person may be charged with and a prosecutor may proceed upon an information based upon a violation of any combination of sub. (1) (a), (am), or (b); any combination of sub. (1) (a), (am), or (bm); any combination of sub. (1) (c), (cm), or (d); any combination of sub. (1) (c), (cm), or (e); any combination of sub. (1g) (a), (am), or (b) or; any combination of sub. (1g) (c), (cm), or (d) for acts arising out of the same incident or occurrence.

(b) If a person is charged in an information with any of the combinations of crimes referred to in par. (a), the crimes shall be joined under s. 971.12. If the person is found guilty of more than one of the crimes so charged 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. 23.33 (13) (b) 2. and 3., under s. 30.80 (6) (a) 2. and 3., under s. 343.307 (1) or under s. 350.11 (3) (a) 2. and 3. Subsection (1) (a), (am), (b), (bm), (c), (cm), (d), and (e) each require proof of a fact for conviction which the others do not require, and sub. (1g) (a), (am), (b), (c), (cm), and (d) each require proof of a fact for conviction which the others do not require.

(2) (a) In any action under this section, the defendant has a defense if he or she proves by a preponderance of the evidence that the death would have occurred even if he or she had been exercising due care and he or she had not been under the influence of an intoxicant, did not have a detectable amount of a restricted controlled substance in his or her blood, or did not have an alcohol concentration described under sub. (1) (b), (bm), (d) or (e) or (1g) (b) or (d).

(b) In any action under sub. (1) (am) or (cm) or (1g) (am) or (cm) that is based on the defendant allegedly having a detectable amount of methamphetamine or gamma-hydroxybutyric acid or delta-9-tetrahydrocannabinol in his or her blood, the defendant has a defense if he or she proves by a preponderance of the evidence that at the time of the incident or occurrence he or she had a valid prescription for methamphetamine or one of its metabolic precursors or gamma-hydroxybutyric acid or delta-9-tetrahydrocannabinol.

(3) An officer who makes an arrest for a violation of this section shall make a report as required under s. 23.33 (4t), 30.686, 346.635 or 350.106.

History: 1977 c. 173; 1981 c. 20, 184, 314, 391; 1983 a. 459; 1985 a. 331; 1987 a. 399; 1989 a. 105, 275, 359; 1991 a. 32, 277; 1993 a. 317; 1995 a. 425, 436; 1997 a. 237, 295, 338; 1999 a. 32, 109; 2001 a. 16, 109; 2003 a. 30, 97; 2009 a. 100.

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

Probable cause for arrest on a charge of homicide by intoxicated use of a motor vehicle justified taking a blood sample without a search warrant or arrest. State v. Bentley, 92 Wis. 2d 860, 286 N.W.2d 153 (Ct. App. 1979).

Each death caused by an intoxicated operator's negligence is chargeable as a separate offense. State v. Rabe, 96 Wis. 2d 48, 291 N.W.2d 809 (1980).

Because driving while intoxicated is inherently dangerous, the state need not prove a causal connection between the driver's intoxication and the victim's death. Sub. (2) does not violate the right against self-incrimination. State v. Caibaiosai, 122 Wis. 2d 587, 363 N.W.2d 574 (1985). Affirmed. State v. Fonte, 2005 WI 77, 281 Wis. 2d 654, 698 N.W.2d 594, 03-2097.

The definition of vehicle in s. 939.22 (44) applies to this section and includes a tractor. State v. Sohn, 193 Wis. 2d 346, 535 N.W.2d 1 (Ct. App. 1995).

Sub. (2) does not violate the constitutional guarantee of equal protection. State v. Lohmeier, 196 Wis. 2d 432, 538 N.W.2d 821 (Ct. App. 1995), 94-2187.

The defense under sub. (2) does not require an intervening cause; a victim's conduct can be the basis of the defense. The s. 939.14 rule that contributory negligence is not a defense to a crime does not prevent considering the victim's negligence in relation to causation. State v. Lohmeier, 205 Wis. 2d 183, 556 N.W.2d 90 (1996), 94-2187.

Second-degree reckless homicide is not a lesser included offense of homicide by intoxicated use of a motor vehicle. State v. Lechner, 217 Wis. 2d 392, 576 N.W.2d 912 (1998), 96-2830.

The common law "year-and-a-day rule" that no homicide is committed unless the victim dies within a year and a day after the injury is inflicted is prospectively abrogated. State v. Picotte, 2003 WI 42, 261 Wis. 2d 249, 661 N.W.2d 381, 01-3063.

This statute does not violate due process. Caibaiosai v. Barrington, 643 F. Supp. 1007 (W. D. Wis. 1986).

Homicide By Intoxicated Use Statute. Sines. Wis. Law. April, 1995.

940.10 Homicide by negligent operation of vehicle.

(1) Whoever causes the death of another human being by the negligent operation or handling of a vehicle is guilty of a Class G felony.

(2) Whoever causes the death of an unborn child by the negligent operation or handling of a vehicle is guilty of a Class G felony.

History: 1987 a. 399; 1997 a. 295; 2001 a. 109.

Judicial Council Note, 1988 Homicide by negligent operation of vehicle is analogous to prior s. 940.08. The mental element is criminal negligence as defined in s. 939.25. [Bill 191-S]

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

The definition of criminal negligence as applied to homicide by negligent operation of a vehicle is not unconstitutionally vague. State v. Barman, 183 Wis. 2d 180, 515 N.W.2d 493 (Ct. App. 1994).

A corporation may be subject to criminal liability under this section. State v. Knutson, Inc. 196 Wis. 2d 86, 537 N.W.2d 420 (Ct. App. 1995), 93-1898. See also State v. Steenberg Homes, Inc. 223 Wis. 2d 511, 589 N.W.2d 668 (Ct. App. 1998), 98-0104.

It is not a requirement for finding criminal negligence that the actor be specifically warned that his or her conduct may result in harm. State v. Johannes, 229 Wis. 2d 215, 598 N.W.2d 299 (Ct. App. 1999), 98-2239.

The common law "year-and-a-day rule" that no homicide is committed unless the victim dies within a year and a day after the injury is inflicted is abrogated, with prospective application only. State v. Picotte, 2003 WI 42, 261 Wis. 2d 249, 661 N.W.2d 381, 01-3063.

940.11 Mutilating or hiding a corpse. (1) Whoever mutilates, disfigures or dismembers a corpse, with intent to conceal a crime or avoid apprehension, prosecution or conviction for a crime, is guilty of a Class F felony.

(2) Whoever hides or buries a corpse, with intent to conceal a crime or avoid apprehension, prosecution or conviction for a crime or notwithstanding s. 49.141 (7), 49.49 (1), or 49.795 with intent to collect benefits under one of those sections, is guilty of a Class G felony.

(3) A person may not be subject to prosecution under both this section and s. 946.47 or under both this section and s. 948.23 (2) for his or her acts regarding the same corpse.

History: 1991 a. 205; 2001 a. 109; 2011 a. 268.

Evidence that the defendant dragged a corpse behind a locked gate into a restricted, secluded wildlife area, then rolled the corpse into water at the bottom of a ditch was sufficient for a jury to conclude that the defendant hid a corpse in violation of this section. State v. Badker, 2001 WI App 27, 240 Wis. 2d 460, 623 N.W.2d 142, 99-2943.

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 H felony.

History: 1977 c. 173; 2001 a. 109.

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 I 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 I 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 I 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; 2001 a. 109.

The essential holding of *Roe v. Wade* allowing abortion is upheld, but various state restrictions on abortion are permissible. Planned Parenthood v. Casey, 505 U.S. 833, 120 L. Ed. 2d 674 (1992).

940.16 Partial-birth abortion. (1) In this section:

(a) "Child" means a human being from the time of fertilization until it is completely delivered from a pregnant woman.

(b) "Partial-birth abortion" means an abortion in which a person partially vaginally delivers a living child, causes the death of the partially delivered child with the intent to kill the child, and then completes the delivery of the child.

(2) Except as provided in sub. (3), whoever intentionally performs a partial-birth abortion is guilty of a Class A felony.

(3) Subsection (2) does not apply if the partial-birth abortion is necessary to save the life of a woman whose life is endangered by a physical disorder, physical illness or physical injury, including a life-endangering physical disorder, physical illness or physical injury caused by or arising from the pregnancy itself, and if no other medical procedure would suffice for that purpose.

History: 1997 a. 219.

A Nebraska statute that provided that no partial birth abortion can be performed unless it is necessary to save the life of the mother whose life is endangered by a physical disorder, physical illness, or physical injury is unconstitutional. Stenberg v. Carhart, 530 U.S. 949, 147 L. Ed. 2d 743 (2000).

Enforcement of this section is enjoined under *Carhart.* Hope Clinic v. Ryan, 249 F.3d 603 (2001).

SUBCHAPTER II

BODILY SECURITY

940.19 Battery; substantial 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.

(2) Whoever causes substantial bodily harm to another by an act done with intent to cause bodily harm to that person or another is guilty of a Class I felony.

(4) Whoever causes great bodily harm to another by an act done with intent to cause bodily harm to that person or another is guilty of a Class H felony.

(5) Whoever causes great bodily harm to another by an act done with intent to cause great bodily harm to that person or another is guilty of a Class E felony.

(6) Whoever intentionally causes bodily harm to another by conduct that creates a substantial risk of great bodily harm is guilty of a Class H felony. A rebuttable presumption of conduct creating a substantial risk 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, that is

discernible by an ordinary person viewing the physically disabled person, or that is actually known by the actor.

History: 1977 c. 173; 1979 c. 111, 113; 1987 a. 399; 1993 a. 441, 483; 2001 a. 109.

Under the "elements only" test, offenses under subsections that require proof of nonconsent are not lesser included offenses of offenses under subsections for which proof of nonconsent is not required. State v. Richards, 123 Wis. 2d 1, 365 N.W.2d 7 (1985).

"Physical disability" is discussed. State v. Crowley, 143 Wis. 2d 324, 422 N.W.2d 847 (1988).

First-degree reckless injury, s. 940.23 (1), is not a lesser included offense of aggravated battery. State v. Eastman, 185 Wis. 2d 405, 518 N.W.2d 257 (Ct. App. 1994).

The act of throwing urine that strikes another and causes pain constitutes a battery. State v. Higgs, 230 Wis. 2d 1, 601 N.W.2d 653 (Ct. App. 1999), 98-1811.

Section 941.20 (1), 1st-degree recklessly endangering safety, is not a lesser included offense of sub. (5), aggravated battery. State v. Dibble, 2002 WI App 219, 257 Wis. 2d. 274, 650 N.W.2d 908, 02-0538.

940.195 Battery to an unborn child; substantial battery to an unborn child; aggravated battery to an unborn child. (1) Whoever causes bodily harm to an unborn child by an act done with intent to cause bodily harm to that unborn child, to the woman who is pregnant with that unborn child or another is guilty of a Class A misdemeanor.

(2) Whoever causes substantial bodily harm to an unborn child by an act done with intent to cause bodily harm to that unborn child, to the woman who is pregnant with that unborn child or another is guilty of a Class I felony.

(4) Whoever causes great bodily harm to an unborn child by an act done with intent to cause bodily harm to that unborn child, to the woman who is pregnant with that unborn child or another is guilty of a Class H felony.

(5) Whoever causes great bodily harm to an unborn child by an act done with intent to cause great bodily harm to that unborn child, to the woman who is pregnant with that unborn child or another is guilty of a Class E felony.

(6) Whoever intentionally causes bodily harm to an unborn child by conduct that creates a substantial risk of great bodily harm is guilty of a Class H felony.

History: 1997 a. 295; 2001 a. 109.

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 or a soft tissue injury, as defined in s. 946.41 (2) (c), to an officer, employee, visitor, or another inmate of such prison or institution, without his or her consent, is guilty of a Class H felony.

(1g) BATTERY BY CERTAIN COMMITTED PERSONS. Any person placed in a facility under s. 980.065 and who intentionally causes bodily harm to an officer, employee, agent, visitor, or other resident of the facility, without his or her consent, is guilty of a Class H felony.

(1m) BATTERY BY PERSONS SUBJECT TO CERTAIN INJUNCTIONS. (a) Any person who is subject to an injunction under s. 813.12 or a tribal injunction filed under s. 806.247 (3) and who intentionally causes bodily harm to the petitioner who sought the injunction by an act done without the consent of the petitioner is guilty of a Class I felony.

(b) Any person who is subject to an injunction under s. 813.125 and who intentionally causes bodily harm to the petitioner who sought the injunction by an act done without the consent of the petitioner is guilty of a Class I felony.

(2) BATTERY TO LAW ENFORCEMENT OFFICERS, FIRE FIGHTERS, AND COMMISSION WARDENS. 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), or to a commission warden, acting in an official capacity and the person knows or has reason to know that the victim is a law enforcement officer, fire fighter, or commission warden, by an act done without the consent of the person so injured, is guilty of a Class H felony.

(2m) BATTERY TO PROBATION, EXTENDED SUPERVISION AND PAROLE AGENTS AND AFTERCARE AGENTS. (a) In this subsection:

1. "Aftercare agent" means any person authorized by the department of corrections to exercise control over a juvenile on aftercare.

2. "Probation, extended supervision and parole agent" means any person authorized by the department of corrections to exercise control over a probationer, parolee or person on extended supervision.

(b) Whoever intentionally causes bodily harm to a probation, extended supervision and parole agent or an aftercare agent, acting in an official capacity and the person knows or has reason to know that the victim is a probation, extended supervision and parole agent or an aftercare agent, by an act done without the consent of the person so injured, is guilty of a Class H felony.

(3) BATTERY TO JURORS. Whoever intentionally causes bodily harm to a person who he or she knows or has reason to know is or was a grand or petit juror, and by reason of any verdict or indictment assented to by the person, without the consent of the person injured, is guilty of a Class H 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 I felony.

(5) BATTERY TO TECHNICAL COLLEGE DISTRICT OR SCHOOL DISTRICT OFFICERS AND EMPLOYEES. (a) In this subsection:

1. "School district" has the meaning given in s. 115.01 (3).

2. "Technical college district" means a district established under ch. 38.

(b) Whoever intentionally causes bodily harm to a technical college district or school district officer or employee acting in that capacity, and the person knows or has reason to know that the victim is a technical college district or school district officer or employee, without the consent of the person so injured, is guilty of a Class I felony.

(6) BATTERY TO PUBLIC TRANSIT VEHICLE OPERATOR, DRIVER OR PASSENGER. (a) In this subsection, "public transit vehicle" means any vehicle used for providing transportation service to the general public.

(b) Whoever intentionally causes bodily harm to another under any of the following circumstances is guilty of a Class I felony:

1. The harm occurs while the victim is an operator, a driver or a passenger of, in or on a public transit vehicle.

2. The harm occurs after the offender forces or directs the victim to leave a public transit vehicle.

3. The harm occurs as the offender prevents, or attempts to prevent, the victim from gaining lawful access to a public transit vehicle.

(7) BATTERY TO EMERGENCY MEDICAL CARE PROVIDERS. (a) In this subsection:

1e. "Ambulance" has the meaning given in s. 256.01 (1).

1g. "Emergency department" means a room or area in a hospital, as defined in s. 50.33 (2), that is primarily used to provide emergency care, diagnosis or radiological treatment.

2. "Emergency department worker" means any of the following:

a. An employee of a hospital who works in an emergency department.

b. A health care provider, whether or not employed by a hospital, who works in an emergency department.

2g. "Emergency medical technician" has the meaning given in s. 256.01 (5).

2m. "First responder" has the meaning given in s. 256.01 (9).

3. "Health care provider" means any person who is licensed, registered, permitted or certified by the department of health services or the department of safety and professional services to provide health care services in this state.

(b) Whoever intentionally causes bodily harm to an emergency department worker, an emergency medical technician, a first responder or an ambulance driver who is acting in an official capacity and who the person knows or has reason to know is an emergency department worker, an emergency medical technician, a first responder or an ambulance driver, by an act done without the consent of the person so injured, is guilty of a Class H felony.

History: 1977 c. 173; 1979 c. 30, 113, 221; 1981 c. 118 s. 9; 1983 a. 189 s. 329 (4); 1989 a. 336; 1993 a. 54, 164, 491; 1995 a. 27 s. 9126 (19); 1995 a. 77, 145, 225, 343; 1997 a. 35, 143, 283; 1999 a. 85; 2001 a. 109; 2005 a. 434; 2007 a. 20 s. 9121 (6) (a); 2007 a. 27, 130; 2011 a. 32, 74.

Resisting or obstructing an officer, s. 946.41, is not a lesser-included offense of battery to a peace officer. State v. Zdiarstek, 53 Wis. 2d 776, 193 N.W.2d 833 (1972).

A county deputy sheriff was not acting in an official capacity under s. 940.205 [now s. 940.20 (2)] when making an arrest outside of his county of employment. State v. Barrett, 96 Wis. 2d 174, 291 N.W.2d 498 (1980).

A prisoner is "confined to a state prison" under sub. (1) when kept under guard at a hospital for treatment. State v. Cummings, 153 Wis. 2d 603, 451 N.W.2d 463 (Ct. App. 1989).

A defendant's commitment to a mental institution upon a finding of not guilty by reason of mental disease or defect rendered him a "prisoner" under sub. (1). State v. Skamfer, 176 Wis. 2d 304, N.W.2d (Ct. App. 1993).

There is no requirement under sub. (2) that the officer/victim be acting lawfully when he or she is hit by a defendant. When an officer was assaulted when doing something within the scope of what the officer was employed to do, the lawfulness of the officer's presence in the house where the defendant hit him was not material to a violation of sub. (2). State v. Haywood, 2009 WI App 178, 322 Wis. 2d 691, 777 N.W.2d 921, 09-0030.

940.201 Battery or threat to witnesses. (1) In this section:

(a) "Family member" means a spouse, child, stepchild, foster child, parent, sibling, or grandchild.

(b) "Witness" has the meaning given in s. 940.41 (3).

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

(a) Intentionally causes bodily harm or threatens to cause bodily harm to a person who he or she knows or has reason to know is or was a witness by reason of the person having attended or testified as a witness and without the consent of the person harmed or threatened.

(b) Intentionally causes bodily harm or threatens to cause bodily harm to a person who he or she knows or has reason to know is a family member of a witness or a person sharing a common domicile with a witness by reason of the witness having attended or testified as a witness and without the consent of the person harmed or threatened.

History: 1997 a. 143; 2001 a. 109; 2009 a. 28.

Battery to a prospective witness is prohibited by s. 940.206 [now s. 940.201]. McLeod v. State, 85 Wis. 2d 787, 271 N.W.2d 157 (Ct. App. 1978).

940.203 Battery or threat to judge. (1) In this section:

(a) "Family member" means a parent, spouse, sibling, child, stepchild, or foster child.

(b) "Judge" means a supreme court justice, court of appeals judge, circuit court judge, municipal judge, temporary or permanent reserve, judge or circuit, supplemental, or municipal court commissioner.

(2) Whoever intentionally causes bodily harm or threatens to cause bodily harm to the person or family member of any judge under all of the following circumstances is guilty of a Class H felony:

(a) At the time of the act or threat, the actor knows or should have known that the victim is a judge or a member of his or her family.

(b) The judge 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: 1993 a. 50, 446; 2001 a. 61, 109; 2009 a. 28.

Only a "true threat" is punishable under this section. A true threat is a statement that a speaker would reasonably foresee that a listener would reasonably interpret as a serious expression of a purpose to inflict harm, as distinguished from hyperbole, jest, innocuous talk, expressions of political views, or other similarly protected speech. It is not necessary that the speaker have the ability to carry out the threat. Jury instructions must contain a clear definition of a true threat. State v. Perkins, 2001 WI 46, 243 Wis. 2d 141, 626 N.W.2d 762, 99-1924.

940.205 Battery or threat to department of revenue employee. (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, employee or agent under all of the following circumstances is guilty of a Class H 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, employee or agent or a member of his or her family.

(b) The official, employee 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; 1993 a. 446; 2001 a. 109; 2009 a. 28.

940.207 Battery or threat to department of safety and professional services or department of workforce development employee. (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 safety and professional services or department of

workforce development official, employee or agent under all of the following circumstances is guilty of a Class H felony:

(a) At the time of the act or threat, the actor knows or should have known that the victim is a department of safety and professional services or department of workforce development official, employee or agent or a member of his or her family.

(b) The official, employee 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: 1993 a. 86, 446; 1995 a. 27 ss. 7227 to 7229, 9116 (5), 9130 (4); 1997 a. 3; 2001 a. 109; 2009 a. 28; 2011 a. 32.

940.208 Battery to certain employees of counties, cities, villages, or towns. Whoever intentionally causes bodily harm to an employee of a county, city, village, or town under all of the following circumstances is guilty of a Class I felony:

(1) At the time of the act, the actor knows or should know that the victim is an employee of a county, city, village, or town.

(2) The victim is enforcing, or conducting an inspection for the purpose of enforcing, a state, county, city, village, or town zoning ordinance, building code, or other construction law, rule, standard, or plan at the time of the act or the act is in response to any such enforcement or inspection activity.

(2p) The enforcement or inspection complies with any law, ordinance, or rule, including any applicable notice requirement.

(3) There is no consent by the victim.

History: 2007 a. 193.

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 C felony.

History: 1977 c. 173; 2001 a. 109.

The forehead qualifies as an "other bodily member" under s. 940.21 because "other bodily member" encompasses all bodily parts. State v. Quintana, 2008 WI 33, 308 Wis. 2d 615, 748 N.W.2d 447, 06-0499.

Failure to instruct a jury that great bodily harm is an essential element of mayhem was reversible error. Cole v. Young, 817 F. 2d 412 (1987).

940.22 Sexual exploitation by therapist; duty to report. (1) DEFINITIONS. In this section:

(a) "Department" means the department of safety and professional services.

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

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

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

(e) "Record" means any document relating to the investigation, assessment and disposition of a report under this section.

(f) "Reporter" means a therapist who reports suspected sexual contact between his or her patient or client and another therapist.

(g) "Sexual contact" has the meaning designated in s. 940.225 (5) (b).

(h) "Subject" means the therapist named in a report or record as being suspected of having sexual contact with a patient or client or who has been determined to have engaged in sexual contact with a patient or client.

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

(2) SEXUAL CONTACT PROHIBITED. 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 F felony. Consent is not an issue in an action under this subsection.

(3) REPORTS OF SEXUAL CONTACT. (a) If a therapist has reasonable cause to suspect that a patient or client he or she has seen in the course of professional duties is a victim of sexual contact by another therapist or a person who holds himself or herself out to be a therapist in violation of sub. (2), as soon thereafter as practicable the therapist shall ask the patient or client if he or she wants the therapist to make a report under this subsection. The therapist shall explain that the report need not identify the patient or client as the victim. If the patient or client wants the therapist to make the report, the patient or client shall provide the therapist with a written consent to the report and shall specify whether the patient's or client's identity will be included in the report.

(b) Within 30 days after a patient or client consents under par. (a) to a report, the therapist shall report the suspicion to:

1. The department, if the reporter believes the subject of the report is licensed by the state. The department shall promptly communicate the information to the appropriate examining board or affiliated credentialing board.

2. The district attorney for the county in which the sexual contact is likely, in the opinion of the reporter, to have occurred, if subd. 1. is not applicable.

(c) A report under this subsection shall contain only information that is necessary to identify the reporter and subject and to express the suspicion that sexual contact has occurred in violation of sub. (2). The report shall not contain information as to the identity of the alleged victim of sexual contact unless the patient or client requests under par. (a) that this information be included.

(d) Whoever intentionally violates this subsection by failing to report as required under pars. (a) to (c) is guilty of a Class A misdemeanor.

(4) CONFIDENTIALITY OF REPORTS AND RECORDS. (a) All reports and records made from reports under sub. (3) and maintained by the department, examining boards, affiliated credentialing boards, district attorneys and other persons, officials and institutions shall be confidential and are exempt from disclosure under s. 19.35 (1). Information regarding the identity of a victim or alleged victim of sexual contact by a therapist shall not be disclosed by a reporter or by persons who have received or have access to a report or record unless disclosure is consented to in writing by the victim or alleged victim. The report of information under sub. (3) and the disclosure of a report or record under this subsection does not violate any person's responsibility for maintaining the

confidentiality of patient health care records, as defined in s. 146.81 (4) and as required under s. 146.82. Reports and records may be disclosed only to appropriate staff of a district attorney or a law enforcement agency within this state for purposes of investigation or prosecution.

(b) 1. The department, a district attorney, an examining board or an affiliated credentialing board within this state may exchange information from a report or record on the same subject.

2. If the department receives 2 or more reports under sub. (3) regarding the same subject, the department shall communicate information from the reports to the appropriate district attorneys and may inform the applicable reporters that another report has been received regarding the same subject.

3. If a district attorney receives 2 or more reports under sub. (3) regarding the same subject, the district attorney may inform the applicable reporters that another report has been received regarding the same subject.

4. After reporters receive the information under subd. 2. or 3., they may inform the applicable patients or clients that another report was received regarding the same subject.

(c) A person to whom a report or record is disclosed under this subsection may not further disclose it, except to the persons and for the purposes specified in this section.

(d) Whoever intentionally violates this subsection, or permits or encourages the unauthorized dissemination or use of information contained in reports and records made under this section, is guilty of a Class A misdemeanor.

(5) IMMUNITY FROM LIABILITY. Any person or institution participating in good faith in the making of a report or record under this section is immune from any civil or criminal liability that results by reason of the action. For the purpose of any civil or criminal action or proceeding, any person reporting under this section is presumed to be acting in good faith. The immunity provided under this subsection does not apply to liability resulting from sexual contact by a therapist with a patient or client.

History: 1983 a. 434; 1985 a. 275; 1987 a. 352, 380; 1991 a. 160; 1993 a. 107; 1995 a. 300; 2001 a. 109; 2011 a. 32.

This section applies to persons engaged in professional therapist-patient relationships. A teacher who conducts informal counseling is not engaged as a professional therapist. State v. Ambrose, 196 Wis. 2d 768, 540 N.W.2d 208 (Ct. App. 1995), 94-3391.

Even though the alleged victim feigned her role as a patient at the last counseling session she attended, attending as a police agent for the purpose of recording the session to obtain evidence, any acts that occurred during the session were during an ongoing therapist-patient relationship as those terms are used in this section. State v. DeLain, 2005 WI 52, 280 Wis. 2d 51, 695 N.W.2d 484, 03-1253.

The totality of the circumstances determine the existence of an ongoing therapist-patient relationship under sub. (2). A defendant's state of mind, a secret unilateral action of a patient, and explicit remarks of one party to the other regarding the relationship may be factors, but are not necessarily dispositive. Other factors may be: 1) how much time has gone by since the last therapy session; 2) how close together the therapy sessions had been to each other; 3) the age of the patient; 4) the particular vulnerabilities experienced by the patient as a result of mental health issues; and 5) the ethical obligations of the therapist's profession. State v. DeLain, 2005 WI 52, 280 Wis. 2d 51, 695 N.W.2d 484, 03-1253.

It was constitutional error to give a pattern jury instruction that never directed the jury to make an independent, beyond-a-reasonable-doubt decision as to whether the defendant clergy member performed or purported to perform psychotherapy. State v. Draughon, 2005 WI App 162, 285 Wis. 2d 633, 702 N.W.2d 412, 04-1637.

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.

(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.

(cm) Has sexual contact or sexual intercourse with a person who is under the influence of an intoxicant to a degree which renders that person incapable of giving consent if the defendant has actual knowledge that the person is incapable of giving consent and the defendant has the purpose to have sexual contact or sexual intercourse with the person while the person is incapable of giving consent.

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

(f) Is aided or abetted by one or more other persons and has sexual contact or sexual intercourse with another person without the consent of that person.

(g) Is an employee of a facility or program under s. 940.295 (2) (b), (c), (h) or (k) and has sexual contact or sexual intercourse with a person who is a patient or resident of the facility or program.

(h) Has sexual contact or sexual intercourse with an individual who is confined in a correctional institution if the actor is a correctional staff member. This paragraph does not apply if the individual with whom the actor has sexual contact or sexual intercourse is subject to prosecution for the sexual contact or sexual intercourse under this section.

(i) Has sexual contact or sexual intercourse with an individual who is on probation, parole, or extended supervision if the actor is a probation, parole, or extended supervision agent who supervises the individual, either directly or through a subordinate, in his or her capacity as a probation, parole, or extended supervision agent or who has influenced or has attempted to influence another probation, parole, or extended supervision agent's supervision of the individual. This paragraph does not apply if the individual with whom the actor

has sexual contact or sexual intercourse is subject to prosecution for the sexual contact or sexual intercourse under this section.

(j) Is a licensee, employee, or nonclient resident of an entity, as defined in s. 48.685 (1) (b) or 50.065 (1) (c), and has sexual contact or sexual intercourse with a client of the entity.

(3) THIRD DEGREE SEXUAL ASSAULT. Whoever has sexual intercourse with a person without the consent of that person is guilty of a Class G felony. Whoever has sexual contact in the manner described in sub. (5) (b) 2. or 3. with a person without the consent of that person is guilty of a Class G felony.

(3m) FOURTH DEGREE SEXUAL ASSAULT. Except as provided in sub. (3), 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 sub. (2) (c), (cm), (d), (g), (h), and (i). 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:

(abm) "Client" means an individual who receives direct care or treatment services from an entity.

(acm) "Correctional institution" means a jail or correctional facility, as defined in s. 961.01 (12m), a juvenile correctional facility, as defined in s. 938.02 (10p), or a juvenile detention facility, as defined in s. 938.02 (10r).

(ad) "Correctional staff member" means an individual who works at a correctional institution, including a volunteer.

(ag) "Inpatient facility" has the meaning designated in s. 51.01 (10).

(ai) "Intoxicant" means any alcohol beverage, controlled substance, controlled substance analog, or other drug or any combination thereof.

(ak) "Nonclient resident" means an individual who resides, or is expected to reside, at an entity, who is not a client of the entity, and who has, or is expected to have, regular, direct contact with the clients of the entity.

(am) "Patient" means any person who does any of the following:

1. Receives care or treatment from a facility or program under s. 940.295 (2) (b), (c), (h) or (k), from an employee of a facility or program or from a person providing services under contract with a facility or program.

2. Arrives at a facility or program under s. 940.295 (2) (b), (c), (h) or (k) for the purpose of receiving care or treatment from a facility or program under s. 940.295 (2) (b), (c), (h) or (k), from an employee of a facility or program under s. 940.295 (2) (b), (c), (h) or (k), or from a person providing services under contract with a facility or program under s. 940.295 (2) (b), (c), (h) or (k).

(ar) "Resident" means any person who resides in a facility under s. 940.295 (2) (b), (c), (h) or (k).

(b) "Sexual contact" means any of the following:

1. Any of the following types of intentional touching, whether direct or through clothing, 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):

a. Intentional touching by the defendant or, upon the defendant's instruction, by another person, by the use of any body part or object, of the complainant's intimate parts.

b. Intentional touching by the complainant, by the use of any body part or object, of the defendant's intimate parts or, if done upon the defendant's instructions, the intimate parts of another person.

2. Intentional penile ejaculation of ejaculate or intentional emission of urine or feces by the defendant or, upon the defendant's instruction, by another person upon any part of the body clothed or unclothed of the complainant if that ejaculation or emission is either for the purpose of sexually degrading or sexually humiliating the complainant or for the purpose of sexually arousing or gratifying the defendant.

3. For the purpose of sexually degrading or humiliating the complainant or sexually arousing or gratifying the defendant, intentionally causing the complainant to ejaculate or emit urine or feces on any part of the defendant's body, whether clothed or unclothed.

(c) "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.

(d) "State treatment facility" has the meaning designated in s. 51.01 (15).

(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; 1987 a. 245, 332, 352; 1987 a. 403 ss. 235, 236, 256; 1993 a. 445; 1995 a. 69; 1997 a. 220; 2001 a. 109; 2003 a. 51; 2005 a. 273, 344, 388, 435, 436.

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 sub. (4). State v. Clark, 87 Wis. 2d 804, 275 N.W.2d 715 (1979).

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

Separate acts of sexual intercourse, each different in kind from the others and differently defined in the statutes, constitute separate chargeable offenses. State v. Eisch, 96 Wis. 2d 25, 291 N.W.2d 800 (1980). See also State v. Ziegler, 2012 WI 73, ___ Wis. 2d ___, 816 N.W.2d 238, 10-2514.

The trial court did not err in denying the accused's motions to compel psychiatric examination of the victim and for discovery of the victim's past addresses. State v. Lederer, 99 Wis. 2d 430, 299 N.W.2d 457 (Ct. App. 1980).

The verdict was unanimous in a rape case even though the jury was not required to specify whether the sexual assault was vaginal or oral. State v. Lomagro, 113 Wis. 2d 582, 335 N.W.2d 583 (1983).

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

"Unconscious" as used in sub. (2) (d) is a loss of awareness that may be caused by sleep. State v. Curtis, 144 Wis. 2d 691, 424 N.W.2d 719 (Ct. App. 1988).

The probability of exclusion and paternity are generally admissible in a sexual assault action in which the assault allegedly resulted in the birth of a child, but the probability of paternity is not generally admissible. HLA and red blood cell test results showing the paternity index and probability of exclusion were admissible statistics. State v. Hartman, 145 Wis. 2d 1, 426 N.W.2d 320 (1988).

Attempted fourth-degree sexual assault is not an offense under Wisconsin law. State v. Cvorovic, 158 Wis. 2d 630, 462 N.W.2d 897 (Ct. App. 1990).

The "use or threat of force or violence" under sub. (2) (a) does not require that the force be directed toward compelling the victim's submission, but includes forcible contact or the force used as the means of making contact. State v. Bonds, 165 Wis. 2d 27, 477 N.W.2d 265 (1991).

A dog may be a dangerous weapon under sub. (1) (b). State v. Sinks, 168 Wis. 2d 245, 483 N.W.2d 286 (Ct. App. 1992).

Convictions under both subs. (1) (d) and (2) (d) did not violate double jeopardy. State v. Sauceda, 168 Wis. 2d 486, 485 N.W.2d 1 (1992).

A defendant's lack of intent to make a victim believe that he was armed was irrelevant in finding a violation of sub. (1) (b); if the victim's belief that the defendant was armed was reasonable, that is enough. State v. Hubanks, 173 Wis. 2d 1, 496 N.W.2d 96 (Ct. App. 1992).

Sub. (2) (d) is not unconstitutionally vague. Expert evidence regarding sleep based solely on a hypothetical situation similar, but not identical, to the facts of the case was inadmissible. State v. Pittman, 174 Wis. 2d 255, 496 N.W.2d 74 (1993).

Convictions under both sub. (2) (a) and (e) did not violate double jeopardy. State v. Selmon, 175 Wis. 2d 155, 877 N.W.2d 498 (Ct. App. 1993).

"Great bodily harm" is a distinct element under sub. (1) (a) and need not be caused by the sexual act. State v. Schambow, 176 Wis. 2d 286, N.W.2d (Ct. App. 1993).

Intent is not an element of sub. (2) (a); lack of an intent element does not render this provision constitutionally invalid. State v. Neumann, 179 Wis. 2d 687, 508 N.W.2d 54 (Ct. App. 1993).

A previous use of force, and the victim's resulting fear, was an appropriate basis for finding that a threat of force existed under sub. (2) (a). State v. Speese, 191 Wis. 2d 205, 528 N.W.2d 63 (Ct. App. 1995).

Violation of any of the provisions of this section does not immunize the defendant from violating the same or another provision in the course of sexual misconduct. Two acts of vaginal intercourse are sufficiently different in fact to justify separate charges under sub. (1) (d). State v. Kruzycki, 192 Wis. 2d 509, 531 N.W.2d 429 (Ct. App. 1995).

Sub. (2) (c) is not unconstitutionally vague. State v. Smith, 215 Wis. 2d 84, 572 N.W.2d 496 (Ct. App. 1997), 96-2961.

For a guilty plea to a sexual assault charge to be knowingly made, a defendant need not be informed of the potential of being required to register as a convicted sex offender under s. 301.45 or that failure to register could result in imprisonment, as the commitment is a collateral, not direct, consequence of the plea. State v. Bollig, 2000 WI 6, 232 Wis. 2d 561, 605 N.W.2d 199, 98-2196.

Sub. (2) (g) was not applicable to an employee of a federal VA hospital as it is not a facility under s. 940.295 (2). The definition of inpatient care facility in s. 940.295 incorporates s. 51.35 (1), which requires that all of the specifically enumerated facilities be places licensed or approved by DHFS. A VA hospital is subject to federal regulation but is not licensed or regulated by the state. State v. Powers, 2004 WI App 156, 276 Wis. 2d 107, 687 N.W.2d 50, 03-1514.

Expert testimony is not required in every case to establish the existence of a mental illness or deficiency rendering the victim unable to appraise his or her conduct under sub. (2) (c). State v. Perkins, 2004 WI App 213, 277 Wis. 2d 243, 689 N.W.2d 684, 03-3296.

The statutory scheme of the sexual assault law does not require proof of stimulation of the clitoris or vulva for finding cunnilingus under sub. (5) (c). The notion of stimulation of the victim offends the principles underpinning the sexual assault law. State v. Harvey, 2006 WI App 26, 289 Wis. 2d 222, 710 N.W.2d 482, 05-0103.

Sub. (2) (h) does not extend to a sheriff's deputy, who was assigned to work as a bailiff in the county courthouse. State v. Terrell, 2006 WI App 166, 295 Wis. 2d 619, 721 N.W.2d 527, 05-1499.

This section criminalizes sexual contact or sexual intercourse with a victim already dead at the time of the sexual activity when the accused did not cause the death of the victim. State v. Grunke, 2008 WI 82, 311 Wis. 2d 439, 752 N.W.2d 769, 06-2744.

The plain language of sub. (3) requires the state to prove beyond a reasonable doubt that the defendants attempted to have sexual intercourse with the victim without the victim's words or overt actions indicating a freely given agreement to have sexual intercourse. The state does not have to prove that the victim withheld consent. State v. Grunke, 2008 WI 82, 311 Wis. 2d 439, 752 N.W.2d 769, 06-2744.

One who has sexual contact or intercourse with a dead person cannot be charged with 1st- or 2nd-degree sexual assault, because the facts cannot correspond with the elements of those two charges. However, the possibility that the facts of a particular case will not come within the elements necessary to establish every crime listed in the statute does not mean the statute is absurd, but rather that the evidence necessary for all potential crimes under this section does not exist in all cases. State v. Grunke, 2008 WI 82, 311 Wis. 2d 439, 752 N.W.2d 769, 06-2744.

Sub. (7) does not limit sub. (3) to only those circumstances in which the perpetrator kills and has sexual intercourse with the victim in a series of events. State v. Grunke, 2008 WI 82, 311 Wis. 2d 439, 752 N.W.2d 769, 06-2744.

Conviction on 2 counts of rape, for acts occurring 25 minutes apart in the same location, did not violate double jeopardy. Harrell v. Israel, 478 F. Supp. 752 (1979).

A conviction for attempted 1st-degree sexual assault based on circumstantial evidence did not deny due process. Upshaw v. Powell, 478 F. Supp. 1264 (1979).

940.23 Reckless injury. (1) FIRST-DEGREE RECKLESS INJURY. (a) Whoever recklessly causes great bodily harm to another human being under circumstances which show utter disregard for human life is guilty of a Class D felony.

(b) Whoever recklessly causes great bodily harm to an unborn child under circumstances that show utter disregard for the life of that unborn child, the woman who is pregnant with that unborn child or another is guilty of a Class D felony.

(2) SECOND-DEGREE RECKLESS INJURY. (a) Whoever recklessly causes great bodily harm to another human being is guilty of a Class F felony.

(b) Whoever recklessly causes great bodily harm to an unborn child is guilty of a Class F felony.

History: 1987 a. 399; 1997 a. 295; 2001 a. 109.

Judicial Council Note, 1988: Sub. (1) is analogous to the prior offense of injury by conduct regardless of life.

Sub. (2) is new. It creates the crime of injury by criminal recklessness. See s. 939.24. [Bill 191-S]

First-degree reckless injury, s. 940.23 (1), is not a lesser included offense of aggravated battery. State v. Eastman, 185 Wis. 2d 405, 518 N.W.2d 257 (Ct. App. 1994).

Sub. (1) (a) cannot be applied against a mother for actions taken against a fetus while pregnant as the applicable definition of human being under s. 939.22 (16) is limited to one who is born alive. Sub. (1) (b) does not apply because s. 939.75 (2) (b) excludes actions by a pregnant woman from its application. State v. Deborah J.Z. 228 Wis. 2d 468, 596 N.W.2d 490 (Ct. App. 1999), 96-2797.

Utter disregard for human life is not a subpart of the intent element and need not be proven subjectively. It can be proven by evidence relating to the defendant's state of mind or by evidence of heightened risk or obvious potentially lethal danger. However proven, utter disregard is measured objectively on the basis of what a reasonable person would have known. State v. Jensen, 2000 WI 84, 236 Wis. 2d 521, 613 N.W.2d 170, 98-3175.

Utter disregard requires more than a high degree of negligence or recklessness. To evince utter disregard, the mind must not only disregard the safety of another but be devoid of regard for the life of another. A person acting with utter disregard must possess a state of mind that has no regard for the moral or social duties of a human being. State v. Miller, 2009 WI App 111, 320 Wis. 2d 724, 772 N.W.2d 188, 07-1052.

In evaluating whether there is sufficient proof of utter disregard for human life, factors to be considered include the type of act, its nature, why the perpetrator acted as he/she did, the extent of the victim's injuries, and the degree of force that was required to cause those injuries. Also considered are the type of victim and the victim's age, vulnerability, fragility, and relationship to the perpetrator, as well as whether the totality of the circumstances showed any regard for the victim's life. State v. Miller, 2009 WI App 111, 320 Wis. 2d 724, 772 N.W.2d 188, 07-1052.

Pointing a loaded gun at another is not conduct evincing utter disregard if it is otherwise defensible, even if it is not privileged. When conduct was to protect the defendant and his friends, although not found to be self defense, the conduct is inconsistent with conduct evincing utter disregard. State v. Miller, 2009 WI App 111, 320 Wis. 2d 724, 772 N.W.2d 188, 07-1052.

Jensen does not create a rule assigning less weight to a defendant's after-the-fact conduct. When evaluating whether a defendant's conduct reflects

utter disregard for human life, the fact-finder should examine the totality of the circumstances surrounding the crime, considering all relevant conduct before, during, and after a crime, giving each the weight it deems appropriate under the circumstances. State v. Burris, 2011 WI 32, 333 Wis. 2d 87, 797 N.W.2d 430, 09-0956.

940.235 Strangulation and suffocation. (1) Whoever intentionally impedes the normal breathing or circulation of blood by applying pressure on the throat or neck or by blocking the nose or mouth of another person is guilty of a Class H felony.

(2) Whoever violates sub. (1) is guilty of a Class G felony if the actor has a previous conviction under this section or a previous conviction for a violent crime, as defined in s. 939.632 (1) (e) 1.

History: 2007 a. 127.

940.24 Injury by negligent handling of dangerous weapon, explosives or fire. (1) Except as provided in sub. (3), whoever causes bodily harm to another by the negligent operation or handling of a dangerous weapon, explosives or fire is guilty of a Class I felony.

(2) Whoever causes bodily harm to an unborn child by the negligent operation or handling of a dangerous weapon, explosives or fire is guilty of a Class I felony.

(3) Subsection (1) does not apply to a health care provider acting within the scope of his or her practice or employment.

History: 1977 c. 173; 1987 a. 399; 1997 a. 295; 2001 a. 109; 2011 a. 2.

Judicial Council Note, 1988: The definition of the offense is broadened to include highly negligent handling of fire, explosives and dangerous weapons other than a firearm, airgun, knife or bow and arrow. See s. 939.22 (10). The culpable mental state is criminal negligence. See s. 939.25 and the NOTE thereto. [Bill 191-S]

Dogs must be intended to be weapons before their handling can result in a violation of this section. That a dog bites does not render the dog a dangerous weapon. Despite evidence of positive steps to restrain the dog, when those measures are inadequate criminal negligence may be found. Physical proximity is not necessary for a defendant's activity to constitute handling. State v. Bodoh, 226 Wis. 2d 718, 595 N.W.2d 330 (1999), 97-0495.

940.25 Injury by intoxicated use of a vehicle. (1) Any person who does any of the following is guilty of a Class F felony:

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

(am) Causes great bodily harm to another human being by the operation of a vehicle while the person has a detectable amount of a restricted controlled substance in his or her blood.

(b) Causes great bodily harm to another human being by the operation of a vehicle while the person has a prohibited alcohol concentration, as defined in s. 340.01 (46m).

(bm) Causes great bodily harm to another human being by the operation of a commercial motor vehicle while the person has an alcohol concentration of 0.04 or more but less than 0.08.

(c) Causes great bodily harm to an unborn child by the operation of a vehicle while under the influence of an intoxicant.

(cm) Causes great bodily harm to an unborn child by the operation of a vehicle while the person has a detectable amount of a restricted controlled substance in his or her blood.

(d) Causes great bodily harm to an unborn child by the operation of a vehicle while the person has a prohibited alcohol concentration, as defined in s. 340.01 (46m).

(e) Causes great bodily harm to an unborn child by the operation of a commercial motor vehicle while the person has an alcohol concentration of 0.04 or more but less than 0.08.

(1d) A person who violates sub. (1) is subject to the requirements and procedures for installation of an ignition interlock device under s. 343.301.

(1m) (a) A person may be charged with and a prosecutor may proceed upon an information based upon a violation of any combination of sub. (1) (a), (am), or (b); any combination of sub. (1) (a), (am), or (bm); any combination of sub. (1) (c), (cm), or (d); or any combination of sub. (1) (c), (cm), or (e) for acts arising out of the same incident or occurrence.

(b) If a person is charged in an information with any of the combinations of crimes referred to in par. (a), the crimes shall be joined under s. 971.12. If the person is found guilty of more than one of the crimes so charged 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. 23.33 (13) (b) 2. and 3., under s. 30.80 (6) (a) 2. or 3., under ss. 343.30 (1q) and 343.305 or under s. 350.11 (3) (a) 2. and 3. Subsection (1) (a), (am), (b), (bm), (c), (cm), (d), and (e) each require proof of a fact for conviction which the others do not require.

(2) (a) The defendant has a defense if he or she proves by a preponderance of the evidence that the great bodily harm would have occurred even if he or she had been exercising due care and he or she had not been under the influence of an intoxicant, did not have a detectable amount of a restricted controlled substance in his or her blood, or did not have an alcohol concentration described under sub. (1) (b), (bm), (d) or (e).

(b) In any action under this section that is based on the defendant allegedly having a detectable amount of methamphetamine, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol in his or her blood, the defendant has a defense if he or she proves by a preponderance of the evidence that at the time of the incident or occurrence he or she had a valid prescription for methamphetamine or one of its metabolic precursors, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol.

(3) An officer who makes an arrest for a violation of this section shall make a report as required under s. 23.33 (4t), 30.686, 346.635 or 350.106.

History: 1977 c. 193, 272; 1981 c. 20, 184; 1983 a. 459; 1985 a. 331; 1987 a. 399; 1989 a. 105, 275, 359; 1991 a. 277; 1993 a. 317, 428, 478; 1995 a. 425, 436; 1997 a. 237, 295; 1999 a. 32, 109, 186; 2001 a. 16, 109; 2003 a. 30, 97; 2005 a. 253; 2009 a. 100.

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

The double jeopardy clause was not violated by a charge under sub. (1) (c) [now sub. (1m)] of violations of subs. (1) (a) and (b). State v. Bohacheff, 114 Wis. 2d 402, 338 N.W.2d 466 (1983).

The trial court did not err in refusing to admit expert testimony indicating that the victims would not have suffered the same injury had they been wearing seat belts; the evidence not relevant to a defense under sub. (2). State v. Turk, 154 Wis. 2d 294, 453 N.W.2d 163 (1990).

The offense under sub. (1) (am) has 2 elements that must be proved beyond a reasonable doubt: 1) the defendant operated a vehicle with a detectable amount of a restricted controlled substance in his or her blood; and 2) the defendant's operation of the vehicle caused great bodily harm to the victim. The elements of the crime do not provide the state with any presumptions that relieves the state of its burden to establish the two elements beyond a reasonable doubt nor did the legislature's enactment, without requiring a causal link between drug use and the injury as an element of the crime, in some way exceeds its authority. State v. Gardner, 2006 WI App 92, 292 Wis. 2d 682, 715 N.W.2d 720, 05-1372.

The affirmative defense under sub. (2) (a) does not shift to the defendant the burden to prove that he or she is innocent. It requires the defendant to prove that despite the fact that the state has satisfied the elements of the offense, the defendant cannot be held legally responsible under the statute. State v. Gardner, 2006 WI App 92, 292 Wis. 2d 682, 715 N.W.2d 720, 05-1372.

"Materially impaired" as used in the definition of "under the influence of an intoxicant" in s. 939.22 (42) does not have a technical or peculiar meaning in the law beyond the time-tested explanations in standard jury instructions. Therefore, the circuit court's response to the jury question to give all words not otherwise defined their ordinary meaning was not error, comported with s. 990.01, and did not constitute an erroneous exercise of discretion. State v. Hubbard, 2008 WI 92, 313 Wis. 2d 1, 752 N.W.2d 839, 06-2753.

940.285 Abuse of individuals at risk. (1) DEFINITIONS. In this section:

(ag) "Abuse" means any of the following:

1. Physical abuse, as defined in s. 46.90 (1) (fg).
2. Emotional abuse, as defined in s. 46.90 (1) (cm).
3. Sexual abuse, as defined in s. 46.90 (1) (gd).
4. Treatment without consent, as defined in s. 46.90 (1) (h).
5. Unreasonable confinement or restraint, as defined in s. 46.90 (1) (i).
6. Deprivation of a basic need for food, shelter, clothing, or personal or health care, including 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.

(am) "Adult at risk" has the meaning given in s. 55.01 (1e).

(dc) "Elder adult at risk" has the meaning given in s. 46.90 (1) (br).

(dg) "Individual at risk" means an elder adult at risk or an adult at risk.

(dm) "Recklessly" means conduct that creates a situation of unreasonable risk of harm and demonstrates a conscious disregard for the safety of the vulnerable adult.

(1m) EXCEPTION. Nothing in this section may be construed to mean that an individual at risk is abused solely because he or she consistently relies upon treatment by spiritual means through prayer for healing, in lieu of medical care, in accordance with his or her religious tradition.

(2) ABUSE; PENALTIES. (a) Any person, other than a person in charge of or employed in a facility under s. 940.29 or in a facility or program under s. 940.295 (2), who does any of the following may be penalized under par. (b):

1. Intentionally subjects an individual at risk to abuse.
2. Recklessly subjects an individual at risk to abuse.
3. Negligently subjects an individual at risk to abuse.

(b) 1g. Any person violating par. (a) 1. or 2. under circumstances that cause death is guilty of a Class C felony. Any person violating par. (a) 3. under circumstances that cause death is guilty of a Class D felony.

1m. Any person violating par. (a) under circumstances that cause great bodily harm is guilty of a Class F felony.

1r. Any person violating par. (a) 1. under circumstances that are likely to cause great bodily harm is guilty of a Class G felony. Any person violating par. (a) 2. or 3. under circumstances that are likely to cause great bodily harm is guilty of a Class I felony.

2. Any person violating par. (a) 1. under circumstances that cause bodily harm is guilty of a Class H felony. Any person violating par. (a) 1. under circumstances that are likely to cause bodily harm is guilty of a Class I felony.

4. Any person violating par. (a) 2. or 3. under circumstances that cause or are likely to cause bodily harm is guilty of a Class A misdemeanor.

5. Any person violating par. (a) 1., 2. or 3. under circumstances not causing and not likely to cause bodily harm is guilty of a Class B misdemeanor.

History: 1985 a. 306; 1993 a. 445; 1997 a. 180; 2001 a. 109; 2005 a. 264, 388; 2007 a. 45.

940.29 Abuse of residents of penal facilities. Any person in charge of or employed in a penal or correctional institution or other place of confinement who abuses, neglects or ill-treats any person confined in or a resident of any such institution or place or who knowingly permits another person to do so is guilty of a Class I felony.

History: 1975 c. 119; 1975 c. 413 s. 18; 1977 c. 173; 1979 c. 124; 1981 c. 20; 1987 a. 161 ss. 12, 13m; 1987 a. 332; 1993 a. 445; 2001 a. 109.

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.

940.295 Abuse and neglect of patients and residents. (1) DEFINITIONS. In this section:

(ad) "Abuse" has the meaning given in s. 46.90 (1) (a).

(ag) "Adult at risk" has the meaning given in s. 55.01 (1e).

(am) "Adult family home" has the meaning given in s. 50.01 (1).

(b) "Bodily harm" has the meaning given in s. 46.90 (1) (aj).

(c) "Community-based residential facility" has the meaning given in s. 50.01 (1g).

(cr) "Elder adult at risk" has the meaning given in s. 46.90 (1) (br).

(d) "Foster home" has the meaning given in s. 48.02 (6).

(e) "Great bodily harm" has the meaning given in s. 939.22 (14).

(f) "Group home" has the meaning given in s. 48.02 (7).

(g) "Home health agency" has the meaning given in s. 50.49 (1) (a).

(h) "Hospice" has the meaning given in s. 50.90 (1).

(hr) "Individual at risk" means an elder adult at risk or an adult at risk.

(i) "Inpatient health care facility" has the meaning given in s. 50.135 (1).

(k) "Neglect" has the meaning given in s. 46.90 (1) (f).

(km) "Negligence" means an act, omission, or course of conduct that the actor should realize creates a substantial and unreasonable risk of death, great bodily harm, or bodily harm to another person.

(L) "Patient" means any person who does any of the following:

1. Receives care or treatment from a facility or program under sub. (2), from an employee of a facility or program or from a person providing services under contract with a facility or program.

2. Arrives at a facility or program under sub. (2) for the purpose of receiving care or treatment from a facility or program under sub. (2), from an employee of a facility or program under sub. (2), or from a person providing services under contract with a facility or program under sub. (2).

(o) "Recklessly" means conduct that creates a situation of unreasonable risk of death or harm to and demonstrates a conscious disregard for the safety of the patient or resident.

(p) "Resident" means any person who resides in a facility under sub. (2).

(r) "State treatment facility" has the meaning given in s. 51.01 (15).

(s) "Treatment facility" has the meaning given in s. 51.01 (19).

(2) APPLICABILITY. This section applies to any of the following types of facilities or programs:

(a) An adult day care center.

(b) An adult family home.

(c) A community-based residential facility.

(d) A foster home.

(e) A group home.

(f) A home health agency.

(g) A hospice.

(h) An inpatient health care facility.

(i) A program under s. 51.42 (2).

(j) The Wisconsin Educational Services Program for the Deaf and Hard of Hearing under s. 115.52 and the Wisconsin Center for the Blind and Visually Impaired under s. 115.525.

(k) A state treatment facility.

(L) A treatment facility.

(m) A residential care center for children and youth operated by a child welfare agency licensed under s. 48.60 or an institution operated by a public agency for the care of neglected, dependent, or delinquent children.

(n) Any other health facility or care-related facility or home, whether publicly or privately owned.

(3) ABUSE AND NEGLECT; PENALTIES. (a) Any person in charge of or employed in any facility or program under sub. (2) who does any of the following, or who knowingly permits another person to do so, may be penalized under par. (b):

1. Intentionally abuses or intentionally neglects a patient or resident.

2. Recklessly abuses or recklessly neglects a patient or resident.

3. Except as provided in par. (am), abuses, with negligence, or neglects a patient or a resident.

(am) Paragraph (a) 3. does not apply to a health care provider acting in the scope of his or her practice or employment who commits an act or omission of mere inefficiency, unsatisfactory conduct, or failure in good performance as the result of inability, incapacity, inadvertency, ordinary negligence, or good faith error in judgment or discretion.

(b) 1g. Any person violating par. (a) 1. or 2. under circumstances that cause death to an individual at risk is guilty of a Class C felony. Any person violating par. (a) 3. under circumstances that cause death to an individual at risk is guilty of a Class D felony.

1m. Any person violating par. (a) under circumstances that cause great bodily harm to an individual at risk is guilty of a Class E felony.

1r. Except as provided in subd. 1m., any person violating par. (a) 1. under circumstances that cause great bodily harm is guilty of a Class F felony. Any person violating par. (a) 1. under circumstances that are likely to cause great bodily harm is guilty of a Class G felony.

2. Any person violating par. (a) 1. under circumstances that cause bodily harm is guilty of a Class H felony. Any person violating par. (a) 1. under circumstances that are likely to cause bodily harm is guilty of a Class I felony.

3. Except as provided in subd. 1m., any person violating par. (a) 2. or 3. under circumstances that cause great bodily harm is guilty of a Class H felony. Any person violating par. (a) 2. or 3. under circumstances that are likely to cause great bodily harm is guilty of a Class I felony.

4. Any person violating par. (a) 2. or 3. under circumstances that cause or are likely to cause bodily harm is guilty of a Class A misdemeanor.

5. Any person violating par. (a) 1., 2. or 3. under circumstances not causing and not likely to cause bodily harm is guilty of a Class B misdemeanor.

History: 1993 a. 445; 1995 a. 225; 1997 a. 180; 1999 a. 9; 2001 a. 57, 59, 109; 2005 a. 264, 388; 2007 a. 45; 2011 a. 2.

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

Section 50.135 (1), as incorporated in sub. (1) (i), requires that all of the specifically enumerated facilities must be places licensed or approved by DHFS. A VA hospital is subject to federal regulation but is not licensed or regulated by the state and thus not within the definition of inpatient health care facility. State v. Powers, 2004 WI App 156, 276 Wis. 2d 107, 687 N.W.2d 50, 03-1514.

Seeking Justice in Death's Waiting Room: Barriers to Effectively Prosecuting Crime in Long-term Care Facilities. Hanrahan. Wis. Law. Aug. 2004.

A Response: Issues Affecting Long-term Care. Purtell. Wis. Law. Oct. 2004.

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 H felony.

History: 1977 c. 173; 2001 a. 109.

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

A victim need only take advantage of reasonable means of escape; a victim need not expose himself or herself or others to danger in attempt to escape. State v. C.V.C. 153 Wis. 2d 145, 450 N.W.2d 463 (Ct. App. 1989).

False imprisonment, or confinement, is the intentional, unlawful, and uncontested restraint by one person of the physical liberty of another. State v. Burroughs, 2002 WI App 18, 250 Wis. 2d 180, 640 N.W.2d 190, 01-0738.

In the context of false imprisonment, consent means words or overt actions by a person who is competent to give informed consent indicating a freely given agreement to be confined or restrained. Under the circumstances of the case, even if the jury did not believe that the victim said no, a reasonable jury could have determined beyond a reasonable doubt that she did not consent to the restraint. State v. Long, 2009 WI 36, 317 Wis. 2d 92, 765 N.W.2d 557, 07-2307.

940.302 Human trafficking. (1) In this section:

(a) "Commercial sex act" means sexual contact for which anything of value is given to, promised, or received, directly or indirectly, by any person.

(b) "Debt bondage" means the condition of a debtor arising from the debtor's pledge of services as a security for debt if the reasonable value of those services is not applied toward repaying the debt or if the length and nature of the services are not defined.

(c) "Services" means activities performed by one individual at the request, under the supervision, or for the benefit of another person.

(d) "Trafficking" means recruiting, enticing, harboring, transporting, providing, or obtaining, or attempting to recruit, entice, harbor, transport, provide, or obtain, an individual without consent of the individual.

(2) (a) Except as provided in s. 948.051, whoever knowingly engages in trafficking is guilty of a Class D felony if all of the following apply:

1. One of the following applies:

a. The trafficking is for the purposes of labor or services.

b. The trafficking is for the purposes of a commercial sex act.

2. The trafficking is done by any of the following:

a. Causing or threatening to cause bodily harm to any individual.

b. Causing or threatening to cause financial harm to any individual.

c. Restraining or threatening to restrain any individual.

d. Violating or threatening to violate a law.

e. Destroying, concealing, removing, confiscating, or possessing, or threatening to destroy, conceal, remove, confiscate, or possess, any actual or purported passport or any other actual or purported official identification document of any individual.

f. Extortion.

g. Fraud or deception.

h. Debt bondage.

i. Controlling any individual's access to an addictive controlled substance.

j. Using any scheme or pattern to cause an individual to believe that any individual would suffer bodily harm, financial harm, restraint, or other harm.

(b) Whoever benefits in any manner from a violation of par. (a) is guilty of a Class D felony if the person knows that the benefits come from an act described in par. (a).

(3) Any person who incurs an injury or death as a result of a violation of sub. (2) may bring a civil action against the person who committed the violation. In addition to actual damages, the court may award punitive damages to the injured party, not to exceed treble the amount of actual damages incurred, and reasonable attorney fees.

History: 2007 a. 116.

Halting Modern Slavery in the Midwest: The Potential of Wisconsin Act 116 to Improve the State and Federal Response to Human Trafficking. Ozalp. 2009 WLR 1391.

940.305 Taking hostages. (1) Except as provided in sub. (2), 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 B felony.

(2) Whoever commits a violation specified under sub. (1) is guilty of a Class C felony if, before the time of the actor's arrest, each person who is held as a hostage is released without bodily harm.

History: 1979 c. 118; 1993 a. 194; 2001 a. 109.

The constitutionality of s. 940.305 is upheld. State v. Bertrand, 162 Wis. 2d 411, 469 N.W.2d 873 (Ct. App. 1991).

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

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

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

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

(2) (a) Except as provided in par. (b), 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 B felony.

(b) 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 C felony if the victim is released without permanent physical injury prior to the time the first witness is sworn at the trial.

History: 1977 c. 173; 1993 a. 194, 486; 2001 a. 109.

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

"Service," as used in this section includes acts done at the command of another and clearly embraces sexual acts performed at the command of another. State v. Clement, 153 Wis. 2d 287, 450 N.W.2d 789 (Ct. App. 1989).

Parental immunity does not extend to an agent acting for the parent. State v. Simplot, 180 Wis. 2d 383, 509 N.W.2d 338 (Ct. App. 1993).

Forced movement of a person from one part of a building to another satisfies the "carries another from one place to another" element of sub. (1) (a). State v. Wagner, 191 Wis. 2d 322, 528 N.W.2d 85 (Ct. App. 1995).

Confinement is the intentional, unlawful, and uncontested restraint by one person of the physical liberty of another. State v. Burroughs, 2002 WI App 18, 250 Wis. 2d 180, 640 N.W.2d 190, 01-0738.

Sub. (2) (b) allows for a lesser degree of kidnapping if two additional elements are present: 1) the victim is released prior to the first witness testimony, and 2) there is no permanent physical injury to the victim. Once there is some evidence of the mitigating factor of no permanent injury, the burden is on the state to prove the absence of that factor and a court accepting a guilty plea to a charged kidnapping offense under sub. (2) (a) should ascertain a factual basis for excluding the lesser-related offense under sub. (2) (b). State v. Ravesteijn, 2006 WI App 250, 297 Wis. 2d 663, 727 N.W.2d 53, 05-1955.

940.32 Stalking. (1) In this section:

(a) "Course of conduct" means a series of 2 or more acts carried out over time, however short or long, that show a continuity of purpose, including any of the following:

1. Maintaining a visual or physical proximity to the victim.

2. Approaching or confronting the victim.

3. Appearing at the victim's workplace or contacting the victim's employer or coworkers.

4. Appearing at the victim's home or contacting the victim's neighbors.

5. Entering property owned, leased, or occupied by the victim.

6. Contacting the victim by telephone or causing the victim's telephone or any other person's telephone to ring repeatedly or continuously, regardless of whether a conversation ensues.

6m. Photographing, videotaping, audiotaping, or, through any other electronic means, monitoring or recording the activities of the victim. This subdivision applies regardless of where the act occurs.

7. Sending material by any means to the victim or, for the purpose of obtaining information about, disseminating information about, or communicating with the victim, to a member of the victim's family or household or an employer, coworker, or friend of the victim.

8. Placing an object on or delivering an object to property owned, leased, or occupied by the victim.

9. Delivering an object to a member of the victim's family or household or an employer, coworker, or friend of the victim or placing an object on, or delivering an object to, property owned, leased, or occupied by such a person with the intent that the object be delivered to the victim.

10. Causing a person to engage in any of the acts described in subds. 1. to 9.

(am) "Domestic abuse" has the meaning given in s. 813.12 (1) (am).

(ap) "Domestic abuse offense" means an act of domestic abuse that constitutes a crime.

(c) "Labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(cb) "Member of a family" means a spouse, parent, child, sibling, or any other person who is related by blood or adoption to another.

(cd) "Member of a household" means a person who regularly resides in the household of another or who within the previous 6 months regularly resided in the household of another.

(cg) "Personally identifiable information" has the meaning given in s. 19.62 (5).

(cr) "Record" has the meaning given in s. 19.32 (2).

(d) "Suffer serious emotional distress" means to feel terrified, intimidated, threatened, harassed, or tormented.

(2) Whoever meets all of the following criteria is guilty of a Class I felony:

(a) The actor intentionally engages in a course of conduct directed at a specific person that would cause a reasonable person under the same circumstances to suffer serious emotional distress or to fear bodily injury to or the death of himself or herself or a member of his or her family or household.

(b) The actor knows or should know that at least one of the acts that constitute the course of conduct will cause the specific person to suffer serious emotional distress or place the specific person in reasonable fear of bodily injury to or the death of himself or herself or a member of his or her family or household.

(c) The actor's acts cause the specific person to suffer serious emotional distress or induce fear in the specific person of bodily injury to or the death of himself or herself or a member of his or her family or household.

(2e) Whoever meets all of the following criteria is guilty of a Class I felony:

(a) After having been convicted of sexual assault under s. 940.225, 948.02, 948.025, or 948.085 or a domestic abuse offense, the actor engages in any of the acts listed in sub. (1) (a) 1. to 10., if the act is directed at the victim of the sexual assault or the domestic abuse offense.

(b) The actor knows or should know that the act will cause the specific person to suffer serious emotional distress or place the specific person in reasonable fear of bodily injury to or the death of himself or herself or a member of his or her family or household.

(c) The actor's act causes the specific person to suffer serious emotional distress or induces fear in the specific person of bodily injury to or the death of himself or herself or a member of his or her family or household.

(2m) Whoever violates sub. (2) is guilty of a Class H felony if any of the following applies:

(a) The actor has a previous conviction for a violent crime, as defined in s. 939.632 (1) (e) 1., or a previous conviction under this section or s. 947.013 (1r), (1t), (1v), or (1x).

(b) The actor has a previous conviction for a crime, the victim of that crime is the victim of the present violation of sub. (2), and the present violation occurs within 7 years after the prior conviction.

(c) The actor intentionally gains access or causes another person to gain access to a record in electronic format that contains personally identifiable information regarding the victim in order to facilitate the violation.

(d) The person violates s. 968.31 (1) or 968.34 (1) in order to facilitate the violation.

(e) The victim is under the age of 18 years at the time of the violation.

(3) Whoever violates sub. (2) is guilty of a Class F felony if any of the following applies:

(a) The act results in bodily harm to the victim or a member of the victim's family or household.

(b) The actor has a previous conviction for a violent crime, as defined in s. 939.632 (1) (e) 1., or a previous conviction under this section or s. 947.013 (1r), (1t), (1v) or (1x), the victim of that crime is the victim of the present violation of sub. (2), and the present violation occurs within 7 years after the prior conviction.

(c) The actor uses a dangerous weapon in carrying out any of the acts listed in sub. (1) (a) 1. to 9.

(3m) A prosecutor need not show that a victim received or will receive treatment from a mental health professional in order to prove that the victim suffered serious emotional distress under sub. (2) (c) or (2e) (c).

(4) (a) This section does not apply to conduct that is or acts that are protected by the person's right to freedom of speech or

to peaceably assemble with others under the state and U.S. constitutions, including, but not limited to, any of the following:

1. Giving publicity to and obtaining or communicating information regarding any subject, whether by advertising, speaking or patrolling any public street or any place where any person or persons may lawfully be.

2. Assembling peaceably.

3. Peaceful picketing or patrolling.

(b) Paragraph (a) does not limit the activities that may be considered to serve a legitimate purpose under this section.

(5) This section does not apply to conduct arising out of or in connection with a labor dispute.

(6) The provisions of this statute are severable. If any provision of this statute is invalid or if any application thereof is invalid, such invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application.

History: 1993 a. 96, 496; 2001 a. 109; 2003 a. 222, 327; 2005 a. 277.

This section does not violate the right to interstate travel and is not unconstitutionally vague or overbroad. State v. Ruesch, 214 Wis. 2d 548, 571 N.W.2d 898 (Ct. App. 1997), 96-2280.

The actor's "acts" under sub. (2) (c) are not the equivalent of the actor's "course of conduct" under sub. (2) (a). There must be proof that the actor's acts caused fear and not that the course of conduct caused fear. State v. Sveum, 220 Wis. 2d 396, 584 N.W.2d 137 (Ct. App. 1998), 97-2185.

A "previous conviction for a violent crime" is a substantive element of the Class H felony stalking offense under sub. (2m) (a), not a penalty enhancer. It was not error to allow the introduction of evidence at trial that the defendant had stipulated to having a previous conviction for a violent crime, nor was it error to instruct the jury to make a finding on that matter. State v. Warbelton, 2009 WI 6, 315 Wis. 2d 253, 759 N.W.2d 557, 07-0105.

The 7-year time restriction specified in sub. (2m) (b) requires that only the final act charged as part of a course of conduct occur within 7 years of the previous conviction, and does not restrict by time the other acts used to establish the underlying course of conduct element of sub. (2). State v. Conner, 2009 WI App 143, 321 Wis. 2d 449, 775 N.W.2d 105, 08-1296.

Although the acts in this case spanned apparently fewer than 15 minutes, this section specifically provides that stalking may be a series of 2 acts over a short time if the acts show a continuity of purpose. State v. Eichorn, 2010 WI App 70, 325 Wis. 2d 241, 783 N.W.2d 902, 09-1864.

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) (h), 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 (1) 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; 1987 a. 14; 1995 a. 461.

This section is not unconstitutional. For a conviction, it must be proved that an accused believed a crime was being committed and that a victim was exposed to bodily harm. The reporting required does not require the defendant to incriminate himself or herself as the statute contains no mandate that an individual identify himself or herself. Whether a defendant fits within an exception under sub. (2) (d) is a matter of affirmative defense. State v. LaPlante, 186 Wis. 2d 427, 521 N.W.2d 448 (Ct. App. 1994).

940.41 Definitions. In ss. 940.42 to 940.49:

(1g) "Law enforcement agency" has the meaning given in s. 165.83 (1) (b).

(1r) "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 provided information concerning any crime to any peace officer or prosecutor; who has provided information concerning a crime to any employee or agent of a law enforcement agency using a crime reporting telephone hotline or other telephone number provided by the law enforcement agency; 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; 1993 a. 128.

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.

When a mother and child were to testify against the defendant and the defendant sent letters to the mother urging that she and the child not testify, regardless of whether the letters were addressed to the child or the child was aware of the letter's contents, the defendant attempted to dissuade the child through her mother. As the mother of the minor child, had the parental responsibility and practical authority to monitor communications by third parties with the child, and to influence whether the child cooperated with the court proceedings, there was sufficient evidence to convict. State v. Moore, 2006 WI App 61, 292 Wis. 2d 101, 713 N.W.2d 131, 04-3227.

This section supports charging a person with a separate count for each letter sent, and each other act performed, for the purpose of attempting to dissuade any witness from attending or giving testimony at a court proceeding or trial. State v. Moore, 2006 WI App 61, 292 Wis. 2d 101, 713 N.W.2d 131, 04-3227.

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

(1) Where the act is accompanied by force or violence or attempted force or violence upon the witness, or the spouse, child, stepchild, foster 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 s. 943.30, 1979 stats., ss. 940.42 to 940.45, 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.

(7) Where the act is committed by a person who is charged with a felony in connection with a trial, proceeding, or inquiry for that felony.

History: 1981 c. 118; 1997 a. 143; 2001 a. 109; 2005 a. 280; 2007 a. 96; 2009 a. 28.

Conspiracy to intimidate a witness is included under sub. (4). State v. Seibert, 141 Wis. 2d 753, 416 N.W.2d 900 (Ct. App. 1987).

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.

A jury instruction for a violation of s. 940.44 should specify the underlying crime and that a defendant cannot be found guilty of intimidating a victim of a crime unless the elements of the underlying crime are proved beyond a reasonable doubt. State v. Thomas, 161 Wis. 2d 616, 468 N.W.2d 729 (Ct. App. 1991).

Acquittal on the underlying charge does not require acquittal on a charge under s. 940.44 as the jury may have exercised its right to return a not guilty verdict irrespective of evidence on the underlying charge. State v. Thomas, 161 Wis. 2d 616, 468 N.W.2d 729 (Ct. App. 1991).

The disorderly conduct statute, s. 947.01, does not require a victim, but when the disorderly conduct is directed at a person, that person is the victim for the purpose of prosecuting the perpetrator for intimidating a victim under this section. State v. Vinje, 201 Wis. 2d 98, 548 N.W.2d 118 (Ct. App. 1996), 95-1484.

In the phrase "causing a complaint ... to be sought and prosecuted and assisting in the prosecution thereof" in sub. (2), "and" is read in the disjunctive. Sub. (2) includes alleged acts of intimidation that occur after a victim has caused a complaint to be sought and applies to all acts of intimidation that attempt to prevent or dissuade a crime victim from providing any one or more of the following forms of assistance to prosecutors: 1) causing a complaint, indictment or information to be sought; 2) causing a complaint to be prosecuted; or, more generally, 3) assisting in a prosecution. State v. Freer, 2010 WI App 9, 323 Wis. 2d 29, 779 N.W.2d 12, 08-2233.

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

(1) Where the act is accompanied by force or violence or attempted force or violence upon the victim, or the spouse, child, stepchild, foster 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 s. 943.30, 1979 stats., ss. 940.42 to 940.45, 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; 1997 a. 143; 2001 a. 109; 2007 a. 96; 2009 a. 28.

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 willful 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.

CHAPTER 941

CRIMES AGAINST PUBLIC HEALTH AND SAFETY

Cross-reference: See definitions in s. 939.22.

SUBCHAPTER I

VEHICLES

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

(2) Upon conviction under sub. (1), no revocation or suspension of an operator's license may follow.

History: 1977 c. 173; 1987 a. 399.

SUBCHAPTER II

FIRE

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

(2) Burning material is handled in a highly negligent manner if handled with criminal negligence under s. 939.25 or under circumstances in which the person should realize that a substantial and unreasonable risk of serious damage to another's property is created.

History: 1977 c. 173; 1987 a. 399.

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

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

(2) Intentionally burns a building of one who has consented to the destruction thereof but does so under circumstances in which he or she should realize he or she is creating an unreasonable risk of death or great bodily harm to another or serious damage to a 3rd person's property.

History: 1977 c. 173; 1993 a. 486; 1995 a. 417; 2001 a. 109.

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

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

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

History: 1977 c. 173; 2001 a. 109.

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

History: 1977 c. 173.

SUBCHAPTER III

WEAPONS

941.20 Endangering safety by use of dangerous weapon. (1) Whoever does any of the following is guilty of a Class A misdemeanor:

(a) Endangers another's safety by the negligent operation or handling of a dangerous weapon; or

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

(bm) Operates or goes armed with a firearm while he or she has a detectable amount of a restricted controlled substance in his or her blood. A defendant has a defense to any action under this paragraph that is based on the defendant allegedly having a detectable amount of methamphetamine, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol in his or her blood, if he or she proves by a preponderance of the evidence that at the time of the incident or occurrence he or she had a valid prescription for methamphetamine or one of its metabolic precursors, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol.

(c) Except as provided in sub. (1m), intentionally points a firearm at or toward another.

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

(1m) (a) In this subsection:

1. "Ambulance" has the meaning given in s. 256.01 (1).

2. "Emergency medical technician" has the meaning given in s. 256.01 (5).

3. "First responder" has the meaning given in s. 256.01 (9).

(b) Whoever intentionally points a firearm at or towards a law enforcement officer, a fire fighter, an emergency medical technician, a first responder, an ambulance driver, or a commission warden who is acting in an official capacity and who the person knows or has reason to know is a law enforcement officer, a fire fighter, an emergency medical technician, a first responder, an ambulance driver, or a commission warden is guilty of a Class H felony.

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

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

(b) Sets a spring gun.

(3) (a) Whoever intentionally discharges a firearm from a vehicle while on a highway, as defined in s. 340.01 (22), or on a vehicle parking lot that is open to the public under any of the following circumstances is guilty of a Class F felony:

1. The person discharges the firearm at or toward another.

2. The person discharges the firearm at or toward any building or other vehicle.

(b) 1. Paragraph (a) does not apply to any of the following who, in the line of duty, discharges a firearm from a vehicle:

a. A peace officer, except for a commission warden who is not a state-certified commission warden.

b. A member of the U.S. armed forces.

c. A member of the national guard.

2. Paragraph (a) does not apply to the holder of a permit under s. 29.193 (2) who is hunting from a standing motor vehicle, as defined in s. 29.001 (57), in accordance with s. 29.193 (2) (cr) 2.

(c) The state does not have to negate any exception under par. (b). Any party that claims that an exception under par. (b) is applicable has the burden of proving the exception by a preponderance of the evidence.

(d) The driver of the vehicle may be charged and convicted for a violation of par. (a) according to the criteria under s. 939.05.

(e) A person under par. (a) has a defense of privilege of self-defense or defense of others in accordance with s. 939.48.

History: 1977 c. 173; 1987 a. 399; 1989 a. 131; 1993 a. 94, 486; 1997 a. 248, 249; 1999 a. 32; 2001 a. 109; 2003 a. 97, 190; 2007 a. 11, 27, 130.

Judicial Council Note, 1988: The mental element of the offense under sub. (1) (a) is changed from reckless conduct to criminal negligence. See s. 939.25. If the defendant acts recklessly, the conduct is prohibited by s. 941.30. [Bill 191-S]

Pointing a firearm is not a lesser included offense of armed robbery and a defendant can be convicted of both. State v. Smith, 55 Wis. 2d 304, 198 N.W.2d 630 (1972).

A jury instruction that shooting "into" a building under sub. (2) (a) occurs when a bullet penetrates the building however slightly, conformed with common usage of the word and was not improper. State v. Grady, 175 Wis. 2d 553, 499 N.W.2d 285 (Ct. App. 1993).

Police officers do not have an absolute right to point their weapons, but privilege may be asserted as an affirmative defense. State v. Trentadue, 180 Wis. 2d 670, 510 N.W.2d 727 (Ct. App. 1993).

Although intentionally pointing a firearm at another constitutes a violation of this section, under s. 939.48 (1) a person is privileged to point a gun at another person in self-defense if the person reasonably believes that the threat of force is necessary to prevent or terminate what he or she reasonably believes to be an unlawful interference. State v. Watkins, 2002 WI 101, 255 Wis. 2d 265, 647 N.W.2d 244, 00-0064.

941.21 Disarming a peace officer. Whoever intentionally disarms a peace officer who is acting in his or her official capacity by taking a dangerous weapon or a device or container described under s. 941.26 (1) (b) or (4) (a) from the officer without his or her consent is guilty of a Class H felony. This section applies to any dangerous weapon or any device or container described under s. 941.26 (1) (b) or (4) (a) that the officer is carrying or that is in an area within the officer's immediate presence.

History: 1983 a. 262; 1993 a. 98; 1995 a. 339; 2001 a. 109.

941.23 Carrying concealed weapon. (1) In this section:

(ag) "Carry" has the meaning given in s. 175.60 (1) (ag).

(ar) "Destructive device" has the meaning given in 18 USC 921 (a) (4).

(b) "Firearm silencer" has the meaning given in s. 941.298 (1).

(c) "Former officer" means a person who served as a law enforcement officer with a law enforcement agency before separating from law enforcement service.

(d) "Law enforcement agency" has the meaning given in s. 175.49 (1) (f).

(e) "Law enforcement officer" has the meaning given in s. 175.49 (1) (g).

(f) "Machine gun" has the meaning given in s. 941.27 (1).

(g) "Qualified out-of-state law enforcement officer" means a law enforcement officer to whom all of the following apply:

1. The person is employed by a state or local government agency in another state.

2. The agency has authorized the person to carry a firearm.

3. The person is not the subject of any disciplinary action by the agency that could result in the suspension or loss of the person's law enforcement authority.

4. The person meets all standards established by the agency to qualify the person on a regular basis to use a firearm.

5. The person is not prohibited under federal law from possessing a firearm.

(2) Any person, other than one of the following, who carries a concealed and dangerous weapon is guilty of a Class A misdemeanor:

(a) A peace officer, but notwithstanding s. 939.22, for purposes of this paragraph, peace officer does not include a commission warden who is not a state-certified commission warden.

(b) A qualified out-of-state law enforcement officer. This paragraph applies only if all of the following apply:

1. The weapon is a firearm but is not a machine gun or a destructive device.

2. The officer is not carrying a firearm silencer.

3. The officer is not under the influence of an intoxicant.

(c) A former officer. This paragraph applies only if all of the following apply:

1. The former officer has been issued a photographic identification document described in sub. (3) (b) 1. or both of the following:

a. A photographic identification document described in sub. (3) (b) 2. (intro.).

b. An identification card described in sub. (3) (b) 2. a., if the former officer resides in this state, or a certification described in sub. (3) (b) 2. b., if the former officer resides in another state.

2. The weapon is a firearm that is of the type described in a photographic identification document described in subd. 1. (intro.) or a card or certification described in subd. 1. b.

3. Within the preceding 12 months, the former officer met the standards of the state in which he or she resides for training and qualification for active law enforcement officers to carry firearms.

4. The weapon is not a machine gun or a destructive device.

5. The former officer is not carrying a firearm silencer.

6. The former officer is not under the influence of an intoxicant.

7. The former officer is not prohibited under federal law from possessing a firearm.

(d) A licensee, as defined in s. 175.60 (1) (d), or an out-of-state licensee, as defined in s. 175.60 (1) (g), if the dangerous weapon is a weapon, as defined under s. 175.60 (1) (j). An individual formerly licensed under s. 175.60 whose license has been suspended or revoked under s. 175.60 (14) may not assert his or her refusal to accept a notice of revocation or suspension mailed under s. 175.60 (14) (b) 1. as a defense to prosecution under this subsection, regardless of whether the person has complied with s. 175.60 (11) (b) 1.

(e) An individual who carries a concealed and dangerous weapon, as defined in s. 175.60 (1) (j), in his or her own dwelling or place of business or on land that he or she owns, leases, or legally occupies.

(3) (a) A qualified out-of-state law enforcement officer shall, while carrying a concealed firearm, also have with him or her an identification card that contains his or her photograph and that was issued by the law enforcement agency by which he or she is employed.

(b) A former officer shall, while carrying a concealed firearm, also have with him or her one of the following:

1. A photographic identification document issued by the law enforcement agency from which the former officer separated that indicates that, within the 12 months preceding the date on which the former officer is carrying the concealed firearm, he or she was tested or otherwise found by that law enforcement agency to meet the standards for qualification in firearms training that that law enforcement agency sets for active law enforcement officers to carry a firearm of the same type as the firearm that the former officer is carrying.

2. A photographic identification document issued by the law enforcement agency from which the former officer separated and one of the following:

a. A certification card issued under s. 175.49 (2), if the former officer resides in this state.

b. A certification issued by the state in which the former officer resides, if the former officer resides in another state, that indicates that, within the 12 months preceding the date on which the former officer is carrying the concealed firearm, he or she has been found by the state in which he or she resides, or by a certified firearms instructor if such an instructor is qualified to conduct a firearms qualification test for active law enforcement officers in that state, to meet the standards for qualification in

firearms training for active law enforcement officers to carry a firearm of the type he or she is carrying, that are established by his or her state of residence or, if that state does not establish standards, by any law enforcement agency in his or her state of residence.

(c) A person who violates this subsection may be required to forfeit not more than $25, except that the person shall be exempted from the forfeiture if the person presents, within 48 hours, his or her license document or out-of-state license and photographic identification to the law enforcement agency that employs the requesting law enforcement officer.

(d) This subsection does not apply to a licensee, as defined in s. 175.60 (1) (d), or an out-of-state licensee, as defined in s. 175.60 (1) (g).

History: 1977 c. 173; 1979 c. 115, 221; 2007 a. 27; 2011 a. 35.

The burden is on the defendant to prove that he or she is a peace officer and within the exception. State v. Williamson, 58 Wis. 2d 514, 206 N.W.2d 613 (1973).

A defendant was properly convicted under this section for driving a vehicle with a gun locked in a glove compartment. State v. Fry, 131 Wis. 2d 153, 388 N.W.2d 565 (1986).

To "go armed" does not require going anywhere. The elements for a violation of s. 941.23 are: 1) a dangerous weapon is on the defendant's person or within reach; 2) the defendant is aware of the weapon's presence; and 3) the weapon is hidden. State v. Keith, 175 Wis. 2d 75, 498 N.W.2d 865 (Ct. App. 1993).

A handgun on the seat of a car that was indiscernible from ordinary observation by a person outside, and within the immediate vicinity, of the vehicle was hidden from view for purposes of determining whether the gun was a concealed weapon under this section. State v. Walls, 190 Wis. 2d 65, 526 N.W.2d 765 (Ct. App. 1994).

There is no statutory or common law privilege for the crime of carrying a concealed weapon under s. 941.23. State Dundon, 226 Wis. 2d 654, 594 N.W.2d 780 (1999), 97-1423.

Under the facts of the case, the privilege of of self-defense was inapplicable to a charge of carrying a concealed weapon. State v. Nollie, 2002 WI 4, 249 Wis. 2d 538, 638 N.W.2d 280, 00-0744.

The concealed weapons statute is a restriction on the manner in which firearms are possessed and used. It is constitutional under Art. I, s. 25. Only if the public benefit in the exercise of the police power is substantially outweighed by an individual's need to conceal a weapon in the exercise of the right to bear arms will an otherwise valid restriction on that right be unconstitutional, as applied. The right to keep and bear arms for security, as a general matter, must permit a person to possess, carry, and sometimes conceal arms to maintain the security of a private residence or privately operated business, and to safely move and store weapons within those premises. State v. Hamdan, 2003 WI 113, 264 Wis. 2d 433, 665 N.W.2d 785, 01-0056. See also State v. Cole, 2003 WI 112, 264 Wis. 2d 520, 665 N.W.2d 328, 01-0350.

A challenge on constitutional grounds of a prosecution for carrying a concealed weapon requires affirmative answers to the following before the defendant may raise the constitutional defense: 1) under the circumstances, did the defendant's interest in concealing the weapon to facilitate exercise of his or her right to keep and bear arms substantially outweigh the state's interest in enforcing the concealed weapons statute? and 2) did the defendant conceal his or her weapon because concealment was the only reasonable means under the circumstances to exercise his or her right to bear arms? State v. Hamdan, 2003 WI 113, 264 Wis. 2d 433, 665 N.W.2d 785, 01-0056.

This section is constitutional as applied in this case. The defendant's interest in exercising his right to keep and bear arms for purposes of security by carrying a concealed weapon in his vehicle does not substantially outweigh the state's interest in prohibiting him from carrying a concealed weapon in his vehicle. State v. Fisher, 2006 WI 44, 290 Wis. 2d 121, 714 N.W.2d 495, 04-2989.

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

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

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

(a) Peace officers or armed forces or military personnel who go armed in the line of duty or to any person duly authorized by the chief of police of any city, village or town, the chief of the capitol police, or the sheriff of any county to possess a firearm in any building under sub. (1). Notwithstanding s. 939.22 (22), for purposes of this paragraph, peace officer does not include a commission warden who is not a state-certified commission warden.

(c) A qualified out-of-state law enforcement officer, as defined in s. 941.23 (1) (g), to whom s. 941.23 (2) (b) 1. to 3. applies.

(d) A former officer, as defined in s. 941.23 (1) (c), to whom s. 941.23 (2) (c) 1. to 7. applies.

(e) A licensee, as defined in s. 175.60 (1) (d), or an out-of-state licensee, as defined in s. 175.60 (1) (g).

History: 1979 c. 221; 1991 a. 172; 1993 a. 246; 2001 a. 109; 2007 a. 27; 2011 a. 35.

941.237 Carrying handgun where alcohol beverages may be sold and consumed. (1) In this section:

(a) "Alcohol beverages" has the meaning given in s. 125.02 (1).

(b) "Correctional officer" means any person employed by the state or any political subdivision as a guard or officer whose principal duties are the supervision and discipline of inmates.

(c) "Encased" has the meaning given in s. 167.31 (1) (b).

(cm) "Firearms dealer" means any person engaged in the business of importing, manufacturing or dealing in firearms and having a license as an importer, manufacturer or dealer issued by the U.S. department of the treasury.

(d) "Handgun" has the meaning given in s. 175.35 (1) (b).

(dm) "Hotel" has the meaning given in s. 254.61 (3).

(dr) Notwithstanding s. 939.22 (22), "peace officer" does not include a commission warden who is not a state-certified commission warden.

(e) "Premises" has the meaning given in s. 125.02 (14m), but excludes any area primarily used as a residence.

(em) "Private security person" has the meaning given in s. 440.26 (1m) (h).

(f) "Target range" means any area where persons are allowed to use a handgun to fire shots at targets.

(fm) "Tavern" means an establishment, other than a private club or fraternal organization, in which alcohol beverages are sold for consumption on the premises.

(g) "Unloaded" means any of the following:

1. Having no shell or cartridge in the chamber of a handgun or in the magazine attached to a handgun.

2. In the case of a caplock muzzle-loading handgun, having the cap removed.

3. In the case of a flintlock muzzle-loading handgun, having the flashpan cleaned of powder.

(2) Whoever intentionally goes armed with a handgun on any premises for which a Class "B" or "Class B" license or permit has been issued under ch. 125 is guilty of a Class A misdemeanor.

(3) Subsection (2) does not apply to any of the following:

(a) A peace officer.

(b) A correctional officer while going armed in the line of duty.

(c) A member of the U.S. armed forces or national guard while going armed in the line of duty.

(cm) A private security person meeting all of the following criteria:

1. The private security person is covered by a license or permit issued under s. 440.26.

2. The private security person is going armed in the line of duty.

3. The private security person is acting with the consent of the person specified in par. (d).

(cr) A qualified out-of-state law enforcement officer, as defined in s. 941.23 (1) (g), to whom s. 941.23 (2) (b) 1. to 3. applies.

(ct) A former officer, as defined in s. 941.23 (1) (c), to whom s. 941.23 (2) (c) 1. to 7. applies.

(cx) A licensee, as defined in s. 175.60 (1) (d), or an out-of-state licensee, as defined in s. 175.60 (1) (g), if the licensee or out-of-state licensee is not consuming alcohol on the premises.

(d) The licensee, owner, or manager of the premises, or any employee or agent authorized to possess a handgun by the licensee, owner, or manager of the premises.

(e) The possession of a handgun that is unloaded and encased in a vehicle in any parking lot area.

(f) The possession or use of a handgun at a public or private gun or sportsmen's range or club.

(g) The possession or use of a handgun on the premises if authorized for a specific event of limited duration by the owner or manager of the premises who is issued the Class "B" or "Class B" license or permit under ch. 125 for the premises.

(h) The possession of any handgun that is used for decoration if the handgun is encased, inoperable or secured in a locked condition.

(i) The possession of a handgun in any portion of a hotel other than the portion of the hotel that is a tavern.

(j) The possession of a handgun in any portion of a combination tavern and store devoted to other business if the store is owned or operated by a firearms dealer, the other business includes the sale of handguns and the handgun is possessed in a place other than a tavern.

History: 1993 a. 95, 491; 1995 a. 461; 2007 a. 27; 2011 a. 35.

Sub. (3) does not allow going armed with a concealed handgun in violation of s. 941.23. State v. Mata, 199 Wis. 2d 315, 544 N.W.2d 578 (Ct. App. 1996), 95-1336.

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

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

History: 1977 c. 173.

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

History: 1977 c. 173.

941.26 Machine guns and other weapons; use in certain cases; penalty. (1) (a) No person may sell, possess, use or transport any machine gun or other full automatic firearm.

(b) Except as provided in sub. (4), no person may sell, possess, use or transport any tear gas bomb, hand grenade, projectile or shell or any other container of any kind or character into which tear gas or any similar substance is used or placed for use to cause bodily discomfort, panic, or damage to property.

(1m) No person may take a firearm that is not designed to shoot more than one shot, without manual reloading, by a single function of the trigger and modify the firearm so that it does shoot more than one shot, without manual reloading, by a single function of the trigger.

(2) (a) Any person violating sub. (1) (a) is guilty of a Class H felony.

(b) Any person violating sub. (1m) is guilty of a Class F felony.

(c) Except as provided in par. (d), any person who violates sub. (1) (b) regarding the possession, noncommercial transportation or use of the bomb, grenade, projectile, shell or container under sub. (1) (b) is guilty of a Class A misdemeanor.

(d) Any person who violates sub. (1) (b) regarding the possession, noncommercial transportation or use of the bomb, grenade, projectile, shell or container under sub. (1) (b) in self-defense or defense of another, as allowed under s. 939.48, is subject to a Class D forfeiture.

(e) Any person who violates sub. (1) (b) regarding the sale or commercial transportation of the bomb, grenade, projectile, shell or container under sub. (1) (b) is guilty of a Class H felony.

(f) Any person who violates sub. (1) (b) regarding the use of the bomb, grenade, projectile, shell or container under sub. (1) (b) to cause bodily harm or bodily discomfort to a person who the actor knows, or has reason to know, is a peace officer who is acting in an official capacity is guilty of a Class H felony.

(g) Any person who violates sub. (1) (b) regarding the use of the bomb, grenade, projectile, shell or container under sub. (1) (b) during his or her commission of another crime to cause bodily harm or bodily discomfort to another or who threatens to use the bomb, grenade, projectile, shell or container during his or her commission of another crime to incapacitate another person is guilty of a Class H felony.

(3) This section does not apply to the sale, possession, modification, use or transportation of any weapons or containers under sub. (1) or (1m) to or by any armed forces or national guard personnel in the line of duty, any civil enforcement officer of the state or of any city or county. This section does not apply to the sale, possession, modification, use or

transportation of weapons under sub. (1) (a) or (1m) to or by any person duly authorized by the chief of police of any city or the sheriff of any county. This section does not apply to the restoration of any weapon under sub. (1) (a) or (1m) by a person having a license to collect firearms as curios or relics issued by the U.S. department of the treasury. The restriction on transportation contained in this section does not apply to common carriers.

(4) (a) Subsections (1) to (3) do not apply to any device or container that contains a combination of oleoresin of capsicum and inert ingredients but does not contain any other gas or substance that will cause bodily discomfort.

(b) Whoever intentionally uses a device or container described under par. (a) to cause bodily harm or bodily discomfort to another is guilty of a Class A misdemeanor.

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

1. Any person acting in self-defense or defense of another, as allowed under s. 939.48.

2. Any peace officer acting in his or her official capacity. Notwithstanding s. 939.22 (22), for purposes of this subdivision, peace officer does not include a commission warden who is not a state-certified commission warden.

3. Any armed forces or national guard personnel acting in the line of duty.

(d) Whoever intentionally uses a device or container described under par. (a) to cause bodily harm or bodily discomfort to a person who the actor knows, or has reason to know, is a peace officer who is acting in an official capacity is guilty of a Class H felony.

(e) Whoever uses a device or container described under par. (a) during his or her commission of another crime to cause bodily harm or bodily discomfort to another or who threatens to use the device or container during his or her commission of another crime to incapacitate another person is guilty of a Class H felony.

(f) Any person who offers for sale a device or container described under par. (a) and who leaves in his or her place of business an unsold device or container in a place where customers have ready access to the device or container is subject to a Class C forfeiture.

(g) 1. Any person who sells or distributes a device or container described under par. (a) to a person who has not attained 18 years of age is subject to a Class C forfeiture.

2. A person who proves all of the following by a preponderance of the evidence has a defense to prosecution under subd. 1.:

a. That the purchaser or distributee falsely represented that he or she had attained the age of 18 and presented an identification card.

b. That the appearance of the purchaser or distributee was such that an ordinary and prudent person would believe that the purchaser or distributee had attained the age of 18.

c. That the sale was made in good faith, in reasonable reliance on the identification card and appearance of the purchaser or distributee and in the belief that the purchaser or distributee had attained the age of 18.

(h) Any person who intentionally offers for sale a device or container in a place where customers have direct access to the device or container is guilty of a Class A misdemeanor.

(i) 1. Whoever intentionally sells a device or container described under par. (a) that does not meet the safety criteria provided in rules promulgated under subd. 2. is guilty of a Class A misdemeanor.

2. The department of justice shall promulgate rules providing safety criteria for devices or containers described under par. (a). In promulgating the rules, the department shall do all of the following:

a. Consider recommendations of law enforcement agencies, as defined in s. 165.83 (1) (b), and manufacturers of devices or containers described under par. (a).

b. Provide allowable amounts of oleoresin of capsicum, inert ingredients and total ingredients for a device or container described under par. (a).

c. Provide a maximum effective range for a device or container described under par. (a).

d. Provide other requirements to ensure that a device or container described under par. (a) is effective and appropriate for self-defense purposes.

3. Subdivisions 1. and 2. do not apply to sales of devices or containers described under par. (a) for use by peace officers or armed forces or national guard personnel.

(j) 1. Whoever intentionally sells a device or container described under par. (a) without providing the purchaser with all of the following is guilty of a Class A misdemeanor:

a. A proper label on the device or container.

b. Written safety instructions for using the device or container.

c. A package that contains a clear, highlighted message to the purchaser cautioning him or her to read and follow the safety instructions.

2. The department of justice shall promulgate rules providing the requirements for labeling, packaging and written safety instructions under subd. 1.

(k) Any person who has not attained the age of 18 years and who possesses a device or container described under par. (a) is subject to a Class E forfeiture.

(L) Any person who has been convicted of a felony in this state or has been convicted of a crime elsewhere that would be a felony if committed in this state who possesses a device or container described under par. (a) is subject to a Class A misdemeanor. This paragraph does not apply if the person has received a pardon for the felony or crime.

History: 1977 c. 173; 1987 a. 234; 1991 a. 137; 1993 a. 91; 1995 a. 25; 2001 a. 109; 2007 a. 27.

Cross-reference: See also ch. Jus 14, Wis. adm. code.

941.27 Machine guns. (1) DEFINITION. In ss. 941.25 and 941.26, "machine gun" means any of the following:

(a) Any weapon that shoots, is designed to shoot or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger.

(b) The frame or receiver of any weapon described under par. (a) or any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a weapon described under par. (a).

(c) Any combination of parts from which a weapon described under par. (a) can be assembled if those parts are in the possession or under the control of a person.

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

History: 1977 c. 173; 1991 a. 137; 1999 a. 85.

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

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

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

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

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

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

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

(4) This section does not apply to the sale, purchase, possession, use or transportation of a short-barreled shotgun or short-barreled rifle to or by any armed forces or national guard personnel in line of duty, any peace officer of the United States or of any political subdivision of the United States or any person who has complied with the licensing and registration requirements under 26 USC 5801 to 5872. This section does not apply to the manufacture of short-barreled shotguns or short-barreled rifles for any person or group authorized to possess these weapons. The restriction on transportation contained in this section does not apply to common carriers. This section shall not apply to any firearm that may be lawfully possessed under federal law, or any firearm that could have been lawfully registered at the time of the enactment of the national firearms act of 1968.

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

History: 1979 c. 115; 2001 a. 109.

The intent in sub. (1) (d) is that of the fabricator; that the gun is incapable of being fired or not intended to be fired by the possessor is immaterial. State v. Johnson, 171 Wis. 2d 175, 491 N.W.2d 110 (Ct. App. 1992).

"Firearm" means a weapon that acts by force of gunpowder to fire a projectile, regardless of whether it is inoperable due to disassembly. State v. Rardon, 185 Wis. 2d 701, 518 N.W.2d 330 (Ct. App. 1994).

941.29 Possession of a firearm. (1) A person is subject to the requirements and penalties of this section if he or she has been:

(a) Convicted of a felony in this state.

(b) Convicted of a crime elsewhere that would be a felony if committed in this state.

(bm) Adjudicated delinquent for an act committed on or after April 21, 1994, that if committed by an adult in this state would be a felony.

(c) Found not guilty of a felony in this state by reason of mental disease or defect.

(d) Found not guilty of or not responsible for a crime elsewhere that would be a felony in this state by reason of insanity or mental disease, defect or illness.

(e) Committed for treatment under s. 51.20 (13) (a) and ordered not to possess a firearm under s. 51.20 (13) (cv) 1., 2007 stats.

(em) Ordered not to possess a firearm under s. 51.20 (13) (cv) 1., 51.45 (13) (i) 1., 54.10 (3) (f) 1., or 55.12 (10) (a).

(f) Enjoined under an injunction issued under s. 813.12 or 813.122 or under a tribal injunction, as defined in s. 813.12 (1) (e), issued by a court established by any federally recognized Wisconsin Indian tribe or band, except the Menominee Indian tribe of Wisconsin, that includes notice to the respondent that he or she is subject to the requirements and penalties under this section and that has been filed under s. 806.247 (3).

(g) Ordered not to possess a firearm under s. 813.125 (4m).

(2) A person specified in sub. (1) is guilty of a Class G felony if he or she possesses a firearm under any of the following circumstances:

(a) The person possesses a firearm subsequent to the conviction for the felony or other crime, as specified in sub. (1) (a) or (b).

(b) The person possesses a firearm subsequent to the adjudication, as specified in sub. (1) (bm).

(c) The person possesses a firearm subsequent to the finding of not guilty or not responsible by reason of insanity or mental disease, defect or illness as specified in sub. (1) (c) or (d).

(d) The person possesses a firearm while subject to the court order, as specified in sub. (1) (e), (em), or (g).

(e) The person possesses a firearm while the injunction, as specified in sub. (1) (f), is in effect.

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

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

(5) This section does not apply to any person specified in sub. (1) who:

(a) Has received a pardon with respect to the crime or felony specified in sub. (1) and has been expressly authorized to possess a firearm under 18 USC app. 1203; or

(b) Has obtained relief from disabilities under 18 USC 925 (c).

(6) The prohibition against firearm possession under this section does not apply to any correctional officer employed before May 1, 1982, who is required to possess a firearm as a

condition of employment. This exemption applies if the officer is eligible to possess a firearm under any federal law and applies while the officer is acting in an official capacity.

(7) This section does not apply to any person who has been found not guilty or not responsible by reason of insanity or mental disease, defect or illness if a court subsequently determines both of the following:

(a) The person is no longer insane or no longer has a mental disease, defect or illness.

(b) The person is not likely to act in a manner dangerous to public safety.

(8) This section does not apply to any person specified in sub. (1) (bm) if a court subsequently determines that the person is not likely to act in a manner dangerous to public safety. In any action or proceeding regarding this determination, the person has the burden of proving by a preponderance of the evidence that he or she is not likely to act in a manner dangerous to public safety.

(9) (a) This section does not apply to a person specified in sub. (1) (e) if the prohibition under s. 51.20 (13) (cv) 1., 2007 stats., has been canceled under s. 51.20 (13) (cv) 2. or (16) (gm), 2007 stats., or under s. 51.20 (13) (cv) 1m. c.

(b) This section does not apply to a person specified in sub. (1) (em) if the order under s. 51.20 (13) (cv) 1. is canceled under s. 51.20 (13) (cv) 1m. c., if the order under s. 51.45 (13) (i) 1. is canceled under s. 51.45 (13) (i) 2. c., if the order under s. 54.10 (3) (f) 1. is canceled under s. 54.10 (3) (f) 2. c., or if the order under s. 55.12 (10) (a) is canceled under s. 55.12 (10) (b) 3.

(10) The prohibition against firearm possession under this section does not apply to a person specified in sub. (1) (f) if the person satisfies any of the following:

(a) The person is a peace officer and the person possesses a firearm while in the line of duty or, if required to do so as a condition of employment, while off duty. Notwithstanding s. 939.22 (22), for purposes of this paragraph, peace officer does not include a commission warden who is not a state-certified commission warden.

(b) The person is a member of the U.S. armed forces or national guard and the person possesses a firearm while in the line of duty.

History: 1981 c. 141, 317; 1983 a. 269; 1985 a. 259; 1993 a. 195, 196, 491; 1995 a. 71, 77, 306, 417; 2001 a. 109; 2007 a. 27; 2009 a. 258; 2011 a. 257, 258.

NOTE: See Chapter 141, laws of 1981, section 2, entitled "Initial applicability."

If a defendant is willing to stipulate to being a convicted felon, evidence of the nature of the felony is irrelevant if offered only to support the felony conviction element. State v. McAllister, 153 Wis. 2d 523, 451 N.W.2d 764 (Ct. App. 1989).

Failure to give the warning under s. 973.033 does not prevent a conviction under this section. State v. Phillips, 172 Wis. 2d 391, 493 N.W.2d 238 (Ct. App. 1992).

Retroactive application of this provision did not violate the prohibition against ex post facto laws because the law is intended not to punish persons for a prior crime but to protect public safety. State v. Thiel, 188 Wis. 2d 695, 524 N.W.2d 641 (1994).

A convicted felon's possession of a firearm is privileged in limited enumerated circumstances. State v. Coleman, 206 Wis. 2d 199, 556 N.W.2d 701 (1996), 95-0917.

Sub. (2m) is not in the nature of a penalty enhancer, but defines an additional element to the crime described in sub. (2). It was proper for the trial court to apply the general repeater statute to a violator. State v. Gibson, 2000 WI App 207, 238 Wis. 2d 547, 618 N.W.2d 248, 99-2612.

In this section, to possess means that the defendant knowingly has control of a firearm. There is no minimum length of time the firearm must be possessed for a violation to occur. Intention in handling a firearm is irrelevant unless the handling is privileged under s. 939.45. State v. Black, 2001 WI 31, 242 Wis. 2d 126, 624 N.W.2d 363, 99-0230.

To determine whether a person has been "convicted of a crime elsewhere that would be a felony if committed in this state" under sub. (1) (b), the courts must consider the underlying conduct of the out-of-state conviction, not merely the statute that was violated. State v. Campbell, 2002 WI App 20, 250 Wis. 2d 238, 642 N.W.2d 230, 01-0758.

Article I, s. 25, of the Wisconsin constitution did not effectively repeal this section, nor is this section unconstitutionally vague, overbroad, or in violation of the equal protection clauses of the United States and Wisconsin constitutions. State v. Thomas, 2004 WI App 115, 274 Wis. 2d 513, 683 N.W.2d 497, 03-1369.

While 18 U.S.C. s. 1162(b) prohibits the state from depriving any Indian of any right, privilege, or immunity afforded under federal treaty, defendant's claim that he was exercising tribal hunting rights did not prevent the application of this section. Application of this section did not make defendant's exercise of treaty hunting rights illegal. Rather, the defendant's own actions in committing a felony limited him from fully enjoying those rights. State v. Jacobs, 2007 WI App 155, 302 Wis. 2d 675, 735 N.W.2d 535, 06-2076.

The ban on felons possessing firearms is constitutional, and that ban extends to all felons, including nonviolent ones. The governmental objective of public safety is an important one, and the legislature's decision to deprive a nonviolent felon of the right to possess a firearm is substantially related to this goal. State v. Pocian, 2012 WI App 58, 341 Wis. 2d 380, 814 N.W.2d 894, 11-1035.

Sub. (5) (a) has been invalidated by congressional action. Pardons granted after November 15, 1986 will give recipients the right to receive, possess, or transport in commerce firearms unless the pardon expressly provides otherwise. 78 Atty. Gen. 22.

941.291 Possession of body armor. (1) DEFINITIONS. In this section:

(a) "Body armor" means any garment that is designed, redesigned, or adapted to prevent bullets from penetrating through the garment.

(b) "Violent felony" means any felony, or the solicitation, conspiracy, or attempt to commit any felony, under s. 943.23 (1m) or (1r), 1999 stats., or s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.08, 940.09, 940.10, 940.19, 940.195, 940.20, 940.201, 940.203, 940.21, 940.225, 940.23, 940.285 (2), 940.29, 940.295 (3), 940.30, 940.305, 940.31, 940.43 (1) to (3), 940.45 (1) to (3), 941.20, 941.26, 941.28, 941.29, 941.30, 941.327, 943.01 (2) (c), 943.011, 943.013, 943.02, 943.04, 943.06, 943.10 (2), 943.23 (1g), 943.32, 943.81, 943.82, 943.83, 943.85, 943.86, 943.87, 943.88, 943.89, 943.90, 946.43, 947.015, 948.02 (1) or (2), 948.025, 948.03, 948.04, 948.05, 948.06, 948.07, 948.08, 948.085, or 948.30; or, if the victim is a financial institution, as defined in s. 943.80 (2), a felony, or the solicitation, conspiracy, or attempt to commit a felony under s. 943.84 (1) or (2).

(2) PROHIBITION. Except as provided in subs. (4), (5), (5m), and (6), no person may possess body armor if any of the following applies to the person:

(a) The person has been convicted of a violent felony in this state and has not been pardoned for it.

(b) The person has been convicted of a crime elsewhere that would be a violent felony if committed in this state and has not been pardoned for it.

(c) The person has been adjudicated delinquent for an act that if committed by an adult in this state would be a violent felony.

(d) The person has been found not guilty of a violent felony in this state by reason of mental disease or defect.

(e) The person has been found not guilty of or not responsible for a crime elsewhere by reason of insanity or mental disease, defect, or illness if the crime would be a violent felony in this state.

(3) PENALTY. (a) Whoever violates sub. (2) is guilty of a Class E felony.

(b) Whoever violates sub. (2) after being convicted of violating sub. (2) is guilty of a Class D felony.

(4) REQUEST BY CERTAIN PERSONS FOR COMPLETE OR PARTIAL EXEMPTION FROM PROHIBITION. (a) A person who is otherwise prohibited from possessing body armor under sub. (2) may request a complete or partial exemption from the prohibition if all of the following apply:

1. The person has a reasonable need to possess body armor to ensure his or her personal safety, to earn a livelihood, or as a condition of employment.

2. The person is likely to use the body armor in a safe and lawful manner.

(b) A person seeking a complete or partial exemption under this subsection from the prohibition under sub. (2) shall request the exemption by filing a written motion in the circuit court for the county in which the person will possess the body armor. A person who files a motion under this paragraph shall send a copy of the motion to the district attorney for the county in which the motion is filed. The district attorney shall make a reasonable attempt to contact the county sheriff and, if applicable, the chief of police of a city, village, or town in the county in which the person will possess the body armor for the purpose of informing the sheriff and the chief of police that the person has made a request for an exemption and to solicit from the sheriff and chief of police any information that may be relevant to the criteria specified in par. (a) 1. and 2.

(c) A court deciding whether to grant a request for an exemption made under par. (b) may deny the request for an exemption, grant a complete exemption from the prohibition, or grant a partial exemption by allowing possession of body armor only under certain specified circumstances or in certain locations or both. In deciding whether a person satisfies the criteria specified in par. (a) 1. and 2. and, if so, whether to grant an exemption, the court shall consider the person's character, including the person's criminal record, the totality of the person's circumstances, and any relevant evidence of the person's character and circumstances, including any relevant evidence submitted by the district attorney who received the copy of the motion under par. (b).

(d) If a court grants a request for an exemption under par. (c), the court shall issue a written order of exemption to the person who requested the exemption. The exemption is valid only in the county in which the court is located. If the exemption is a partial exemption, the order shall specify the circumstances under which the person may possess body armor, the locations in which the person may possess body armor, or, if applicable, both. The person granted the exemption shall carry a copy of the order of exemption at all times during which he or she is in possession of body armor. The clerk of the circuit court shall send a copy of the order of exemption to the county sheriff and, if applicable, to the chief of police of a city, village, or town in the county in which the person will possess the body armor.

(5) EXEMPTION BASED ON REQUEST OF LAW ENFORCEMENT AGENCY FOR CERTAIN WITNESSES AND INFORMERS. A person who is otherwise prohibited from possessing body armor under sub. (2) may wear body armor if the person is furnishing or has furnished information to a law enforcement agency relating to a possible violation of law or is assisting or has assisted a law enforcement agency in an investigation of a possible violation of law and is wearing the body armor at the request or direction of the law enforcement agency.

(5m) EXEMPTION BASED ON REQUEST BY CERTAIN WITNESSES AND INFORMERS. (a) A person who is otherwise prohibited from possessing body armor under sub. (2) may possess body armor if all of the following apply:

2. The law enforcement agency to which the person is furnishing or has furnished information or to which the person is providing or has provided assistance determines that there is reason to believe that the person may be in danger of suffering death or great bodily harm because he or she is furnishing or has furnished information or because he or she is assisting or has assisted or is assisting in an investigation.

3. The law enforcement agency to which the person is furnishing or has furnished information or to which the person is providing or has provided assistance approves of the person's request to possess body armor under par. (b).

(b) A person seeking an exemption under this subsection from the prohibition under sub. (2) shall request the exemption from the law enforcement agency to which the person is furnishing or has furnished information or to which the person is providing or has provided assistance. The law enforcement agency may deny the request for an exemption, grant a complete exemption from the prohibition, or grant a partial exemption by allowing possession of body armor only under certain specified circumstances or in certain locations or both. If the law enforcement agency grants a request for an exemption under this subsection, it shall keep a written record of the exemption. If the exemption is a partial exemption, the record shall specify the circumstances under which the person may possess body armor, the locations in which the person may possess body armor, or, if applicable, both. A written record relating to an exemption granted by a law enforcement agency under this subsection is not subject to inspection or copying under s. 19.35 (1), except that a written record shall, upon request, be disclosed to another law enforcement agency or a district attorney, if the other law enforcement agency or the district attorney is investigating or prosecuting an alleged violation of sub. (2) or to the person to whom the exemption was granted.

(6) EXEMPTION FROM PROHIBITION FOR CERTAIN PRISONERS. A person who is prohibited from possessing body armor under sub. (2) may wear body armor if he or she is in the actual custody of a law enforcement officer, as defined in s. 165.85 (2) (c), or a correctional officer, as defined in s. 102.475 (8) (a), and is wearing the body armor at the request or direction of the law enforcement officer or correctional officer.

History: 2001 a. 95; 2003 a. 321; 2005 a. 212, 277; 2007 a. 97.

941.295 Possession of electric weapon. (1c) In this section:

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

(b) "Licensee" has the meaning given in s. 175.60 (1) (d).

(c) "Out-of-state licensee" has the meaning given in s. 175.60 (1) (g).

(1m) Whoever sells, transports, manufactures, possesses or goes armed with any electric weapon is guilty of a Class H felony.

(2) Subsection (1m) does not apply to any of the following:

(a) Any peace officer. Notwithstanding s. 939.22 (22), for purposes of this paragraph, peace officer does not include a commission warden who is not a state-certified commission warden.

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

(c) Any corrections personnel in a county or in the department of corrections while on official duty.

(d) Any manufacturer or seller of electric weapons, unless the manufacturer or seller engages in the conduct described in sub. (1m) with the intent to provide an electric weapon to someone other than one of the following:

1. A person specified in pars. (a) to (c), a licensee, or an out-of-state licensee.

2. A person for use in his or her dwelling or place of business or on land that he or she owns, leases, or legally occupies.

(e) Any common carrier transporting electric weapons.

(2g) The prohibition in sub. (1m) on possessing or going armed with an electric weapon does not apply to any of the following:

(a) A licensee or an out-of-state licensee.

(b) An individual who goes armed with an electric weapon in his or her own dwelling or place of business or on land that he or she owns, leases, or legally occupies.

(2r) The prohibition in sub. (1m) on transporting an electric weapon does not apply to any of the following:

(a) A licensee or an out-of-state licensee.

(b) An individual who is not a licensee or an out-of-state licensee who transports an electric weapon if the electric weapon is enclosed within a carrying case.

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

History: 1981 c. 348; 1985 a. 29 s. 3200 (35); 1989 a. 31, 56; 2001 a. 109; 2007 a. 27, 128; 2011 a. 35.

941.296 Use or possession of a handgun and an armor-piercing bullet during crime.

(1) In this section:

(a) "Armor-piercing bullet" means a bullet meeting any of the following criteria: any projectile or projectile core that may be fired from any handgun and that is constructed entirely, excluding the presence of traces of other substances, from one or a combination of tungsten alloys, steel, iron, brass, bronze, beryllium copper or depleted uranium.

(b) "Handgun" has the meaning given in s. 175.35 (1) (b).

(2) Whoever uses or possesses a handgun during the commission of a crime under chs. 939 to 948 or 961 is guilty of a Class H felony under any of the following circumstances.

(a) The handgun is loaded with an armor-piercing bullet or a projectile or projectile core that may be fired from the handgun with a muzzle velocity of 1,500 feet per second or greater.

(b) The person possesses an armor-piercing bullet capable of being fired from the handgun.

History: 1993 a. 98; 1995 a. 448; 2001 a. 109.

941.2965 Restrictions on use of facsimile firearms.

(1) In this section, "facsimile firearm" means any replica, toy, starter pistol or other object that bears a reasonable resemblance to or that reasonably can be perceived to be an actual firearm. "Facsimile firearm" does not include any actual firearm.

(2) No person may carry or display a facsimile firearm in a manner that could reasonably be expected to alarm, intimidate, threaten or terrify another person. Whoever violates this section is subject to a Class C forfeiture.

(3) Subsection (2) does not apply to any of the following:

(a) Any peace officer acting in the discharge of his or her official duties. Notwithstanding s. 939.22 (22), this paragraph does not apply to a commission warden.

(b) Any person engaged in military activities, sponsored by the state or federal government, acting in the discharge of his or her official duties.

(c) Any person who is on his or her own real property, in his or her own home or at his or her own fixed place of business.

(d) Any person who is on real property and acting with the consent of the owner of that property.

History: 1993 a. 191; 1993 a. 491 s. 262; Stats. 1993 s. 941.2965; 2007 a. 27.

941.297 Sale or distribution of imitation firearms.

(1) In this section, "look-alike firearm" means any imitation of any original firearm that was manufactured, designed and produced after December 31, 1897, including and limited to toy

guns, water guns, replica nonguns, and air-soft guns firing nonmetallic projectiles. "Look-alike firearm" does not include any imitation, nonfiring, collector replica of an antique firearm developed prior to 1898, or any traditional beebee, paint-ball or pellet-firing air gun that expels a projectile through the force of air pressure.

(2) Beginning November 1, 1992, no person may sell or distribute any look-alike firearm. Whoever violates this subsection is subject to a Class A forfeiture.

(3) This section does not apply to the sale or distribution of a look-alike firearm that complies with the marking or waiver requirements under 15 USC 5001 (b).

History: 1991 a. 155.

941.298 Firearm silencers. (1) In this section, "firearm silencer" means any device for silencing, muffling or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for use in assembling or fabricating such a device, and any part intended only for use in that assembly or fabrication.

(2) Whoever sells, delivers or possesses a firearm silencer is guilty of a Class H felony.

(3) Subsection (2) does not apply to sales or deliveries of firearm silencers to or possession of firearm silencers by any of the following:

(a) Any peace officer who is acting in compliance with the written policies of the officer's department or agency. This paragraph does not apply to any officer whose department or agency does not have such a policy. Notwithstanding s. 939.22 (22), this paragraph does not apply to a commission warden.

(b) Any armed forces or national guard personnel, while in the line of duty.

(c) Any person who has complied with the licensing and registration requirements under 26 USC 5801 to 5872.

History: 1991 a. 39; 2001 a. 109; 2007 a. 27.

941.299 Restrictions on the use of laser pointers. (1) In this section:

(a) "Correctional officer" has the meaning given in s. 941.237 (1) (b).

(b) "Laser pointer" means a hand-held device that uses light amplification by stimulated emission of radiation to emit a beam of light that is visible to the human eye.

(c) "Law enforcement officer" means a Wisconsin law enforcement officer, as defined in s. 175.46 (1) (g), or a federal law enforcement officer, as defined in s. 175.40 (7) (a) 1.

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

(a) Intentionally direct a beam of light from a laser pointer at any part of the body of a correctional officer, law enforcement officer, or commission warden without the officer's consent, if the person knows or has reason to know that the victim is a correctional officer, law enforcement officer, or commission warden who is acting in an official capacity.

(b) Intentionally and for no legitimate purpose direct a beam of light from a laser pointer at any part of the body of any human being.

(c) Intentionally direct a beam of light from a laser pointer in a manner that could reasonably be expected to alarm, intimidate, threaten or terrify another person.

(d) Intentionally direct a beam of light from a laser pointer in a manner that, under the circumstances, tends to disrupt any public or private event or create or provoke a disturbance.

(3) (a) Whoever violates sub. (2) (a) is guilty of a Class B misdemeanor.

(b) Whoever violates sub. (2) (b), (c) or (d) is subject to a Class B forfeiture.

(c) A person may be charged with a violation of sub. (2) (a) or (b) or both for an act involving the same victim. If the person is charged with violating both sub. (2) (a) and (b) with respect to the same victim, the charges shall be joined. If the person is found guilty of both sub. (2) (a) and (b) for an act involving the same victim, the charge under sub. (2) (b) shall be dismissed and the person may be sentenced only under sub. (2) (a).

History: 1999 a. 157; 2007 a. 27.

SUBCHAPTER IV

OTHER DANGEROUS INSTRUMENTALITIES AND PRACTICES

941.30 Recklessly endangering safety. (1) FIRST-DEGREE RECKLESSLY ENDANGERING SAFETY. Whoever recklessly endangers another's safety under circumstances which show utter disregard for human life is guilty of a Class F felony.

(2) SECOND-DEGREE RECKLESSLY ENDANGERING SAFETY. Whoever recklessly endangers another's safety is guilty of a Class G felony.

History: 1987 a. 399; 2001 a. 109.

Judicial Council Note, 1988: Sub. (1) is analogous to the prior offense of endangering safety by conduct regardless of life.

Sub. (2) is new. It creates the offense of endangering safety by criminal recklessness. See s. 939.24 and the NOTE thereto. [Bill 191-S]

A bomb scare under s. 947.015 is not a lesser included crime of recklessly endangering safety. State v. Van Ark, 62 Wis. 2d 155, 215 N.W.2d 41 (1974).

Section 941.30 is a lesser included offense of s. 940.01, 1st-degree homicide. State v. Weeks, 165 Wis. 2d 200, 477 N.W.2d 642 (Ct. App. 1991).

A conviction under sub. (1) was proper when the defendant desisted from an attack but showed no regard for the victim's life or safety during the attack. State v. Holtz, 173 Wis. 2d 515, 496 N.W.2d 668 (Ct. App. 1992).

941.31 Possession of explosives. (1) Whoever makes, buys, transports, possesses, or transfers any explosive compound or offers to do the same, either with intent to use such explosive to commit a crime or knowing that another intends to use it to commit a crime, is guilty of a Class F felony.

(2) (a) In this subsection, "improvised explosive device" means a destructive explosive device capable of causing bodily harm, great bodily harm, death or property damage; with some type of explosive material and a means of detonating the explosive material, directly, remotely, or with a timer either present or readily capable of being inserted or attached; which may include a pipe or similar casing, with the ends of the pipe or casing capped, plugged or crimped, and a fuse or similar object sticking out of the pipe or casing; and made by a person not engaged in the legitimate manufacture or legitimate use of explosives, or otherwise authorized by law to do so. "Improvised explosive device" does not include ammunition for any rifle, pistol or shotgun.

(b) Whoever makes, buys, sells, transports, possesses, uses or transfers any improvised explosive device, or possesses

materials or components with intent to assemble any improvised explosive device, is guilty of a Class H felony.

(c) This subsection does not apply to the transportation, possession, use, or transfer of any improvised explosive device by any armed forces or national guard personnel or to any peace officer in the line of duty or as part of a duty-related function or exercise. The restriction on transportation in this subsection does not apply to common carriers. Notwithstanding s. 939.22 (22), this paragraph does not apply to a commission warden.

History: 1977 c. 173; 1987 a. 234; 1999 a. 32; 2001 a. 109; 2007 a. 27.

Sub. (1) is not unconstitutionally vague. An explosive is any chemical compound, mixture, or device, the primary purpose of which is to function by explosion. An explosion is a substantially instantaneous release of both gas and heat. State v. Brulport, 202 Wis. 2d 505, 551 N.W.2d 824 (Ct. App. 1996), 95-1687.

First-degree recklessly endangering safety is not a lesser included offense of s. 940.19 (5), aggravated battery. State v. Dibble, 2002 WI App 219, 257 Wis. 2d. 274, 650 N.W.2d 908, 02-0538.

The court applied a dictionary definition of explosive material as "a substance that on ignition by heat, impact, friction, or detonation undergoes very rapid decomposition (as combustion) with the production of heat and the formation of more stable products (as gases) which exert tremendous pressure as they expand at the high temperature produced" in finding methyl ethyl ketone, commonly known as acetone, is an explosive material under sub. (2) (a). State v. Strong, 2011 WI App 43, 332 Wis. 2d 554, 796 N.W.2d 438, 10-1798.

A device qualifies as an improvised explosive under sub. (2) (a) even if it lacks a functioning detonator as long as a means of detonation can be readily inserted or attached. The defendant's devices met this requirement because the detonators could have been made operable with the insertion of two readily available parts. State v. Strong, 2011 WI App 43, 332 Wis. 2d 554, 796 N.W.2d 438, 10-1798.

941.315 Possession, distribution or delivery of nitrous oxide. (1) In this section:

(a) "Deliver" or "delivery" means the actual, constructive or attempted transfer of nitrous oxide or a substance containing nitrous oxide from one person to another.

(b) "Distribute" means to deliver, other than by administering.

(2) Whoever does any of the following is guilty of a Class A misdemeanor:

(a) Possesses nitrous oxide or a substance containing nitrous oxide with the intent to inhale the nitrous oxide.

(b) Intentionally or otherwise inhales nitrous oxide.

(3) Whoever does any of the following is guilty of a Class H felony:

(a) Distributes or delivers, or possesses with intent to distribute or deliver, nitrous oxide to a person who has not attained the age of 21.

(b) Distributes or delivers, or possesses with intent to distribute or deliver, nitrous oxide or a substance containing nitrous oxide to a person aged 21 years or older knowing or having reason to know that the person will use the nitrous oxide in violation of sub. (2).

(c) Distributes or delivers to a person aged 21 years or older any object used, designed for use or primarily intended for use in inhaling nitrous oxide at the same time that he or she distributes or delivers nitrous oxide or a substance containing nitrous oxide to the person.

(5) (a) Subsection (2) does not apply to a person to whom nitrous oxide is administered for the purpose of providing medical or dental care, if the nitrous oxide is administered by a physician or dentist or at the direction or under the supervision of a physician or dentist.

(b) Subsection (3) does not apply to the administration of nitrous oxide by a physician or dentist, or by another person at the direction or under the supervision of a physician or dentist, for the purpose of providing medical or dental care.

(c) Subsection (3) (c) does not apply to the sale to a hospital, health care clinic or other health care organization or to a physician or dentist of any object used, designed for use or primarily intended for use in administering nitrous oxide for the purpose of providing medical or dental care.

History: 1997 a. 336; 2001 a. 109.

941.316 Abuse of hazardous substance. (1) In this section:

(a) "Abuse" means to ingest, inhale, or otherwise introduce into the human body a hazardous substance in a manner that does not comply with any cautionary labeling that is required for the hazardous substance under s. 100.37 or under federal law, or in a manner that is not intended by the manufacturer of the hazardous substance, and that is intended to induce intoxication or elation, to stupefy the central nervous system, or to change the human audio, visual, or mental processes.

(b) "Distribute" means to transfer a hazardous substance from one person to another.

(c) "Hazardous substance" has the meaning given in s. 100.37 (1) (c). "Hazardous substance" also includes any substance or mixture of substances that has the capacity to produce personal injury or illness to a person who abuses the substance and includes any household product, as defined in s. 941.327 (1) (e), or any mixture of household products, as defined in s. 941.327 (1) (e).

(2) Whoever does any of the following is guilty of a Class A misdemeanor:

(a) Possesses a hazardous substance with the intent to abuse the hazardous substance.

(b) Intentionally abuses a hazardous substance.

(3) Whoever distributes, or possesses with intent to distribute, a hazardous substance, knowing or having reason to know that the hazardous substance will be abused, is guilty of a Class I felony.

(4) Subsection (2) does not apply to a person who possesses or uses the hazardous substance if the substance is obtained from, or pursuant to a valid prescription or order of, a practitioner, as defined in s. 961.01 (19), while acting in the course of professional practice.

(5) Subsection (3) does not apply to a person who distributes a hazardous substance in an ordinary course of business.

History: 2005 a. 44.

941.318 Salvia divinorum. (1) In this section:

(a) "Deliver," with respect to salvinorin A, has the same meaning given in s. 961.01 (6) with respect to a controlled substance or controlled substance analog.

(b) "Distribute," with respect to salvinorin A, has the same meaning given in s. 961.01 (9) with respect to a controlled substance or controlled substance analog.

(c) "Manufacture," with respect to salvinorin A, has the same meaning given in s. 961.01 (13) with respect to a controlled substance or controlled substance analog.

(2) Except as provided in sub. (3), whoever manufactures, distributes, or delivers salvinorin A with intent that it be consumed by an individual may be fined not more than $10,000.

(3) (a) Subsection (2) does not apply to the manufacture of any dosage form of salvinorin A that may be obtained from a retail establishment without a prescription and that is recognized by the U.S. Food and Drug Administration as a homeopathic drug.

(b) Subsection (2) does not apply to the distribution or delivery to an individual who is 18 years of age or older of any dosage form of salvinorin A that may be obtained from a retail establishment without a prescription and that is recognized by the U.S. Food and Drug Administration as a homeopathic drug.

History: 2009 a. 141.

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

History: 1977 c. 173; 2001 a. 109.

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

History: 1971 c. 72; 1977 c. 173; 1995 a. 410; 2001 a. 109.

"Edibles" includes solids and liquids. State v. Timm, 163 Wis. 2d 894, 472 N.W.2d 593 (Ct. App. 1991).

941.327 Tampering with household products. (1) In this section:

(a) "Cosmetic" means articles intended to be rubbed, poured, sprinkled or sprayed on, introduced into or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness or altering the appearance; and articles intended for use as a component of any such articles. "Cosmetic" does not include soap.

(b) "Device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar or related article, including any component, part or accessory which is recognized in the official national formulary, or the United States Pharmacopeia, or any supplement to them; intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment or prevention of disease, in persons or other animals; or intended to affect the structure or any function of the body of persons or other animals; and which does not achieve any of its principal intended purposes through chemical action within or on the body of persons or other animals and which is not dependent upon being metabolized for the achievement of any of its principal intended purposes.

(c) "Drug" has the meaning described in s. 450.01 (10), but does not include a prescription drug.

(d) "Food" has the meaning described in s. 97.01 (6).

(e) "Household product" means any food, drug, device or cosmetic or any article, product or commodity of any kind or class which is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals, or use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and which usually is consumed or expended in the course of that consumption or use.

(f) "Label" means a written, printed or graphic matter upon the immediate container of any household product.

(g) "Labeling" means all labels and other written, printed or graphic matter upon any household product or any of its containers or wrappers or accompanying any household product.

(h) "Prescription drug" has the meaning described in s. 450.01 (20).

(2) (a) Whoever, with intent to kill, injure or otherwise endanger the health or safety of any person or to cause significant injury or damage to the business of any person or entity, does either of the following may be punished under par. (b):

1. Tampers with any household product and thereby taints the product.

2. Tampers with any household product or its container and thereby renders the labeling of the product or its container materially false or misleading.

(b) 1. Except as provided in subds. 2. to 4., a person violating par. (a) is guilty of a Class I felony.

2. If the act under par. (a) creates a high probability of great bodily harm to another, a person violating par. (a) is guilty of a Class H felony.

3. If the act under par. (a) causes great bodily harm to another, a person violating par. (a) is guilty of a Class F felony.

4. If the act under par. (a) causes death to another, a person is guilty of a Class C felony.

(3) Whoever intentionally imparts or conveys false information, knowing the information to be false, concerning an act or attempted act which, if true, would constitute a violation of sub. (2) is guilty of a Class I felony.

History: 1987 a. 90; 2001 a. 109.

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

History: 1977 c. 173.

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

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

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

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

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

(4) Every telephone directory printed and distributed to the general public shall contain a notice prominently printed and displayed in bold-faced type, stating in substance the conduct

prohibited by this section, and to be preceded by the word "Warning". This subsection does not apply to directories distributed solely for business advertising purposes, commonly known as classified directories.

History: 1977 c. 173; 1983 a. 189, 192.

941.36 Fraudulent tapping of electric wires or gas or water meters or pipes. (1) Whoever, without permission and for the purpose of obtaining electrical current, gas or water with intent to defraud any vendor of electricity, gas or water by doing any of the following, is guilty of a Class C misdemeanor:

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

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

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

History: 1977 c. 311.

941.37 Obstructing emergency or rescue personnel. (1) In this section:

(a) "Ambulance" has the meaning specified in s. 256.01 (1).

(b) "Authorized emergency vehicle" has the meaning specified in s. 340.01 (3).

(c) "Emergency medical personnel" means an emergency medical technician licensed under s. 256.15, first responder certified under s. 256.15 (8), peace officer or fire fighter, or other person operating or staffing an ambulance or an authorized emergency vehicle.

(2) Any person who knowingly obstructs any emergency medical personnel in the performance of duties relating to an emergency or rescue is guilty of a Class A misdemeanor.

(3) Any person who intentionally interferes with any emergency medical personnel in the performance of duties relating to an emergency or rescue and who has reasonable grounds to believe that the interference may endanger another's safety is guilty of a Class I felony.

(4) Any person who violates sub. (3) and thereby contributes to the death of another is guilty of a Class E felony.

History: 1983 a. 515; 1989 a. 102; 1999 a. 56; 2001 a. 109; 2007 a. 130.

941.375 Throwing or discharging bodily fluids at public safety workers. (1) In this section:

(a) "Ambulance" has the meaning specified in s. 256.01 (1).

(b) "Public safety worker" means an emergency medical technician licensed under s. 256.15, a first responder certified under s. 256.15 (8), a peace officer, a fire fighter, or a person operating or staffing an ambulance.

(2) Any person who throws or expels blood, semen, vomit, saliva, urine, feces, or other bodily substance at or toward a public safety worker under all of the following circumstances is guilty of a Class I felony:

(a) The person throws or expels the blood, semen, vomit, saliva, urine, feces, or other bodily substance with the intent that it come into contact with the public safety worker.

(c) The public safety worker does not consent to the blood, semen, vomit, saliva, urine, feces, or other bodily substance being thrown or expelled at or toward him or her.

History: 2003 a. 190; 2007 a. 130; 2011 a. 72.

941.38 Criminal gang member solicitation and contact. (1) In this section:

(a) "Child" means a person who has not attained the age of 18 years.

(b) "Criminal gang activity" means the commission of, attempt to commit or solicitation to commit one or more of the following crimes, or acts that would be crimes if the actor were an adult, committed for the benefit of, at the direction of or in association with any criminal gang, with the specific intent to promote, further or assist in any criminal conduct by criminal gang members:

1. Manufacture, distribution or delivery of a controlled substance or controlled substance analog, as prohibited in s. 961.41 (1).

2. First-degree intentional homicide, as prohibited in s. 940.01.

3. Second-degree intentional homicide, as prohibited in s. 940.05.

4. Battery, as prohibited in s. 940.19 or 940.195.

5. Battery, special circumstances, as prohibited in s. 940.20.

5m. Battery or threat to witness, as prohibited in s. 940.201.

6. Mayhem, as prohibited in s. 940.21.

7. Sexual assault, as prohibited in s. 940.225.

8. False imprisonment, as prohibited in s. 940.30.

9. Taking hostages, as prohibited in s. 940.305.

10. Kidnapping, as prohibited in s. 940.31.

11. Intimidation of witnesses, as prohibited in s. 940.42 or 940.43.

12. Intimidation of victims, as prohibited in s. 940.44 or 940.45.

13. Criminal damage to property, as prohibited in s. 943.01.

13m. Criminal damage to or threat to criminally damage the property of a witness, as prohibited in s. 943.011 or 943.017 (2m).

14. Arson of buildings or damage by explosives, as prohibited in s. 943.02.

15. Burglary, as prohibited in s. 943.10.

16. Theft, as prohibited in s. 943.20.

17. Taking, driving or operating a vehicle, or removing a part or component of a vehicle, without the owner's consent, as prohibited in s. 943.23.

18. Robbery, as prohibited in s. 943.32.

19. Sexual assault of a child, as prohibited in s. 948.02.

20. Repeated acts of sexual assault of the same child, as prohibited in s. 948.025.

21. A crime under s. 943.81, 943.82, 943.83, 943.85, 943.86, 943.87, 943.88, 943.89, or 943.90 or, if the victim is a financial institution, as defined in s. 943.80 (2), a crime under s. 943.84 (1) or (2).

21m. Sexual assault of a child placed in substitute care under s. 948.085.

(2) Whoever intentionally solicits a child to participate in criminal gang activity is guilty of a Class I felony.

(3) Whoever intentionally violates, under all of the following circumstances, a court order to refrain from contacting a criminal gang member is guilty of a Class A misdemeanor:

(a) The court finds that the person who is subject to the court order is a criminal gang member.

(b) The court informs the person of the contact restriction orally and in writing.

(c) The order specifies how long the contact restriction stays in effect.

History: 1993 a. 98, 227; 1995 a. 448; 1997 a. 143, 295; 2001 a. 109; 2005 a. 212, 277; 2007 a. 97.

NOTE: See 1993 Wis. Act 98, s. 9159, for a statement of legislative intent.

The definition in sub. (1) (b) is sufficiently specific that when incorporated into a probation condition it provides fair and adequate notice as to the expected course of conduct and provides an adequate standard of enforcement. State v. Lo, 228 Wis. 2d 531, 599 N.W.2d 659 (Ct. App. 1999), 98-2490.

941.39 Victim, witness, or co-actor contact. Whoever intentionally violates a court order issued under s. 973.049 (2) is guilty of one of the following:

(1) If the court order results from a conviction for a felony, a Class H felony.

(2) If the court order results from a conviction for a misdemeanor, a Class A misdemeanor.

History: 2005 a. 32; 2011 a. 267.

941.40 Injury to wires by removal of building, etc.; tampering with telecommunication or electric wires. (1) Except as provided under sub. (4), any person having the right so to do who intentionally removes or changes any building or other structure or any timber, standing or fallen, to which any telegraph, telecommunications, electric light, or electric power lines or wires are in any manner attached, or causes the same to be done, and consequently destroys, disturbs, or injures the wires, poles, or other property of any telegraph, telecommunications, electric light, or electric power company, including a cooperative association organized under ch. 185, transacting business in this state, without first giving the company, at its office nearest the place of injury, at least 24 hours' notice thereof, is guilty of a Class B misdemeanor.

(2) Any person who intentionally breaks down, interrupts, or removes any telegraph, telecommunications, electric light, or electric power line or wire including grounds or who destroys, disturbs, interferes with, or injures the wires, poles, or other property of any telegraph, telecommunications, electric light, or electric power company, including a cooperative association organized under ch. 185, is guilty of a Class B misdemeanor.

(3) Any person who, for any purpose, intentionally makes or causes to be made a physical electrical connection with any wire, cable, conductor, ground, equipment, facility, or other property of any telecommunications or electric power company, including a cooperative association organized under ch. 185, is guilty of a Class A misdemeanor.

(4) (a) Subsections (1) and (2) do not apply to any person who is lawfully using a land survey marker for land surveying purposes no more than 30 inches below ground level.

(b) Subsections (2) and (3) do not apply to a person who acts with the permission of the telecommunications or electric power company, including a cooperative association organized under ch. 185, that is affected or that owns the wire, pole, cable, conductor, ground, equipment, facility, or other affected property or with the permission of the person who owns the

property on which the wire, pole, cable, conductor, ground, equipment, facility, or other affected property is located.

History: 1985 a. 187, 297, 332; 2011 a. 155 ss. 3 to 5, 32 to 34; Stats. 2011 s. 941.40.

CHAPTER 942

CRIMES AGAINST REPUTATION, PRIVACY AND CIVIL LIBERTIES

Cross-reference: See definitions in s. 939.22.

942.01 Defamation. (1) Whoever with intent to defame communicates any defamatory matter to a 3rd person without the consent of the person defamed is guilty of a Class A misdemeanor.

(2) Defamatory matter is anything which exposes the other to hatred, contempt, ridicule, degradation or disgrace in society or injury in the other's business or occupation.

(3) This section does not apply if the defamatory matter was true and was communicated with good motives and for justifiable ends or if the communication was otherwise privileged.

(4) No person shall be convicted on the basis of an oral communication of defamatory matter except upon the testimony of 2 other persons that they heard and understood the oral statement as defamatory or upon a plea of guilty or no contest.

History: 1977 c. 173; 1979 c. 110 s. 60 (6); 1993 a. 486; 2005 a. 253.

The defense of conditional privilege applies to criminal defamation, but the defense is not absolute and may be forfeited if abused. State v. Gilles, 173 Wis. 2d 101, 496 N.W.2d 133 (Ct. App. 1992).

Perjury committed in a judicial proceeding is absolutely privileged under sub. (3). The sanction for perjury is under the perjury statute, s. 946.31, and not under the defamation statute. State v. Cardenas-Hernandez, 219 Wis. 2d 516, 579 N.W.2d 678 (1998), 96-3605.

942.03 Giving false information for publication. Whoever, with intent that it be published and that it injure any person, and with knowledge that it is false, communicates to a newspaper, magazine, or other publication any false statement concerning any person or any false and unauthorized advertisement is guilty of a Class A misdemeanor.

History: 1977 c. 173.

942.05 Opening letters. Whoever does either of the following is guilty of a Class A misdemeanor:

(1) Knowing that he or she does not have the consent of either the sender or the addressee, intentionally opens any sealed letter or package addressed to another; or

(2) Knowing that a sealed letter or package has been opened without the consent of either the sender or addressee, intentionally publishes any of the contents thereof.

History: 1977 c. 173; 1993 a. 486.

942.06 Use of polygraphs and similar tests. (1) Except as provided in sub. (2m), no person may require or administer a polygraph, voice stress analysis, psychological stress evaluator or any other similar test purporting to test honesty without the prior written and informed consent of the subject.

(2) Except as provided in sub. (2q), no person may disclose that another person has taken a polygraph, voice stress analysis, psychological stress evaluator or any other similar test purporting to test honesty and no person may disclose the results of such a test to any person except the person tested, without the prior written and informed consent of the subject.

(2m) Subsection (1) does not apply to any of the following:

(a) An employee or agent of the department of corrections who conducts a lie detector test of a sex offender under s. 301.132.

(b) An employee or agent of the department of health services who conducts a lie detector test of a person under s. 51.375.

(2q) Subsection (2) does not apply to any of the following:

(a) An employee or agent of the department of corrections who discloses, to any of the following, the fact that a sex offender has had a lie detector test under s. 301.132 or the results of such a lie detector test:

1. Another employee or agent of the department of corrections.

2. Another agency or person, if the information disclosed will be used for purposes related to correctional programming or care and treatment.

(b) An employee or agent of the department of health services who discloses, to any of the following, the fact that a person has had a lie detector test under s. 51.375 or the results of such a lie detector test:

1. Another employee or agent of the department of health services or another person to whom disclosure is permitted under s. 51.375 (2) (b).

2. Another agency or person, if the information disclosed will be used for purposes related to programming or care and treatment for the person.

(3) Whoever violates this section is guilty of a Class B misdemeanor.

History: 1979 c. 319; 1995 a. 440; 1997 a. 283; 1999 a. 89; 2001 a. 16; 2007 a. 20 s. 9121 (6) (a).

942.07 Use of genetic tests. (1) In this section:

(a) "Employer" has the meaning given in s. 111.32 (6).

(b) "Employment agency" has the meaning given in s. 111.32 (7).

(c) "Genetic test" means a test of a person's genes, gene products or chromosomes for abnormalities or deficiencies, including carrier status, that are linked to physical or mental disorders or impairments, or that indicate a susceptibility to illness, disease, impairment or other disorders, whether physical or mental, or that demonstrate genetic or chromosomal damage due to environmental factors.

(d) "Labor organization" has the meaning given in s. 111.32 (9).

(e) "Licensing agency" has the meaning given in s. 111.32 (11).

(2) No employer, labor organization, employment agency or licensing agency may require or administer a genetic test without the prior written and informed consent of the employee, labor organization member or licensee, or of the prospective employee, labor organization member or licensee, who is the subject of the test.

(3) No person may disclose to an employer, labor organization, employment agency or licensing agency that an employee, labor organization member or licensee, or a prospective employee, labor organization member or licensee, has taken a genetic test, and no person may disclose the results of such a test to an employer, labor organization, employment agency or licensing agency without the prior written and informed consent of the subject of the test.

(4) Whoever violates this section is guilty of a Class B misdemeanor.

History: 1991 a. 117.

942.08 Invasion of privacy. (1) In this section:

(a) "Nude or partially nude person" means any human being who has less than fully and opaquely covered genitals, pubic area or buttocks, any female human being who has less than a fully opaque covering over any portion of a breast below the top of the nipple, or any male human being with covered genitals in a discernibly turgid state.

(b) "Private place" means a place where a person may reasonably expect to be safe from being observed without his or her knowledge and consent.

(c) "Surveillance device" means any device, instrument, apparatus, implement, mechanism or contrivance used, designed to be used or primarily intended to be used to observe the activities of a person. "Surveillance device" includes a peephole.

(2) Whoever does any of the following is guilty of a Class A misdemeanor:

(a) Knowingly installs a surveillance device in any private place, or uses a surveillance device that has been installed in a private place, with the intent to observe any nude or partially nude person without the consent of the person observed.

(b) For the purpose of sexual arousal or gratification and without the consent of each person who is present in the private place, looks into a private place that is, or is part of, a public accommodation, as defined in s. 134.48 (1) (b), and in which a person may reasonably be expected to be nude or partially nude.

(c) For the purpose of sexual arousal or gratification, looks into a private place that is, or is part of, a public accommodation, as defined in s. 134.48 (1) (b), and in which a person may reasonably be expected to be nude or partially nude but in which no person is present.

(d) Enters another person's private property without that person's consent or enters an enclosed or unenclosed common area of a multiunit dwelling or condominium and looks into any individual's dwelling unit if all of the following apply:

1. The actor looks into the dwelling unit for the purpose of sexual arousal or gratification and with the intent to intrude upon or interfere with an individual's privacy.

2. The actor looks into a part of the dwelling unit in which an individual is present.

3. The individual has a reasonable expectation of privacy in that part of the dwelling unit.

4. The individual does not consent to the actor looking into that part of the dwelling.

History: 1997 a. 271; 2003 a. 50; 2007 a. 198.

942.09 Representations depicting nudity. (1) In this section:

(a) "Captures a representation" means takes a photograph, makes a motion picture, videotape, or other visual representation, or records or stores in any medium data that represents a visual image.

(am) "Nude or partially nude person" has the meaning given in s. 942.08 (1) (a).

(b) "Nudity" has the meaning given in s. 948.11 (1) (d).

(c) "Representation" means a photograph, exposed film, motion picture, videotape, other visual representation, or data that represents a visual image.

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

1. Captures a representation that depicts nudity without the knowledge and consent of the person who is depicted nude while that person is nude in a circumstance in which he or she has a reasonable expectation of privacy, if the person knows or has reason to know that the person who is depicted nude does not know of and consent to the capture of the representation.

2. Makes a reproduction of a representation that the person knows or has reason to know was captured in violation of subd. 1. and that depicts the nudity depicted in the representation captured in violation of subd. 1., if the person depicted nude in the reproduction did not consent to the making of the reproduction.

3. Possesses, distributes, or exhibits a representation that was captured in violation of subd. 1. or a reproduction made in violation of subd. 2., if the person knows or has reason to know that the representation was captured in violation of subd. 1. or the reproduction was made in violation of subd. 2., and if the person who is depicted nude in the representation or reproduction did not consent to the possession, distribution, or exhibition.

(bm) Notwithstanding par. (am), if the person depicted nude in a representation or reproduction is a child and the capture, possession, exhibition, or distribution of the representation, or making, possession, exhibition, or distribution of the reproduction, does not violate s. 948.05 or 948.12, a parent, guardian, or legal custodian of the child may do any of the following:

1. Capture and possess the representation or make and possess the reproduction depicting the child.

2. Distribute or exhibit a representation captured or possessed under subd. 1., or distribute or exhibit a reproduction made or possessed under subd. 1., if the distribution or exhibition is not for commercial purposes.

(cm) This subsection does not apply to a person who receives a representation or reproduction depicting a child from a parent, guardian, or legal custodian of the child under par. (bm) 2., if the possession, exhibition, or distribution is not for commercial purposes.

(5) (a) Whoever, while present in a locker room, intentionally captures a representation of a nude or partially nude person while the person is nude or partially nude in the locker room is guilty of a Class B misdemeanor. This paragraph does not apply if the person consents to the capture of the representation and one of the following applies:

1. The person is, or the actor reasonably believes that the person is, 18 years of age or over when the person gives his or her consent.

2. The person's parent, guardian, or legal custodian consents to the capture of the representation.

(b) 1. Whoever intentionally does any of the following is guilty of a Class A misdemeanor:

a. Captures a representation of a nude or partially nude person while the actor is present in, and the person is nude or partially nude in, the locker room and exhibits or distributes the representation to another.

b. Transmits or broadcasts an image of a nude or partially nude person from a locker room while the person is nude or partially nude in the locker room.

2. This paragraph does not apply if the person consents to the exhibition or distribution of the representation or the transmission or broadcast of the image and one of the following applies:

a. The person is, or the actor reasonably believes that the person is, 18 years of age or over when the person gives his or her consent.

b. The person's parent, guardian, or legal custodian consents to the exhibition, distribution, transmission, or broadcast.

History: 1995 a. 249; 2001 a. 16; 2001 a. 33 ss. 2 to 13; Stats. 2001 s. 942.09; 2001 a. 109; 2007 a. 118.

Sub. (2) (a) requires that the person who is depicted nude is in a circumstance in which he or she has an assumption that he or she is secluded from the presence or view of others, and that assumption is a reasonable one under all the circumstances, according to an objective standard. State v. Nelson, 2006 WI App 124, 294 Wis. 2d 578, 718 N.W.2d 168, 05-2300.

A "legitimate expectation of privacy" for purposes of a search or seizure under the 4th Amendment is not consistent with the context and purpose of this section. The 4th Amendment embodies a balance between society's interest in law enforcement and the privacy interest asserted by the individual that is not relevant to this section. Construing "reasonable expectation of privacy" according to its common meaning does not render the statute unconstitutionally vague and provides sufficient notice of the conduct prohibited under sub. (2) (a). State v. Nelson, 2006 WI App 124, 294 Wis. 2d 578, 718 N.W.2d 168, 05-2300.

Nelson did not purport to provide a definition of reasonable expectation of privacy covering all circumstances. The question for purposes of the privacy element is not whether the nude person had a reasonable expectation that the defendant would view him or her nude at the time of the recording, but whether the nude person had a reasonable expectation, under the circumstances, that he or she would not be recorded in the nude. State v. Jahnke, 2009 WI App 4, 316 Wis. 2d 324, 762 N.W.2d 696, 07-2130.

CHAPTER 943

CRIMES AGAINST PROPERTY

Cross-reference: See definitions in s. 939.22.

SUBCHAPTER I

DAMAGE

943.01 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 any of the following circumstances is guilty of a Class I 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 railways, 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.

(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.

(c) The property damaged belongs to a person who is or was a grand or petit juror and the damage was caused by reason of any verdict or indictment assented to by the owner.

(d) If the total property damaged in violation of sub. (1) is reduced in value by more than $2,500. 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.

(e) The property damaged is on state-owned land and is listed on the registry under sub. (5).

(f) 1. In this paragraph, "rock art site" means an archaeological site that contains paintings, carvings or other deliberate modifications of an immobile rock surface, such as a cave, overhang, boulder or bluff face, to produce symbols, stories, messages, designs or pictures. "Rock art site" includes artifacts and other cultural items, modified soils, bone and other objects of archaeological interest that are located adjacent to the paintings, carvings or other deliberate rock surface modifications.

2. The property damaged is a rock art site, any portion of a rock art site or any object that is part of a rock art site, if the rock art site is listed on the national register of historic places in Wisconsin, as defined in s. 44.31 (5), or the state register of historic places under s. 44.36.

(2d) (a) In this subsection, "plant research and development" means research regarding plants or development of plants, if the research or development is undertaken in conjunction or coordination with the state, a federal or local government agency, a university, or a private research facility.

(b) Any person violating sub. (1) under all of the following circumstances is guilty of a Class I felony:

1. The property damaged is a plant, material taken, extracted, or harvested from a plant, or a seed or other plant material that is being used or that will be used to grow or develop a plant.

2. The plant referred to in subd. 1. is or was being grown as feed for animals being used or to be used for commercial purposes, for other commercial purposes, or in conjunction with plant research and development.

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

(a) The property damaged is a machine operated by the insertion of coins, currency, debit cards or credit cards.

(b) The person acted with the intent to commit a theft from the machine.

(c) The total property damaged in violation of sub. (1) is reduced in value by more than $500 but not more than $2,500. For purposes of this paragraph, property is reduced in value by the amount that it would cost to repair or replace it, whichever is less, plus other monetary losses associated with the damage.

(2m) Whoever causes damage to any physical property of another under all of the following circumstances is subject to a Class B forfeiture:

(a) The person does not consent to the damage of his or her property.

(b) The property damaged is on state-owned land and is listed on the registry under sub. (5).

(3) If more than one item of property is damaged under a single intent and design, the damage to all the property may be prosecuted as a single forfeiture offense or crime.

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

(5) The department of natural resources shall maintain a registry of prominent features in the landscape of state-owned land. To be included on the registry, a feature must have significant value to the people of this state.

History: 1977 c. 173; 1981 c. 118 s. 9; 1987 a. 399; 1993 a. 262, 486; 1995 a. 133, 208; 1997 a. 143; 2001 a. 16, 109.

To prove unlawful entry to a building with intent to commit a felony in violation of s. 943.10 (1) when the underlying felony was criminal damage to property in excess of $1,000, it was necessary to prove not only an intent to criminally damage property, but also that the damage to the property would exceed $1,000. Gilbertson v. State, 69 Wis. 2d 587, 230 N.W.2d 874 (1975).

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

A person can be convicted of criminal damage to property in which he or she has an ownership interest if someone else has an ownership interest. State v. Sevelin, 204 Wis. 2d 127, 554 N.W.2d 521 (Ct. App. 1996), 96-0729.

943.011 Damage or threat to property of witness. **(1)** In this section:

(a) "Family member" means a spouse, child, stepchild, foster child, parent, sibling, or grandchild.

(b) "Witness" has the meaning given in s. 940.41 (3).

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

(a) Intentionally causes damage or threatens to cause damage to any physical property owned by a person who is or was a witness by reason of the owner having attended or testified as a witness and without the owner's consent.

(b) Intentionally causes damage or threatens to cause damage to any physical property owned by a person who is a family member of a witness or a person sharing a common domicile with a witness by reason of the witness having attended or testified as a witness and without the owner's consent.

History: 1997 a. 143; 2001 a. 109; 2009 a. 28.

943.012 Criminal damage to or graffiti on religious and other property. Whoever intentionally causes damage to, intentionally marks, draws or writes with ink or another substance on or intentionally etches into any physical property of another, without the person's consent and with knowledge of the character of the property, is guilty of a Class I 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; 1995 a. 24; 2001 a. 109.

943.013 Criminal damage; threat; property of judge. (1) In this section:

(a) "Family member" means a parent, spouse, sibling, child, stepchild, or foster child.

(b) "Judge" means a supreme court justice, court of appeals judge, circuit court judge, municipal judge, temporary or permanent reserve judge, or circuit, supplemental, or municipal court commissioner.

(2) Whoever intentionally causes or threatens to cause damage to any physical property that belongs to a judge or his or her family member under all of the following circumstances is guilty of a Class I 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 judge or a member of his or her family.

(b) The judge 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: 1993 a. 50, 446; 2001 a. 61, 109; 2009 a. 28.

943.014 Demolition of historic building without authorization. (1) In this section, "historic building" means any building or structure that is listed on, or any building or structure within and contributing to a historic district that is listed on, the national register of historic places in Wisconsin or the state register of historic places or any building or structure that is included on a list of historic places designated by a city, village, town or county.

(2) Whoever intentionally demolishes a historic building without a permit issued by a city, village, town or county or without an order issued under s. 66.0413 is guilty of a Class A misdemeanor.

(3) Subsection (2) does not apply to any person if he or she acts as part of a state agency action and the state agency has complied with ss. 44.39 to 44.42 regarding the action.

History: 1995 a. 466; 1999 a. 150 s. 672; 2001 a. 109.

943.015 Criminal damage; threat; property of department of revenue employee. (1) In this section, "family member" 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, employee or agent or his or her family member under all of the following circumstances is guilty of a Class I 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, employee or agent or a member of his or her family.

(b) The official, employee 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; 1993 a. 446; 2001 a. 109; 2009 a. 28.

943.017 Graffiti. (1) Whoever intentionally marks, draws or writes with paint, ink or another substance on or intentionally etches into the physical property of another without the other person's consent is guilty of a Class A misdemeanor.

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

(a) The property under sub. (1) is a vehicle or a highway, as defined in s. 943.01 (2) (a) 1., and the marking, drawing, writing or etching is of a kind which is likely to cause injury to a person or further property damage.

(b) The property under sub. (1) belongs to a public utility or common carrier and the marking, drawing, writing or etching is of a kind which is likely to impair the services of the public utility or common carrier.

(c) The property under sub. (1) belongs to a person who is or was a grand or petit juror and the marking, drawing, writing or etching was caused by reason of any verdict or indictment assented to by the owner.

(d) If the total property affected in violation of sub. (1) is reduced in value by more than $2,500. For the purposes of this paragraph, property is reduced in value by the amount which it would cost to repair or replace it or to remove the marking, drawing, writing or etching, whichever is less.

(e) The property affected is on state-owned land and is listed on the registry under s. 943.01.

(2m) (a) In this subsection:

1. "Family member" means a spouse, child, stepchild, foster child, parent, sibling, or grandchild.

2. "Witness" has the meaning given in s. 940.41 (3).

(b) Whoever does any of the following is guilty of a Class I felony:

1. Intentionally marks, draws or writes with paint, ink or another substance on or intentionally etches into, or threatens to mark, draw or write on or etch into, any physical property owned by a person who is or was a witness by reason of the owner having attended or testified as a witness and without the owner's consent.

2. Intentionally marks, draws or writes with paint, ink or another substance on or intentionally etches into, or threatens to mark, draw or write on or etch into, any physical property owned by a family member of a witness or by a person sharing a common domicile with a witness by reason of the witness having attended or testified as a witness and without the owner's consent.

(3) (a) In addition to any other penalties that may apply to a crime under this section, the court may require that a convicted defendant perform 100 hours of community service work for an individual, a public agency or a nonprofit charitable organization. The court may order community service work that is designed to show the defendant the impact of his or her wrongdoing. The court shall allow the victim to make suggestions regarding appropriate community service work. If the court orders community service work, the court shall ensure that the defendant receives a written statement of the community service order and that the community service order is monitored.

(b) Any individual, organization or agency acting in good faith to whom or to which a defendant is assigned pursuant to an order under this subsection has immunity from any civil liability in excess of $25,000 for acts or omissions by or impacting on the defendant.

(c) This subsection applies whether the court imposes a sentence or places the defendant on probation.

(d) If the defendant is not placed on probation and the court orders community service work, the court shall specify in its order under this subsection the method of monitoring the defendant's compliance with this subsection and the deadline for completing the work that is ordered. The court shall inform the defendant of the potential penalties for noncompliance that would apply under s. 973.07.

(4) If more than one item of property is marked, drawn or written upon or etched into under a single intent and design, the markings, drawings or writings on or etchings into all of the property may be prosecuted as a single crime.

(5) In any case under this section involving more than one act of marking, drawing, writing or etching but prosecuted as a single crime, it is sufficient to allege generally that unlawful marking, drawing or writing on or etching into property was committed between certain dates. At the trial, evidence may be given of any such unlawful marking, drawing, writing or etching that was committed on or between the dates alleged.

History: 1995 a. 24; 1997 a. 35, 143; 2001 a. 16, 109; 2009 a. 28.

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

(a) By means of fire, intentionally damages any building of another without the other's 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 the other's 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 the actor's intent to defraud the insurer.

History: 1977 c. 173; 1993 a. 486; 2001 a. 109.

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

Criminal damage to property under s. 943.01 is a lesser-included offense of arson. State v. Thompson, 146 Wis. 2d 554, 431 N.W.2d 716 (Ct. App. 1988).

For purposes of this section, an explosive is any chemical compound, mixture, or device, the primary purpose for which is to function by explosion. An explosion is a substantially instantaneous release of both gas and heat. State v. Brulport, 202 Wis. 2d 505, 551 N.W.2d 824 (Ct. App. 1996), 95-1687.

943.03 Arson of property other than building. Whoever, by means of fire, intentionally damages any property of another without the person's consent, if the property is not a building and has a value of $100 or more, is guilty of a Class I felony.

History: 1977 c. 173; 1999 a. 85; 2001 a. 109.

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 H 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; 1999 a. 85; 2001 a. 109.

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, 943.013, 943.02, 943.03 or 943.04, depending on the facts of the particular case.

History: 1987 a. 348; 1993 a. 50.

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 H 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); 2001 a. 109.

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 I felony.

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

(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; 2001 a. 109.

SUBCHAPTER II

TRESPASS

943.10 Burglary. (1g) In this section:

(a) "Boat" means any ship or vessel that has sleeping quarters.

(b) "Motor home" has the meaning given in s. 340.01 (33m).

(1m) 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 F 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. (1m) under any of the following circumstances is guilty of a Class E felony:

(a) The person is armed with a dangerous weapon or a device or container described under s. 941.26 (4) (a).

(b) The person is unarmed, but arms himself with a dangerous weapon or a device or container described under s. 941.26 (4) (a) while still in the burglarized enclosure.

(c) While the person is in the burglarized enclosure, he or she opens, or attempts to open, any depository by use of an explosive.

(d) While the person is in the burglarized enclosure, he or she commits a battery upon a person lawfully therein.

(e) The burglarized enclosure is a dwelling, boat, or motor home and another person is lawfully present in the dwelling, boat, or motor home at the time of the violation.

(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; 1995 a. 288; 2001 a. 109; 2003 a. 189.

Stolen items may be introduced in evidence in a burglary prosecution as the items tend to prove that entry was made with intent to steal. Abraham v. State, 47 Wis. 2d 44, 176 N.W.2d 349 (1970).

Since attempted robbery requires proof of elements in addition to those elements required to prove burglary, they are separate and distinct crimes. State v. DiMaggio, 49 Wis. 2d 565, 182 N.W.2d 466 (1971).

The state need not prove that the defendant knew that his or her entry was without consent. Hanson v. State, 52 Wis. 2d 396, 190 N.W.2d 129 (1971).

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 Wis. 2d 489, 190 N.W.2d 542 (1971).

An information is defective if it charges entry into a building with intent to steal or to commit a felony, since these are different offenses. Champlain v. State, 53 Wis. 2d 751, 193 N.W.2d 868 (1972).

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, conduct at the time of arrest, or interruption, and other circumstances, without proof of actual losses, can be sufficient to permit a reasonable person to conclude that the defendant entered with an intent to steal. State v. Barclay, 54 Wis. 2d 651, 196 N.W.2d 745 (1972).

Evidence that the defendant walked around a private dwelling knocking on doors, then broke the glass in one, entered, and when confronted offered no excuse, was sufficient to sustain a conviction for burglary. Raymond v. State, 55 Wis. 2d 482, 198 N.W.2d 351 (1972).

A burglary is completed after a door is pried open and entry made. It was no defense that the defendant had changed his mind and started to leave the scene when arrested. Morones v. State, 61 Wis. 2d 544, 213 N.W.2d 31 (1973).

Hiding in the false ceiling of the men's room, perfected by false pretenses and fraud, rendered an otherwise lawful entrance into a restaurant unlawful. Levesque v. State, 63 Wis. 2d 412, 217 N.W.2d 317 (1974).

Failure to allege lack of consent in an information charging burglary was not a fatal jurisdictional defect. Schleiss v. State, 71 Wis. 2d 733, 239 N.W.2d 68 (1976).

In a burglary prosecution, ordinarily once proof of entry is made, it is the defendant's burden to show consent. When a private residence is broken into at night, little evidence is required to support an inference of intent to steal. LaTender v. State, 77 Wis. 2d 383, 253 N.W.2d 221 (1977).

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

Section 939.72 (3) does not bar convictions for possession of burglarious tools and burglary arising out of a single transaction. Dumas v. State, 90 Wis. 2d 518, 280 N.W.2d 310 (Ct. App. 1979).

Intent to steal is capable of being gleaned from the defendant's conduct and the circumstances surrounding it. State v. Bowden, 93 Wis. 2d 574, 288 N.W.2d 139 (1980).

Under the facts of the case, the defendant's employer did not give the defendant consent to enter the employer's premises after hours by providing the defendant with a key to the premises. State v. Schantek, 120 Wis. 2d 79, 353 N.W.2d 832 (Ct. App. 1984).

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

To negate the intent to steal through the defense of "self-help" repossession of property stolen from the defendant, the money repossessed must consist of the exact coins and currency owed to him or her. State v. Pettit, 171 Wis. 2d 627, 492 N.W.2d 633 (Ct. App. 1992).

As used in sub. (2) (d), "battery" applies only to simple battery. Convictions for both intermediate battery under s. 940.19 (3) and burglary/battery under sub. (2) (d) did not violate double jeopardy. State v. Reynolds, 206 Wis. 2d 356, 557 N.W.2d 821 (Ct. App. 1996), 96-0265.

A firearm with a trigger lock is within the applicable definition of a dangerous weapon under s. 939.22 (10). State v. Norris, 214 Wis. 2d 25, 571 N.W.2d 857 (Ct. App. 1997), 96-2158.

Sub. (1) requires only an intent to commit a felony. There is not a unanimity requirement that the jury agree on the specific felony that was intended. State v. Hammer, 216 Wis. 2d 214, 576 N.W.2d 285 (Ct. App. 1997), 96-3084.

A nexus between the burglary and the weapon is not required for an armed burglary conviction. Being armed is a necessary separate element. That a nexus is not required does not violate due process and fundamental fairness. State v. Gardner, 230 Wis. 2d 32, 601 N.W.2d 670 (Ct. App. 1999), 98-2655.

The defendant's violation of the bail jumping statute by making an unauthorized entry into the initial crime victim's premises in violation of the defendant's bond with the purpose of intimidating the victim constituted a felony against persons or property that would support a burglary charge. State v. Semrau, 2000 WI App 54, 233 Wis. 2d 508, 608 N.W.2d 376, 98-3443.

A person commits a burglary by entering premises with the intent of committing a felony against persons or property while on the premises, regardless of whether the person's actions while within the premises constitute a new crime or the continuation of an ongoing offense. Felon in possession of a firearm in violation of s. 941.29 is a crime against persons or property that may be an underlying felony for a burglary charge. State v. Steele, 2001 WI App 34, 241 Wis. 2d 269, 625 N.W.2d 525, 00-0190.

Each paragraph of sub. (2) defines a complete stand-alone crime. Separate convictions under separate paragraphs arising from the same event do not constitute double jeopardy. State v. Beasley, 2004 WI App 42, 271 Wis. 2d 469, 678 N.W.2d 600, 02-2229.

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 I felony.

History: 1977 c. 173; 2001 a. 109.

A homemade key used to open parking meters is a burglarious tool. Perkins v. State, 61 Wis. 2d 341, 212 N.W.2d 141 (1973).

It was implausible that the defendant was 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 Wis. 2d 541, 219 N.W.2d 246 (1974).

Section 939.72 (3) does not bar convictions for possession of burglarious tools and burglary arising out of a single transaction. Dumas v. State, 90 Wis. 2d 518, 280 N.W.2d 310 (Ct. App. 1979).

The defendant's 2 prior convictions for burglary were admissible to prove intent to use gloves, a long pocket knife, a crowbar, and a pillow case as burglarious tools. Vanlue v. State, 96 Wis. 2d 81, 291 N.W.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. (1e) In this section:

(aL) "Carry" has the meaning given in s. 175.60 (1) (ag).

(ar) "Dwelling unit" means a structure or that part of a structure which is used or intended to be used as a home, residence or sleeping place by one person or by 2 or more persons maintaining a common household, to the exclusion of all others.

(az) "Implied consent" means conduct or words or both that imply that an owner or occupant of land has given consent to another person to enter the land.

(b) "Inholding" means a parcel of land that is private property and that is surrounded completely by land owned by the United States, by this state or by a local governmental unit or any combination of the United States, this state and a local governmental unit.

(bm) "Licensee" means a licensee, as defined in s. 175.60 (1) (d), or an out-of-state licensee, as defined in s. 175.60 (1) (g).

(c) "Local governmental unit" means a political subdivision of this state, a special purpose district in this state, an instrumentality or corporation of the political subdivision or special purpose district or a combination or subunit of any of the foregoing.

(cm) "Nonresidential building" includes a nursing home as defined in s. 50.01 (3), a community-based residential facility as defined in s. 50.01 (1g), a residential care apartment complex as defined in s. 50.01 (6d), an adult family home as defined in s. 50.01 (1), and a hospice as defined in s. 50.90 (1).

NOTE: The cross-reference to s. 50.01 (6d) was changed from s. 50.01 (1d) by the legislative reference bureau under s. 13.92 (1) (bm) 2. to reflect the renumbering under s. 13.92 (1) (bm) 2. of s. 50.01 (1d).

(cr) "Open land" means land that meets all of the following criteria:

1. The land is not occupied by a structure or improvement being used or occupied as a dwelling unit.

2. The land is not part of the curtilage, or is not lying in the immediate vicinity, of a structure or improvement being used or occupied as a dwelling unit.

3. The land is not occupied by a public building.

4. The land is not occupied by a place of employment.

NOTE: Par. (cr) is shown as renumbered from par. (f) by the legislative reference bureau under s. 13.92 (1) (bm) 2.

(cv) "Out-of-state licensee" has the meaning given in s. 175.60 (1) (g).

NOTE: Par. (cv) is shown as renumbered from par. (g) by the legislative reference bureau under s. 13.92 (1) (bm) 2.

(d) "Place of employment" has the meaning given in s. 101.01 (11).

(e) "Private property" means real property that is not owned by the United States, this state or a local governmental unit.

(h) "Special event" means an event that is open to the public, is for a duration of not more than 3 weeks, and either has designated entrances to and from the event that are locked when the event is closed or requires an admission.

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

(a) Enters any enclosed, cultivated or undeveloped land of another, other than open land specified in par. (e) or (f), without the express or implied consent of the owner or occupant.

(am) Enters any land of another that is occupied by a structure used for agricultural purposes without the express or implied consent of the owner or occupant.

(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. This paragraph does not apply to a licensee or out-of-state licensee if the owner's or occupant's intent is to prevent the licensee or out-of-state licensee from carrying a firearm on the owner's or occupant's land.

(c) 1. While carrying a firearm, enters or remains at a residence that the actor does not own or occupy after the owner of the residence, if he or she has not leased it to another person, or the occupant of the residence has notified the actor not to enter or remain at the residence while carrying a firearm or with that type of firearm. In this subdivision, "residence," with respect to a single-family residence, includes the residence building and the parcel of land upon which the residence building is located, and "residence," with respect to a residence that is not a single-family residence, does not include any common area of the building in which the residence is located or any common areas of the rest of the parcel of land upon which the residence building is located.

1m. While carrying a firearm, enters or remains in a common area in a building, or on the grounds of a building, that is a residence that is not a single-family residence if the actor does not own the residence or does not occupy any part of the residence, if the owner of the residence has notified the actor not to enter or remain in the common area or on the grounds while carrying a firearm or with that type of firearm. This subdivision does not apply to a part of the grounds of the building if that part is used for parking and the firearm is in a vehicle driven or parked in that part.

2. While carrying a firearm, enters or remains in any part of a nonresidential building, grounds of a nonresidential building, or land that the actor does not own or occupy after the owner of the building, grounds, or land, if that part of the building, grounds, or land has not been leased to another person, or the occupant of that part of the building, grounds, or land has notified the actor not to enter or remain in that part of the building, grounds, or land while carrying a firearm or with that type of firearm. This subdivision does not apply to a part of a building, grounds, or land occupied by the state or by a local governmental unit, to a privately or publicly owned building on the grounds of a university or college, or to the grounds of or land owned or occupied by a university or college, or, if the firearm is in a vehicle driven or parked in the parking facility, to any part of a building, grounds, or land used as a parking facility.

3. While carrying a firearm, enters or remains at a special event if the organizers of the special event have notified the actor not to enter or remain at the special event while carrying a firearm or with that type of firearm. This subdivision does not apply, if the firearm is in a vehicle driven or parked in the parking facility, to any part of the special event grounds or building used as a parking facility.

4. [While carrying a firearm,] Enters or remains in any part of a building that is owned, occupied, or controlled by the state or any local governmental unit, excluding any building or portion of a building under s. 175.60 (16) (a), if the state or local governmental unit has notified the actor not to enter or remain in the building while carrying a firearm or with that type of firearm. This subdivision does not apply to a person who leases residential or business premises in the building or, if the firearm is in a vehicle driven or parked in the parking facility, to any part of the building used as a parking facility.

NOTE: Drafting records indicate that the bracketed language was inadvertently removed from this provision during the drafting process. Corrective legislation is pending.

5. [While carrying a firearm,]Enters or remains in any privately or publicly owned building on the grounds of a university or college, if the university or college has notified the actor not to enter or remain in the building while carrying a firearm or with that type of firearm. This subdivision does not apply to a person who leases residential or business premises in the building or, if the firearm is in a vehicle driven or parked in the parking facility, to any part of the building used as a parking facility.

NOTE: Drafting records indicate that the bracketed language was inadvertently removed from this provision during the drafting process. Corrective legislation is pending.

(e) Enters or remains on open land that is an inholding of another after having been notified by the owner or occupant not to enter or remain on the land.

(f) Enters undeveloped private land from an abutting parcel of land that is owned by the United States, this state or a local governmental unit, or remains on such land, after having been notified by the owner or occupant not to enter or remain on the land.

(1s) In determining whether a person has implied consent to enter the land of another a trier of fact shall consider all of the circumstances existing at the time the person entered the land, including all of the following:

(a) Whether the owner or occupant acquiesced to previous entries by the person or by other persons under similar circumstances.

(b) The customary use, if any, of the land by other persons.

(c) Whether the owner or occupant represented to the public that the land may be entered for particular purposes.

(d) The general arrangement or design of any improvements or structures on the land.

(2) (am) A person has received notice from the owner or occupant within the meaning of sub. (1m) (b), (e) or (f) 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 paragraph under either of the following procedures:

1. 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 provide 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 subdivision were erected or in existence upon the premises to be protected prior to the event complained of shall be prima facie proof that the premises to be protected were posted as provided in this subdivision.

2. If markings 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.

(bm) 1. In this paragraph, "sign" means a sign that states a restriction imposed under subd. 2. that is at least 5 inches by 7 inches.

2. a. For the purposes of sub. (1m) (c) 1m., an owner of a residence that is not a single-family residence has notified an individual not to enter or remain in a part of that building, or on the grounds of that building, while carrying a firearm or with a particular type of firearm if the owner has posted a sign that is located in a prominent place near all of the entrances to the part of the building to which the restriction applies or near all probable access points to the grounds to which the restriction applies and any individual entering the building or the grounds can be reasonably expected to see the sign.

am. For the purposes of sub. (1m) (c) 2., 4., and 5., an owner or occupant of a part of a nonresidential building, the state or a local governmental unit, or a university or a college has notified an individual not to enter or remain in a part of the building while carrying a firearm or with a particular type of firearm if the owner, occupant, state, local governmental unit, university, or college has posted a sign that is located in a prominent place near all of the entrances to the part of the building to which the restriction applies and any individual entering the building can be reasonably expected to see the sign.

b. For the purposes of sub. (1m) (c) 2., an owner or occupant of the grounds of a nonresidential building or of land has notified an individual not to enter or remain on the grounds or land while carrying a firearm or with a particular type of firearm if the owner or occupant has posted a sign that is located in a prominent place near all probable access points to the grounds or land to which the restriction applies and any

individual entering the grounds or land can be reasonably expected to see the sign.

c. For the purposes of sub. (1m) (c) 3., the organizers of the special event have notified an individual not to enter or remain at the special event while carrying a firearm or with a particular type of firearm if the organizers have posted a sign that is located in a prominent place near all of the entrances to the special event and any individual attending the special event can be reasonably expected to see the sign.

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

(3m) An owner or occupant may give express consent to enter or remain on the land for a specified purpose or subject to specified conditions and it is a violation of sub. (1m) (a) or (am) for a person who received that consent to enter or remain on the land for another purpose or contrary to the specified conditions.

(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 land, other than the residence or other buildings or the curtilage of the residence or other buildings, of another for the purpose of removing a wild animal as authorized under s. 29.885 (2), (3) or (4).

(b) A hunter entering land that is required to be open for hunting under s. 29.885 (4m) or 29.889 (7m).

(c) A person entering or remaining on any exposed shore area of a stream as authorized under s. 30.134.

(d) An assessor and an assessor's staff entering the land, other than a building, agricultural land or pasture, or a livestock confinement area, of another if all of the following apply:

1. The assessor or the assessor's staff enters the land in order to make an assessment on behalf of the state or a political subdivision.

2. The assessor or assessor's staff enters the land on a weekday during daylight hours, or at another time as agreed upon with the land owner.

3. The assessor or assessor's staff spends no more than one hour on the land.

4. The assessor or assessor's staff does not open doors, enter through open doors, or look into windows of structures on the land.

5. The assessor or the assessor's staff leaves in a prominent place on the principal building on the land, or on the land if there is not a principal building, a notice informing the owner or occupant that the assessor or the assessor's staff entered the land and giving information on how to contact the assessor.

6. The assessor or the assessor's staff has not personally received a notice from the owner or occupant, either orally or in writing, not to enter or remain on the premises.

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

History: 1971 c. 317; 1977 c. 173, 295; 1979 c. 32; 1983 a. 418; 1987 a. 27; 1989 a. 31; 1993 a. 342, 486; 1995 a. 45, 451; 1997 a. 248; 1999 a. 9; 2003 a. 33; 2009 a. 68; 2011 a. 35; s. 13.92 (1) (bm) 2.; s. 35.17 correction in (1m) (c) 2.

The arrest of abortion protesters trespassing at a clinic did not violate their free speech rights. State v. Horn, 139 Wis. 2d 473, 407 N.W.2d 854 (1987).

Administrative code provisions requiring hunters to make reasonable efforts to retrieve game birds killed or injured do not exempt a person from criminal prosecution under sub. (1) (b) [now sub. (1m) (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 burglary. Raymond v. State, 55 Wis. 2d 482, 198 N.W.2d 351 (1972).

Regardless of any ownership rights in the property, if a person enters a dwelling that is another's residence, without consent, this section is violated. State v. Carls, 186 Wis. 2d 533, 521 N.W.2d 181 (Ct. App. 1994).

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.

This provision is constitutional. State v. Migliorino, 150 Wis. 2d 513, 442 N.W.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.

(1m) This section does not apply to an assessor and an assessor's staff entering the construction site, other than buildings, of another if all of the following apply:

(a) The assessor or the assessor's staff enters the construction site in order to make an assessment on behalf of the state or a political subdivision.

(b) The assessor or assessor's staff enters the construction site on a weekday during daylight hours, or at another time as agreed upon by the land owner.

(c) The assessor or assessor's staff spends no more than one hour on the construction site.

(d) The assessor or assessor's staff does not open doors, enter through open doors, or look into windows of structures on the construction site.

(e) The assessor or the assessor's staff leaves in a prominent place on the principal building at the construction site, or on the land if there is not a principal building, a notice informing the owner or occupant that the assessor or the

assessor's staff entered the construction site and giving information on how to contact the assessor.

(f) The assessor or the assessor's staff has not personally received a notice from the owner or occupant, either orally or in writing, not to enter or remain on the premises.

(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; 2009 a. 68.

SUBCHAPTER III

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 the other's consent and with intent to deprive the owner permanently of possession of such property.

(b) By virtue of his or her 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 or her authority, and with intent to convert to his or her 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 or her possession or custody by virtue of his or her 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 or her 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 person by intentionally deceiving the person 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 or her possession or under his or her control by virtue of a written lease or written rental agreement after the lease or rental agreement has expired. This paragraph does not apply to a person who returns personal property, except a motor vehicle, which is in his or her possession or under his or her control by virtue of a written lease or written rental agreement, within 10 days after the lease or rental agreement expires.

(2) DEFINITIONS. In this section:

(ac) "Adult at risk" has the meaning given in s. 55.01 (1e).

(ad) "Elder adult at risk" has the meaning given in s. 46.90 (1) (br).

(ae) "Individual at risk" means an elder adult at risk or an adult at risk.

(ag) "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.

(am) "Patient" has the meaning given in s. 940.295 (1) (L).

(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.

(cm) "Resident" has the meaning given in s. 940.295 (1) (p).

(d) Except as otherwise provided in this paragraph, "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. 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 property stolen is scrap metal, as defined in s. 134.405 (1) (f), or "plastic bulk merchandise container" as defined in s. 134.405 (1) (em), "value" also includes any costs that would be incurred in repairing or replacing any property damaged in the theft or removal of the scrap metal or plastic bulk merchandise container. 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 $2,500, is guilty of a Class A misdemeanor.

(bf) If the value of the property exceeds $2,500 but does not exceed $5,000, is guilty of a Class I felony.

(bm) If the value of the property exceeds $5,000 but does not exceed $10,000, is guilty of a Class H felony.

(c) If the value of the property exceeds $10,000, is guilty of a Class G felony.

(d) If any of the following circumstances exists, is guilty of a Class H felony:

1. The property is a domestic animal.

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.

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

5. The property is a firearm.

6. The property is taken from a patient or resident of a facility or program under s. 940.295 (2) or from an individual at risk.

(e) If the property is taken from the person of another or from a corpse, is guilty of a Class G felony.

(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; 1993 a. 213, 445, 486; 2001 a. 16, 109; 2005 a. 388; 2007 a. 64; 2011 a. 194.

Cross-reference: Misappropriation of funds by contractor or subcontractor as theft, see s. 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 subs. (1) (a) and (3) (d) 2., either on a theory of conspiracy or of complicity. Hawpetoss v. State, 52 Wis. 2d 71, 187 N.W.2d 823 (1971).

Theft is a lesser included offense of robbery. Moore v. State, 55 Wis. 2d 1, 197 N.W.2d 820 (1972).

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 Wis. 2d 408, 204 N.W.2d 452 (1973).

Under sub. (1) (d), it is not necessary that the person who parts with property be induced to do so by a false and fraudulent scheme; the person must be deceived by a false representation that is part of such a scheme. Schneider v. State, 60 Wis. 2d 765, 211 N.W.2d 511 (1973).

In abolishing the action for breach of promise to marry, the legislature did not sanction either civil or criminal fraud by the breaching party against the property of a duped victim. Restrictions on civil actions for fraud are not applicable to related criminal actions. Lambert v. State, 73 Wis. 2d 590, 243 N.W.2d 524 (1976).

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. The sale of stolen property is thus prohibited. State v. Genova, 77 Wis. 2d 141, 252 N.W.2d 380 (1977).

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

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

Section 943.20 (1) (e) does not unconstitutionally imprison one for debt. State v. Roth, 115 Wis. 2d 163, 339 N.W.2d 807 (Ct. App. 1983).

A person may be convicted under s. 943.20 (1) (a) for concealing property and be separately convicted for transferring that property. State v. Tappa, 127 Wis. 2d 155, 378 N.W.2d 883 (1985).

A violation of sub. (1) (d) does not require proof that the accused personally received property. State v. O'Neil, 141 Wis. 2d 535, 416 N.W.2d 77 (Ct. App. 1987).

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

The federal tax on a fraudulently obtained airline ticket was properly included in its value for determining whether the offense was a felony under sub. (3). State v. McNearney, 175 Wis. 2d 485, N.W.2d (Ct. App. 1993).

The definition of "bailee" under s. 407.102 (1) is not applicable to sub. (1) (b); definitions of "bailment" and are "bailee" discussed. State v. Kuhn, 178 Wis. 2d 428, 504 N.W.2d 405 (Ct. App. 1993).

When the factual basis for a plea to felony theft does not establish the value of the property taken, the conviction must be set aside and replaced with a misdemeanor conviction. State v. Harrington, 181 Wis. 2d 985, 512 N.W.2d 261 (Ct. App. 1994).

The words "uses," "transfers," "conceals," and "retains possession" in sub. (1) (b) are not synonyms describing the crime of theft but describe separate offenses. A jury must be instructed that there must be unanimous agreement on the manner in which the statute was violated. State v. Seymour, 183 Wis. 2d 682, 515 N.W.2d 874 (1994).

Theft from the person includes theft of a purse from the handle of an occupied wheelchair. State v. Hughes, 218 Wis. 2d 538, 582 N.W.2d 49 (Ct. App. 1998), 97-0638.

When the victim had pushed her purse against a car door with her leg and the defendant's action caused her to fall back, dislodging the purse, his act of taking it constituted taking property from the victim's person under sub. (3) (d) 2. State v. Graham, 2000 WI App 138, 237 Wis. 2d 620, 614 N.W.2d 504, 99-1960.

Multiple convictions for the theft of an equal number of firearms arising from one incident did not violate the protection against double jeopardy. State v. Trawitzki, 2001 WI 77, 244 Wis. 2d 523, 628 N.W.2d 801, 99-2234.

Agency is not necessarily an element of theft by fraud when the accused obtains another person's property through an intermediary. State v. Timblin, 2002 WI App 304, 259 Wis. 2d 299, 657 N.W.2d 89, 02-0275.

Multiple charges and multiple punishments for separate fraudulent acts was not multiplicitous. State v. Swinson, 2003 WI App 45, 261 Wis. 2d 633, 660 N.W.2d 12, 02-0395.

A party to a business transaction has a duty to disclose a fact when: 1) the fact is material to the transaction; 2) the party with knowledge of the fact knows the other party is about to enter into the transaction under a mistake as to the fact; 3) the fact is peculiarly and exclusively within the knowledge of one party, and the mistaken party could not reasonably be expected to discover it; and 4) on account of the objective circumstances, the mistaken party would reasonably expect disclosure of the fact. If a duty to disclose exists, failure to disclose is a representation under sub. (1) (d). State v. Ploeckelman, 2007 WI App 31, 299 Wis. 2d 251, 729 N.W.2d 784, 06-1180.

The intent of the "from the person" penalty enhancer under sub. (3) (e) was to cover circumstances that made stealing particularly dangerous and undesirable. Although the cash register the defendant was attempting to steal was not connected to the manager at the register, at the time of the attempted theft the manager was within arm's reach of the defendant while the defendant was smashing the register and was in constructive possession of the money when the attempted theft occurred even if the money was not physically touching her person. The manager's constructive possession of the money made this a particularly dangerous and undesirable theft. State v. Tidwell, 2009 WI App 153, 321 Wis. 2d 596, 774 N.W.2d 650, 08-2846.

There is no requirement under sub. (1) (d) that at least one co-conspirator expressly promise that he or she will pay for fraudulently obtained property. State v. Steffes, 2012 WI App 47, 340 Wis. 2d 576, 812 N.W.2d 529, 11-0691.

The term "electricity" in sub. (2) (b) is broad enough to encompass the transmission of electricity over telephone lines. The market value to the telephone company of the services that a prisoner's scam fraudulently obtained was the correct measure of the value of the stolen property in this case. State v. Steffes, 2012 WI App 47, 340 Wis. 2d 576, 812 N.W.2d 529, 11-0691.

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 a conviction under sub. (1) (d) were not an unlawful broadening of the offense so as to deprive the defendant of notice and the opportunity to defend. Hawkins v. Mathews, 495 F. Supp. 323 (1980).

Sub. (1) (b) was intended to target those entrusted with the property of another who retain or use that property in a way that does not comport with the owner's wishes. The statute applies only to those who are entrusted with custody or possession or money or property. It does not apply to a breach of contract case over whether a purchaser has met contractual conditions for obtaining a refund. Azamat v. American Express Travel Related Services Company, Inc. 426 F. Supp. 2d 888 (2006).

943.201 Unauthorized use of an individual's personal identifying information or documents.

(1) In this section:

(a) "Personal identification document" means any of the following:

1. A document containing personal identifying information.

2. An individual's card or plate, if it can be used, alone or in conjunction with another access device, to obtain money, goods, services, or any other thing of value or benefit, or if it can be used to initiate a transfer of funds.

3. Any other device that is unique to, assigned to, or belongs to an individual and that is intended to be used to

access services, funds, or benefits of any kind to which the individual is entitled.

(b) "Personal identifying information" means any of the following information:

1. An individual's name.

2. An individual's address.

3. An individual's telephone number.

4. The unique identifying driver number assigned to the individual by the department of transportation under s. 343.17 (3) (a) 4.

5. An individual's social security number.

6. An individual's employer or place of employment.

7. An identification number assigned to an individual by his or her employer.

8. The maiden name of an individual's mother.

9. The identifying number of a depository account, as defined in s. 815.18 (2) (e), of an individual.

10. An individual's taxpayer identification number.

11. An individual's deoxyribonucleic acid profile, as defined in s. 939.74 (2d) (a).

12. Any of the following, if it can be used, alone or in conjunction with any access device, to obtain money, goods, services, or any other thing of value or benefit, or if it can be used to initiate a transfer of funds:

a. An individual's code or account number.

b. An individual's electronic serial number, mobile identification number, personal identification number, or other telecommunications service, equipment, or instrument identifier.

c. Any other means of account access.

13. An individual's unique biometric data, including fingerprint, voice print, retina or iris image, or any other unique physical representation.

14. Any other information or data that is unique to, assigned to, or belongs to an individual and that is intended to be used to access services, funds, or benefits of any kind to which the individual is entitled.

15. Any other information that can be associated with a particular individual through one or more identifiers or other information or circumstances.

(2) Whoever, for any of the following purposes, intentionally uses, attempts to use, or possesses with intent to use any personal identifying information or personal identification document of an individual, including a deceased individual, without the authorization or consent of the individual and by representing that he or she is the individual, that he or she is acting with the authorization or consent of the individual, or that the information or document belongs to him or her is guilty of a Class H felony:

(a) To obtain credit, money, goods, services, employment, or any other thing of value or benefit.

(b) To avoid civil or criminal process or penalty.

(c) To harm the reputation, property, person, or estate of the individual.

(3) It is an affirmative defense to a prosecution under this section that the defendant was authorized by law to engage in the conduct that is the subject of the prosecution. A defendant who raises this affirmative defense has the burden of proving the defense by a preponderance of the evidence.

(4) If an individual reports to a law enforcement agency for the jurisdiction which is the individual's residence that personal identifying information or a personal identifying document belonging to the individual reasonably appears to be in the possession of another in violation of this section or that another has used or has attempted to use it in violation of this section, the agency shall prepare a report on the alleged violation. If the law enforcement agency concludes that it appears not to have jurisdiction to investigate the violation, it shall inform the individual which law enforcement agency may have jurisdiction. A copy of a report prepared under this subsection shall be furnished upon request to the individual who made the request, subject to payment of any reasonable fee for the copy.

History: 1997 a. 101; 2001 a. 109; 2003 a. 36.

A violation of sub. (2) is a continuing offense. State v. Ramirez, 2001 WI App 158, 246 Wis. 2d 802, 633 N.W.2d 656, 00-2605.

Because bail is statutorily defined as "monetary conditions of release," and can be expressed as cash, a bond, or both, one who misappropriates another's identity and uses it to obtain lower bail in a criminal case has done so to obtain credit or money within the meaning of this section. State v. Peters, 2003 WI 88, 263 Wis. 2d 475, 665 N.W.2d 171, 01-3267.

A violation of this section is a continuing offense that is complete when the defendant performs the last act that, viewed alone, is a crime. An offense continues after fraudulently obtained phone and credit accounts are closed only if the defendant received a "thing of value or benefit" after the accounts are closed. Here, once those accounts were closed, the benefits to the defendant ended. State v. Lis, 2008 WI App 82, 311 Wis. 2d 691, 751 N.W.2d 891, 07-2357.

Although the purpose of harming an individual's reputation is an element of identity theft, the statute does not directly punish for the intent to defame and indirectly punish for disclosure of defamatory information, in violation of the 1st Amendment. This section criminalizes the whole act of using someone's identity without permission plus using the identity for one of the enumerated purposes, including harming another's reputation. The statute does not criminalize each of its component parts standing alone. This section neither prohibits the defendant from disseminating information about a public official nor prevents the public from receiving that information. State v. Baron, 2008 WI App 90, 312 Wis. 2d 789, 754 N.W.2d 175, 07-1289.

As applied in this case, sub. (2) (c) is content based and regulates speech because whether the defendant's conduct was prohibited depended entirely upon whether the defendant's speech, i.e., the content of e-mails sent using another individual's identity, was intended to be reputation-harming to that other individual. The statute survives strict scrutiny because the statute is narrowly tailored to apply only when the defendant intentionally uses an individual's personal information to harm that individual's reputation. The statute does not prevent revealing reputation-harming information so long as the method chosen does not entail pretending to be the targeted individual. State v. Baron, 2009 WI 58, 318 Wis. 2d 60, 769 N.W.2d 34, 07-1289.

943.203 Unauthorized use of an entity's identifying information or documents.

(1) In this section:

(a) "Entity" means a person other than an individual.

(b) "Identification document" means any of the following:

1. A document containing identifying information.

2. An entity's card or plate, if it can be used, alone or in conjunction with another access device, to obtain money, goods, services, or any other thing of value or benefit, or if it can be used to initiate a transfer of funds.

3. Any other device that is unique to, assigned to, or belongs to an entity and that is intended to be used to access services, funds, or benefits of any kind to which the entity is entitled.

(c) "Identifying information" means any of the following information:

1. An entity's name.

2. An entity's address.

3. An entity's telephone number.

4. An entity's employer identification number.

5. The identifying number of an entity's depository account, as defined in s. 815.18 (2) (e).

6. Any of the following, if it can be used, alone or in conjunction with any access device, to obtain money, goods, services, or any other thing of value or benefit, or if it can be used to initiate a transfer of funds:

a. An entity's code or account number.

b. An entity's electronic serial number, mobile identification number, entity identification number, or other telecommunications service, equipment, or instrument identifier.

c. Any other means of account access.

7. Any other information or data that is unique to, assigned to, or belongs to an entity and that is intended to be used to access services, funds, or benefits of any kind to which the entity is entitled.

8. Any other information that can be associated with a particular entity through one or more identifiers or other information or circumstances.

(2) Whoever, for any of the following purposes, intentionally uses, attempts to use, or possesses with intent to use any identifying information or identification document of an entity without the authorization or consent of the entity and by representing that the person is the entity or is acting with the authorization or consent of the entity is guilty of a Class H felony:

(a) To obtain credit, money, goods, services, or anything else of value or benefit.

(b) To harm the reputation or property of the entity.

(3) It is an affirmative defense to a prosecution under this section that the defendant was authorized by law to engage in the conduct that is the subject of the prosecution. A defendant who raises this affirmative defense has the burden of proving the defense by a preponderance of the evidence.

(4) If an entity reports to a law enforcement agency for the jurisdiction in which the entity is located that identifying information or an identification document belonging to the entity reasonably appears to be in the possession of another in violation of this section or that another has used or has attempted to use it in violation of this section, the agency shall prepare a report on the alleged violation. If the law enforcement agency concludes that it appears not to have jurisdiction to investigate the violation, it shall inform the entity which law enforcement agency may have jurisdiction. A copy of a report prepared under this subsection shall be furnished upon request to the entity that made the request, subject to payment of any reasonable fee for the copy.

History: 2003 a. 36, 320.

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 or her 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 I 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 the person charged destroyed all copies made.

(5) This section does not prevent anyone 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; 1993 a. 213, 486; 1997 a. 254; 2001 a. 109.

An insurance agency's customer list was not a trade secret. Corroon & Black v. Hosch, 109 Wis. 2d 290, 325 N.W.2d 883 (1982).

Pricing policies, cost markups, and the amount of a company's bid for a particular project were not trade secrets. Wisconsin Electric Power Co. v. PSC, 110 Wis. 2d 530, 329 N.W.2d 178 (1983).

21st Century White Collar Crime: Intellectual Property Crimes in the Cyber World. Simon & Jones. Wis. Law. Oct. 2004.

943.206 Definitions. In this section and ss. 943.207 to 943.209:

(1) "Manufacturer" means a person who transfers sounds to a recording.

(2) "Owner" means the person who owns sounds in or on a recording from which the transferred recorded sounds are directly or indirectly derived.

(3) "Performance" means a recital, rendering or playing of a series of words or other sounds, either alone or in combination with images or physical activity.

(4) "Performance owner" means the performer or performers or the person to whom the performer or performers have transferred, through a contract, the right to sell recordings of a performance.

(5) "Recording" means a medium on or in which sounds or images or both are stored.

History: 1999 a. 51, 186.

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

(a) Intentionally transfers, without the consent of the owner, any sounds first embodied in or on a recording before February 15, 1972, with intent to sell or rent the recording into or onto which such sounds are transferred for commercial advantage or private financial gain.

(b) Advertises, offers for sale or rent, sells, rents or possesses a recording with knowledge that sounds have been transferred into or onto it in violation of par. (a).

(c) Transports a recording within this state for commercial advantage or private financial gain with knowledge that sounds have been transferred into or onto the recording in violation of par. (a).

(3m) (a) Whoever violates this section is guilty of a Class A misdemeanor under any of the following circumstances:

1. If the person transfers sounds into or onto fewer than 1,000 recordings or advertises, offers for sale or rent, sells, rents, possesses or transports fewer than 1,000 recordings in violation of sub. (1) during a 180-day period, and the value of the recordings does not exceed $2,500.

2. If the person transfers sounds on or to the Internet in violation of sub. (1), the transferred sounds are never replayed or are replayed by others from the Internet fewer than 1,000 times during a 180-day period, and the value of the transferred sounds does not exceed $2,500.

(b) Whoever violates this section is guilty of a Class I felony under any of the following circumstances:

1. If the person transfers sounds into or onto fewer than 1,000 recordings or advertises, offers for sale or rent, sells, rents, possesses or transports fewer than 1,000 recordings in violation of sub. (1) during a 180-day period, and the value of the recordings exceeds $2,500.

2. If the person transfers sounds on or to the Internet in violation of sub. (1), the transferred sounds are replayed by others from the Internet fewer than 1,000 times during a 180-day period, and the value of the transferred sounds involved in the violation exceeds $2,500.

(c) Whoever violates this section is guilty of a Class H felony under any of the following circumstances:

1. If the person transfers sounds into or onto at least 1,000 recordings or advertises, offers for sale or rent, sells, rents, possesses or transports at least 1,000 recordings in violation of sub. (1) during a 180-day period.

2. If the person transfers sounds on or to the Internet in violation of sub. (1) and the transferred sounds are replayed by others from the Internet at least 1,000 times during a 180-day period.

3. If the violation occurs after the person has been convicted under this section.

(4) This section does not apply to:

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

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

History: 1975 c. 300; 1977 c. 173; 1999 a. 51; 2001 a. 109.

943.208 Recording performance without consent of performance owner. (1) Whoever does any of the following for commercial advantage or private financial gain may be penalized as provided in sub. (2):

(a) Creates a recording of a performance without consent of the performance owner and with intent to sell or rent the recording.

(b) Advertises, offers for sale or rent, sells, rents or transports a recording of a performance with knowledge that the sounds, images or both from the performance embodied in the recording were recorded without the consent of the performance owner.

(c) Possesses with intent to advertise, offer for sale or rent, sell, rent or transport a recording of a performance with knowledge that the sounds, images or both from the performance embodied in the recording were recorded without the consent of the performance owner.

(2) (a) Whoever violates sub. (1) is guilty of a Class A misdemeanor if the person creates, advertises, offers for sale or rent, sells, rents, transports or possesses fewer than 1,000 recordings embodying sound or fewer than 100 audiovisual recordings in violation of sub. (1) during a 180-day period, and the value of the recordings does not exceed $2,500.

(b) Whoever violates sub. (1) is guilty of a Class I felony if the person creates, advertises, offers for sale or rent, sells, rents, transports or possesses fewer than 1,000 recordings embodying sound or fewer than 100 audiovisual recordings in violation of sub. (1) during a 180-day period, and the value of the recordings exceeds $2,500.

(c) Whoever violates sub. (1) is guilty of a Class H felony if the person creates, advertises, offers for sale or rent, sells, rents, transports or possesses at least 1,000 recordings embodying sound or at least 100 audiovisual recordings in violation of sub. (1) during a 180-day period or if the violation occurs after the person has been convicted under this section.

(3) Under this section, the number of recordings that a person rents shall be the sum of the number of times in which each individual recording is rented.

History: 1999 a. 51; 2001 a. 109.

943.209 Failure to disclose manufacturer of recording. (1) Whoever does any of the following for commercial advantage or private financial gain may be penalized as provided in sub. (2):

(a) Knowingly advertises, offers for sale or rent, sells, rents or transports a recording that does not contain the name and address of the manufacturer in a prominent place on the cover, jacket or label of the recording.

(b) Possesses with intent to advertise, offer for sale or rent, sell, rent or transport a recording that does not contain the name and address of the manufacturer in a prominent place on the cover, jacket or label of the recording.

(2) (a) Whoever violates sub. (1) is guilty of a Class A misdemeanor if the person advertises, offers for sale or rent, sells, rents, transports or possesses fewer than 100 recordings in

violation of sub. (1) during a 180-day period, and the value of the recordings does not exceed $2,500.

(b) Whoever violates sub. (1) is guilty of a Class I felony if the person advertises, offers for sale or rent, sells, rents, transports or possesses fewer than 100 recordings in violation of sub. (1) during a 180-day period, and the value of the recordings exceeds $2,500.

(c) Whoever violates sub. (1) is guilty of a Class H felony if the person advertises, offers for sale or rent, sells, rents, transports or possesses at least 100 recordings in violation of sub. (1) during a 180-day period or if the violation occurs after the person has been convicted under this section.

(3) Under this section, the number of recordings that a person rents shall be the sum of the number of times that each individual recording is rented.

History: 1999 a. 51; 2001 a. 109.

943.21 Fraud on hotel or restaurant keeper, recreational attraction, taxicab operator, or gas station. (1c) In this section, "recreational attraction" means a public accommodation designed for amusement and includes chair lifts or ski resorts, water parks, theaters, entertainment venues, racetracks, swimming pools, trails, golf courses, carnivals, and amusement parks.

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

(a) Having obtained any beverage, food, lodging, ticket or other means of admission, or other service or accommodation at any campground, hotel, motel, boarding or lodging house, restaurant, or recreational attraction, 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.

(c) Having obtained any transportation service from a taxicab operator, intentionally absconds without paying for the service.

(d) Having obtained gasoline or diesel fuel from a service station, garage, or other place where gasoline or diesel fuel is sold at retail or offered for sale at retail, intentionally absconds without paying for the gasoline or diesel fuel.

(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.

(2g) If a person has obtained a ticket, another means of admission, or an accommodation or service provided by the recreational attraction, his or her failure or refusal to pay a recreational attraction the established charge for the ticket, other means of admission, or accommodation or service provided by the recreational attraction constitutes prima facie evidence of an intent to abscond without payment.

(2m) The refusal to pay a taxicab operator the established charge for transportation service provided by the operator constitutes prima facie evidence of an intent to abscond without payment.

(2r) The failure or refusal to pay a service station, garage, or other place where gasoline or diesel fuel is sold at retail or offered for sale at retail the established charge for gasoline or diesel fuel provided by the service station, garage, or other place constitutes prima facie evidence of an intent to abscond without payment.

(3) (am) Whoever violates sub. (1m) (a), (b), or (c):

1. Is guilty of a Class A misdemeanor when the value of any beverage, food, lodging, accommodation, transportation or other service is $2,500 or less.

2. Is guilty of a Class I felony when the value of any beverage, food, lodging, accommodation, transportation or other service exceeds $2,500.

(bm) Whoever violates sub. (1m) (d) is subject to a Class D forfeiture.

(3m) (a) *Definitions.* In this subsection:

1. "Operating privilege" has the meaning given in s. 340.01 (40).

2. "Repeat offense" means a violation of sub. (1m) (d) that occurs after a person has been found by a court to have violated sub. (1m) (d).

(b) *Driver's license suspension; 2nd offense.* Subject to pars. (c) and (d), if a person commits a repeat offense, the court, in addition to imposing any penalty under sub. (3) (bm), may suspend the person's operating privilege for not more than 6 months.

(c) *Driver's license suspension; 3rd offense.* Subject to par. (d), if a person violates sub. (1m) (d) after having been found by a court to have committed an offense that constitutes a repeat offense, the court, in addition to imposing any penalty under sub. (3) (bm), shall suspend the person's operating privilege for not more than 6 months.

(d) *Driver's license suspension; 4th offense.* If a person violates sub. (1m) (d) after having his or her operating privilege suspended under par. (c), the court, in addition to imposing any penalty under sub. (3) (bm), shall suspend the person's operating privilege for one year.

(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; 1995 a. 160; 2001 a. 16, 109; 2003 a. 80, 252, 327.

943.212 Fraud on hotel or restaurant keeper, recreational attraction, taxicab operator, or gas station; 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, ticket or other means of admission, gasoline or diesel fuel, transportation, 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, ticket or other means of admission, gasoline or diesel fuel, transportation, 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. Attorney 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) (a) 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, ticket or other means of admission, transportation, or service prior to the commencement of the action, he or she is not liable under this section.

(b) This subsection does not apply to an action based on acts that constitute a violation of s. 943.21 (1m) (d).

(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; 1995 a. 160; 2003 a. 80, 252, 327; 2005 a. 253.

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 subds. 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.

(1g) Whoever, while possessing a dangerous weapon and by the use of, or the threat of the use of, force or the weapon against another, intentionally takes any vehicle without the consent of the owner is guilty of a Class C felony.

(2) Except as provided in sub. (3m), whoever intentionally takes and drives any vehicle without the consent of the owner is guilty of a Class H felony.

(3) Except as provided in sub. (3m), whoever intentionally drives or operates any vehicle without the consent of the owner is guilty of a Class I felony.

(3m) It is an affirmative defense to a prosecution for a violation of sub. (2) or (3) if the defendant abandoned the vehicle without damage within 24 hours after the vehicle was taken from the possession of the owner. An affirmative defense under this subsection mitigates the offense to a Class A misdemeanor. A defendant who raises this affirmative defense has the burden of proving the defense by a preponderance of the evidence.

(4m) Whoever knows that the owner does not consent to the driving or operation of a vehicle and intentionally accompanies, as a passenger in the vehicle, a person while he or she violates sub. (1g), (2), (3), or (3m) 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 I 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; 1993 a. 92; 2001 a. 109.

To sustain a conviction for 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 Wis. 2d 249, 174 N.W.2d 269 (1970).

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

Restitution under sub. (6) (b) is analyzed in the same manner as restitution under the general statute, s. 973.20. A defendant is entitled to a hearing, although it may be informal, to challenge the existence of damage to the victim, as well as the amount of damage. If damage results from a criminal episode in which the defendant played any part, the defendant is jointly and severally liable in restitution for the amount of damages. State v. Madlock, 230 Wis. 2d 324, 602 N.W.2d 104 (Ct. App. 1999), 98-2718.

Sub. (1r) is applicable if the taking of the vehicle is a substantial factor in the victim's death. A substantial factor is not only the primary or immediate cause, but includes other significant factors. State v. Miller, 231 Wis. 2d 447, 605 N.W.2d 567 (Ct. App. 1999), 98-2089.

Separate prosecutions for a carjacking in violation of sub. (1g), which occurred on one day, and operating the same car without the owner's consent in violation of sub. (3), which occurred on the next day, did not violate s. 939.66 (2r) or the constitutional protection against double jeopardy. State v. McKinnie, 2002 WI App 82, 252 Wis. 2d 172, 642 N.W.2d 617, 01-2764.

Although the standard jury instruction provides that "[a] firearm is a weapon that acts by force of gunpowder," the state was not required to present evidence that a firearm operated by force of gunpowder. Essentially, both the supreme court and court of appeals have taken judicial notice of the fact that it is common knowledge that the guns at issue in previous cases operated as dangerous weapons because they used gunpowder to fire projectiles. State v. Powell, 2012 WI App 33, 340 Wis. 2d 423,812 N.W.2d 520, 11-0630.

943.24 Issue of worthless check. (1) Whoever issues any check or other order for the payment of not more than $2,500 which, at the time of issuance, he or she intends shall not be paid is guilty of a Class A misdemeanor.

(2) Whoever issues any single check or other order for the payment of more than $2,500 or whoever within a 90-day period issues more than one check or other order amounting in the aggregate to more than $2,500 which, at the time of issuance, the person intends shall not be paid is guilty of a Class I 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 written notice of nonpayment or dishonor to pay the check or other order, delivered by regular mail to either the person's last-known address or the address provided on 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 written notice of nonpayment or dishonor to pay the check or other order, delivered by regular mail to either the person's last-known address or the address provided on 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.

(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.

(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.

(6) (a) If the department of justice, a district attorney, or a state or local law enforcement agency requests any of the following information under par. (b) from a financial institution, as defined in s. 705.01 (3), regarding a specific person, the financial institution shall provide the information within 10 days after receiving the request:

1. Documents relating to the opening and closing of the person's account.

2. Notices regarding any of the following that were issued within the 6 months immediately before the request and that relate to the person:

a. Checks written by the person when there were insufficient funds in his or her account.

b. Overdrafts.

c. The dishonor of any check drawn on the person's account.

3. Account statements sent to the person by the financial institution for the following:

a. The period during which any specific check covered by a notice under subd. 2. was issued.

b. The period immediately before and immediately after the period specified in subd. 3. a.

4. The last known address and telephone number for the person's home and business.

(b) The department of justice, a district attorney, or a state or local law enforcement agency may request information under par. (a) only if the request is in writing and if it states that the requester is investigating whether the person specified violated this section or is prosecuting the person specified under this section.

(c) A financial institution may not impose a fee for providing information under this subsection.

History: 1977 c. 173; 1985 a. 179; 1987 a. 398; 1991 a. 39, 40; 1993 a. 71; 2001 a. 16, 109; 2003 a. 138, 306; 2005 a. 462.

The grace period under sub. (3) does not transform the issuance of a worthless check into a debt for which one may not be imprisoned under Art. I, s. 16. Locklear v. State, 86 Wis. 2d 603, 273 N.W.2d 334 (1979).

Checks cashed at a dog track for the purpose of making bets were void gambling contracts under s. 895.055 and could not be enforced under this statute although returned for nonsufficient funds. State v. Gonelly, 173 Wis. 2d 503, 496 N.W.2d 671 (Ct. App. 1992).

The distinction between present and past consideration under sub. (4) is discussed. State v. Archambeau, 187 Wis. 2d 501, 523 N.W.2d 150 (Ct. App. 1994).

Each different group of checks totalling more than $1,000, issued during the 15 day period, may be the basis for a separate charge under sub. (2). State v. Hubbard, 206 Wis. 2d 651, 558 N.W.2d 126 (Ct. App. 1996), 96-0865.

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) Except as provided in sub. (9), 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

(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 $500 for each violation.

(3m) Any recovery under this section shall be reduced by the amount recovered as restitution for the same act under ss. 800.093 and 973.20 or as recompense under s. 969.13 (5) (a) for the same act and by any amount collected in connection with the act and paid to the plaintiff under a deferred prosecution agreement under s. 971.41.

(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. 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 other than sub. (9) 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).

(9) A person may not bring an action under this section after requesting that a criminal prosecution be deferred under s. 971.41 if the person against whom the action would be brought has complied with the terms of the deferred prosecution agreement.

History: 1985 a. 179; 1987 a. 398; 1989 a. 31; 1993 a. 71; 2003 a. 138; 2005 a. 447, 462; 2007 a. 96.

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 I felony.

History: 1977 c. 173; 2001 a. 109.

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 I felony.

History: 1977 c. 173; 1979 c. 168; 2001 a. 109.

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 F 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 F felony.

(4) Whoever knowingly participates in any way in the use of any extortionate means to collect or attempt to collect any extension of credit, or to punish any person for the nonrepayment thereof, is guilty of a Class F felony.

History: 1977 c. 173; 1995 a. 225; 2001 a. 109.

An extortionate extension of credit under sub. (1) (b) is not restricted to the original extension of credit, but includes renewals of loans. State v. Green, 208 Wis. 2d 290, 560 N.W.2d 295 (Ct. App. 1997), 96-0652.

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 H 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 H 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 H felony.

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

(5) (a) In this subsection, "patient health care records" has the meaning given in s. 146.81 (4).

(b) Whoever, orally or by any written or printed communication, maliciously uses, or threatens to use, the patient health care records of another person, with intent thereby to extort money or any pecuniary advantage, 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 H felony.

History: 1977 c. 173; 1979 c. 110; 1981 c. 118; 1997 a. 231; 2001 a. 109.

Commencement of a threat need not occur in Wisconsin to support an extortion charge venued in Wisconsin. State v. Kelly, 148 Wis. 2d 774, 436 N.W.2d 883 (Ct. App. 1989).

A threat to falsely testify unless paid, in violation of criminal law, is a threat to property within the purview of sub. (1). State v. Manthey, 169 Wis. 2d 673, 487 N.W.2d 44 (Ct. App. 1992).

Extortion is not a lesser included offense of robbery. Convictions for both is not precluded. State v. Dauer, 174 Wis. 2d 418, 497 N.W.2d 766 (Ct. App. 1993).

A threat to one's education constitutes a threat to one's profession under sub. (1), and a threat to terminate promised financial support could constitute a threat to property. State v. Kittilstad, 231 Wis. 2d 245, 603 N.W.2d 732 (1999), 98-1456.

A claim under this section is governed by the 6-year limitation period under s. 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 I felony.

History: 1977 c. 173; 2001 a. 109.

A threat to injure a manager's reputation unless a job is offered violated this section. State v. Gilkes, 118 Wis. 2d 149, 345 N.W.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 E felony:

(a) By using force against the person of the owner with intent thereby to overcome his or her 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, a device or container described under s. 941.26 (4) (a) or any article used or fashioned in a manner to lead the victim reasonably to believe that it is a dangerous weapon or such a device or container is guilty of a Class C felony.

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

History: 1977 c. 173; 1979 c. 114; 1993 a. 486; 1995 a. 288; 2001 a. 109.

While a person who by use of force or a gun seeks to repossess specific property that he or she owns and has a present right of possession to 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 that ownership to the specific coins and bills in the debtor's possession. Edwards v. State, 49 Wis. 2d 105, 181 N.W.2d 383 (1970).

Since attempted robbery requires proof of elements in addition to those required to prove burglary, they are separate and distinct crimes. State v. DiMaggio, 49 Wis. 2d 565, 182 N.W.2d 466 (1971).

It is error not to instruct on the allegations that the defendant was armed and that he attempted to conceal his identity, but it is harmless error when the facts are uncontroverted. Claybrooks v. State, 50 Wis. 2d 79, 183 N.W.2d 139 (1971).

On a charge of armed robbery, the court should instruct as to the definition of a dangerous weapon, but the error is harmless if all the evidence is to the effect that the defendant had a gun. Claybrooks v. State, 50 Wis. 2d 87, 183 N.W.2d 143 (1971).

If the evidence is clear that the defendant was armed, the court need not submit a verdict of unarmed robbery. Kimmons v. State, 51 Wis. 2d 266, 186 N.W.2d 308 (1971).

An information charging armed robbery is void if it fails to allege the use of or threat of force to overcome the owner's resistance. Champlain v. State, 53 Wis. 2d 751, 193 N.W.2d 868 (1972).

Theft is a lesser included offense of robbery. Both require asportation. Moore v. State, 55 Wis. 2d 1, 197 N.W.2d 820 (1972).

Taking a pouch from the victim by force and in such a manner as to overcome any physical resistance or power of resistance constituted robbery and not theft under s. 943.20. Walton v. State, 64 Wis. 2d 36, 218 N.W.2d 309 (1974).

When a victim testified that the defendant's accomplice held an object to his throat while the defendant took money from his person and 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. It was not error to deny the defendant's request for an instruction on theft from a person. State v. Powers, 66 Wis. 2d 84, 224 N.W.2d 206 (1974).

When a defendant lost money to a dice cheat and thereafter recovered a similar amount at gunpoint, the jury could convict despite the defendant's claim that the bills recovered were those lost. Austin v. State, 86 Wis. 2d 213, 271 N.W.2d 668 (1978).

Sub. (1) states one offense that may be committed by alternate means. The jury was properly instructed in the disjunctive on the force element. Manson v. State, 101 Wis. 2d 413, 304 N.W.2d 729 (1981).

Armed robbery can be the natural and probable consequence of robbery. In such case, an aider and abettor need not have had actual knowledge that the principals would be armed. State v. Ivey, 119 Wis. 2d 591, 350 N.W.2d 622 (1984).

If the defendant commits a robbery while merely possessing a dangerous weapon, the penalty enhancer under s. 939.63 is applicable. State v. Robinson, 140 Wis. 2d 673, 412 N.W.2d 535 (Ct. App. 1987).

A defendant's lack of intent to make a victim believe that the defendant is armed is irrelevant in finding a violation of sub. (2); if the victim's belief that the defendant was armed is reasonable, that is enough. State v. Hubanks, 173 Wis. 2d 1, 496 N.W.2d 96 (Ct. App. 1992).

Extortion is not a lesser included offense of robbery. Convictions for both are not precluded. State v. Dauer, 174 Wis. 2d 418, 497 N.W.2d 766 (Ct. App. 1993).

This statute does not require a specific intent that property that is demanded actually be transferred. State v. Voss, 205 Wis. 2d 586, 556 N.W.2d 433 (Ct. App. 1996), 95-1183.

Asportation, or carrying away, is an element of robbery. The asportation requirement provides a bright line distinction between attempt and robbery. There is no exception for an automobile that is entered by force, but cannot be moved by the defendant. State v. Johnson, 207 Wis. 2d 239, 558 N.W.2d 375 (1997), 95-0072.

The key to a conviction under sub. (2) is whether the victim reasonably believed that he or she was threatened with a dangerous weapon even though he or she did not see anything that was perceived as a weapon. In applying reasonable belief to the armed-robbery statute courts must consider the circumstances of the individual case. State v. Rittman, 2010 WI App 41, 324 Wis. 2d 273, 781 N.W.2d 545, 09-0708.

The state's attempt to retry the defendant for armed robbery, alleging the use of a different weapon after the trial judge concluded that acquittal on a first armed robbery charge resulted from insufficient evidence of the use of a gun, violated double jeopardy protections. It did not necessarily follow that the state was prevented from pursuing a charge of simple robbery however. Losey v. Frank, 268 F. Supp. 2d 1066 (2003).

Letting Armed Robbery Get Away: An Analysis of Wisconsin's Armed Robbery Statute. Goodstein. 1998 WLR 591.

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

(a) A Class A misdemeanor, if the value of the property does not exceed $2,500.

(bf) A Class I felony, if the value of the property exceeds $2,500 but does not exceed $5,000.

(bm) A Class H felony, if the property is a firearm or if the value of the property exceeds $5,000 but does not exceed $10,000.

(c) A Class G felony, if the value of the property exceeds $10,000.

(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; 2001 a. 16, 109; 2011 a. 99.

The fact that sequentially received stolen property was purchased for a lump sum is an insufficient basis to aggregate the value of the property; the crime of receiving stolen property does not require payment. State v. Spraggin, 71 Wis. 2d 604, 239 N.W.2d 297 (1976).

If any element of the crime charged occurred in a given county, then that county can be the place of trial. Because the crime of receiving stolen property requires more than two acts, and one of the acts is that the property must be stolen, venue is properly established in the county where that act occurred. State v. Lippold, 2008 WI App 130, 313 Wis. 2d 699, 757 N.W.2d 825, 07-1773.

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 sub. (3) means comparable or substantially alike. State v. Hamilton, 146 Wis. 2d 426, 432 N.W.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 H 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 H 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, a title insurance commitment, a title insurance policy, or any other written evidence regarding the state of title to real estate.

History: 1977 c. 173; 2001 a. 109; 2005 a. 205.

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

Fraudulent use of a credit card need not involve forgery. If forgery is involved, the prosecutor has discretion to charge under s. 943.41 or 943.38. Mack v. State, 93 Wis. 2d 287, 286 N.W.2d 563 (1980).

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

The absence of a maker's signature did not immunize the accused from the crime of uttering a forged writing. State v. Machon, 112 Wis. 2d 47, 331 N.W.2d 665 (Ct. App. 1983).

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

Whether a writing is a negotiable instrument and whether the conduct of the victims when presented with the writing was negligent is irrelevant to whether the writings were within the terms of sub. (1) (a). State v. Perry, 215 Wis. 2d 696, 573 N.W.2d 876 (Ct. App. 1997), 97-0847.

Sub. (2) does not incorporate the requirement of sub. (1) that the offender act with intent to defraud. State v. Shea, 221 Wis. 2d 418, 585 N.W.2d 662 (Ct. App. 1998), 97-2345.

A check maker's intent or reliance on an endorsement are immaterial to the crime of forgery by the endorser. The essence of forgery is the intent to defraud. The use of an assumed name may be a forgery if done for a fraudulent purpose. State v. Czarnecki, 2000 WI App 155, 237 Wis. 2d 794, 615 N.W.2d 672, 99-1985.

A person cannot falsely make a postal money order by writing in the name of someone else as the payer as that does not affect the genuineness of the money order itself. It is not forgery to add mere surplusage to a document. State v. Entringer, 2001 WI App 157, 246 Wis. 2d 839, 631 N.W.2d 651, 00-2568.

The words "legal rights" in sub. (1) (a) plainly cover the right to dispense prescription drugs without violating the law. That the legislature has created specific crimes that cover obtaining a controlled substance by forgery under s. 961.43 (1) (a) and (2) and obtaining a prescription drug by forgery under s. 450.11 (7) and (9) (a) does not mean that each violation is not punishable under this section, the general forgery statute. The fact that the forgery statute applies to writings creating property rights does not mean that it applies only to such writings. State v. Fortun, 2010 WI App 32, 323 Wis. 2d 732, 780 N.W.2d 238, 09-1172.

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

(1) Being a director, officer, manager, agent or employee of any corporation or limited liability company falsifies any record, account or other document belonging to that corporation or limited liability company by alteration, false entry or omission, or makes, circulates or publishes any written statement regarding the corporation or limited liability company which he or she 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; 1993 a. 112; 2001 a. 109.

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

943.392 Fraudulent data alteration. Whoever, with intent to injure or defraud, manipulates or changes any data, as defined in s. 943.70 (1) (f), is guilty of a Class A misdemeanor.

History: 1993 a. 496.

21st Century White Collar Crime: Intellectual Property Crimes in the Cyber World. Simon & Jones. Wis. Law. Oct. 2004.

943.395 Fraudulent insurance and employee 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 employee 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 $2,500.

(b) Is guilty of a Class I felony if the value of the claim or benefit exceeds $2,500.

History: 1971 c. 214; 1975 c. 373, 421; 1977 c. 173; 1979 c. 89; 1981 c. 96; 1987 a. 349; 1991 a. 39; 2001 a. 16, 109.

The "value of the claim" under sub. (2) refers to the amount of the entire claim and not the fraudulent portion. State v. Briggs, 214 Wis. 2d 281, 571 N.W.2d 881 (Ct. App. 1997), 97-0439.

943.40 Fraudulent destruction of certain writings. Whoever with intent to defraud does either of the following is guilty of a Class H 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; 2001 a. 109.

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 the person's identity or that of any other person or the person's 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 or her possession or under his or her control financial transaction cards issued in the names of 2 or more other persons it is prima facie evidence that the person acquired them in violation of this subsection.

(b) No person shall receive a financial transaction card that the person 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 the person knew the financial transaction cards to have been so altered or counterfeited.

(b) No person other than the cardholder or a person authorized by the cardholder 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) 1. 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:

a. 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 the person knows is forged, expired or revoked; or

b. Obtain money, goods, services or anything else of value by representing without the consent of the cardholder that the person is the holder of a specified card or by representing that the person is the holder of a card and such card has not in fact been issued.

2. Knowledge of revocation shall be presumed to have been received by a cardholder 4 days after it has been mailed to the cardholder at the address set forth on the financial transaction card or at the cardholder's 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 the cardholder or allow another person to use a financial transaction card issued to the cardholder 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 employee 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 the person 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 employee of such person, shall, with intent to defraud, fail to furnish money, goods, services or anything else of value which the person represents in writing to the issuer that the person 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 I 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 $2,500 is guilty of a Class A misdemeanor; if the value of the money, goods, services, or property exceeds $2,500 but does not exceed $5,000, in a single transaction or in separate transactions within a period not exceeding 6 months, the person is guilty of a Class I felony; if the value of the money, goods, services, or property exceeds $5,000 but does not exceed $10,000, in a single transaction or in separate transactions within a period not exceeding 6 months, the person is guilty of a Class H felony; or

if the value of money, goods, services, or property exceeds $10,000, in a single transaction or in separate transactions within a period not exceeding 6 months, the person is guilty of a Class G felony.

History: 1973 c. 219; 1977 c. 173; 1981 c. 288; 1989 a. 321; 1991 a. 39; 1993 a. 486; 1995 a. 225; 2001 a. 16, 109.

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

Actual possession of the financial transaction card is not required for a violation of sub. (5) (a) 1. a. State v. Shea, 221 Wis. 2d 418, 585 N.W.2d 662 (Ct. App. 1998), 97-2345.

943.45 Theft of telecommunications service. (1) No person may intentionally obtain or attempt to obtain telecommunications service, as defined in s. 182.017 (1g) (cq), by any of the following means:

(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) The following penalties apply to violations of this section:

(a) Except as provided in pars. (b) to (d), any person who violates sub. (1) is subject to a Class C forfeiture.

(b) Except as provided in pars. (c) and (d), any person who violates sub. (1) 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. (1) for direct or indirect commercial advantage or private financial gain is guilty of a Class A misdemeanor.

(d) Any person who violates sub. (1) for direct or indirect commercial advantage or private financial gain as a 2nd or subsequent offense is guilty of a Class I felony.

History: 1977 c. 173; 1991 a. 39; 1993 a. 496; 2001 a. 109; 2011 a. 22.

Each separate plan or scheme to obtain service by fraud is a separate chargeable offense. State v. Davis, 171 Wis. 2d 711, 492 N.W.2d 174 (Ct. App. 1992).

943.455 Theft of commercial mobile service. (1) DEFINITIONS. In this section:

(a) "Commercial mobile service" means commercial mobile service, as defined in s. 196.01 (2i), that is provided by a company for payment.

(b) "Company" means a commercial mobile radio service provider, as defined in s. 196.01 (2g).

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

(a) Obtain or attempt to obtain commercial mobile 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 commercial mobile services without payment. This inference is rebutted if the defendant demonstrates that he or she purchased that device for a legitimate use.

(b) Give technical assistance or instruction to any person in obtaining or attempting to obtain any commercial mobile 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 commercial mobile services for the purpose of obtaining commercial mobile 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 commercial mobile service to the defendant was authorized under a service agreement with the defendant and has been terminated by the company and that thereafter there exists in fact an ability to connect to the company's commercial mobile service system.

(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. 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 commercial mobile

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 commercial mobile service without charge.

(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 (f) for direct or indirect commercial advantage or private financial gain is guilty of a Class A misdemeanor.

(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 I felony.

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

History: 1991 a. 39; 1993 a. 496; 1997 a. 218; 2001 a. 109.

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

(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.

(c) "Video service" has the meaning given in s. 66.0420 (2) (y), except that "video service" does not include signals received by privately owned antennas that are not connected to a video service network whether or not the same signals are provided by a video service provider.

(d) "Video service network" has the meaning given in s. 66.0420 (2) (zb).

(e) "Video service provider" has the meaning given in s. 66.0420 (2) (zg), and also includes an interim cable operator, as defined in s. 66.0420 (2) (n).

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

(a) Obtain or attempt to obtain video service from a provider by trick, artifice, deception, use of an illegal device or illegal decoder or other fraudulent means with the intent to deprive that provider 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 video service provider, the major purpose of which is to permit reception of video services without payment. This inference is rebutted if the defendant demonstrates that he or she purchased that device for a legitimate use.

(b) Give technical assistance or instruction to any person in obtaining or attempting to obtain any video service without payment of all lawful compensation to the provider 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 video services for the purpose of distributing video service to any other dwelling unit without authority from a video service provider.

(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 video services for the purpose of obtaining video service without payment of all lawful compensation to the provider providing that service. The intent required for a violation of this paragraph may be inferred from proof that the video service to the defendant's residence or business was connected under a service agreement with the defendant and has been disconnected by the video service provider and that thereafter there exists in fact a connection to the video service network at the defendant's residence or business.

(e) Make or maintain any modification or alteration to any device installed with the authorization of a video service provider for the purpose of intercepting or receiving any program or other service carried by that provider which that person is not authorized by that provider to receive. The intent required for a violation of this paragraph may be inferred from proof that, as a matter of standard procedure, the video service provider 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 video service provider 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 video service provider, 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 video service provider 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 video service network any video programming or services offered for sale over that video service network, 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 video service provider's services without payment. 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 video programming or services offered for sale over a video service network from a video service network, 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 provider'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 video service without charge.

(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 A misdemeanor.

(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 I felony.

(5) EXCEPTION. This section does not affect the use by a person of video 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 video services and does not prohibit a c video service provider, in any written contract with a subscriber, from requiring the provider's approval for any increase in the number of those outlets used.

History: 1987 a. 345; 1993 a. 496; 2001 a. 109; 2007 a. 42.

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 pars. (b) to (d), any person who intentionally violates sub. (2) is subject to a Class C forfeiture.

(b) Except as provided in pars. (c) and (d), any person who violates sub. (2) 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) for direct or indirect commercial advantage or private financial gain is guilty of a Class A misdemeanor.

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

(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; 1993 a. 496; 2001 a. 109.

943.48 Telecommunications; civil liability. (1) Any person who incurs injury as a result of a violation of s. 943.45 (1), 943.455 (2), 943.46 (2) or 943.47 (2) may bring a civil action against the person who committed the violation.

(1m) Except as provided in sub. (2), if the person who incurs the loss prevails, the court shall grant the prevailing party actual damages, costs and disbursements.

(2) If the person who incurs the loss prevails against a person who committed the violation willfully and for the purpose of commercial advantage or prevails against a person who has committed more than one violation of s. 943.45 (1), 943.455 (2), 943.46 (2) or 943.47 (2), the court shall grant the prevailing party all of the following:

(a) Except as provided in subs. (2g) and (2r), not more than $10,000.

(b) Actual damages.

(c) Any profits of the violator that are attributable to the violation and that are not taken into account in determining the amount of actual damages under par. (b).

(d) Notwithstanding the limitations under s. 799.25 or 814.04, costs, disbursements and reasonable attorney fees.

(2g) If the court finds that the violation was committed willfully and for the purpose of commercial advantage, the court may increase the amount granted under sub. (2) (a) to an amount not to exceed $50,000.

(2r) If the court finds that the violator had no reason to believe that the violator's action constituted a violation of this section, the court may reduce the amount granted under sub. (2) (a).

(3) If damages under sub. (2) (c) are requested, the party who incurred the injury shall have the burden of proving the violator's gross revenue and the violator shall have the burden of proving the violator's deductible expenses and the elements of profit attributable to factors other than the violation.

(4) In addition to other remedies available under this section, the court may grant the injured party a temporary or permanent injunction.

History: 1993 a. 496.

943.49 Unlawful use of recording device in motion picture theater. (1) DEFINITIONS. In this section:

(a) "Motion picture theater" means a site used for the exhibition of a motion picture to the public.

(b) "Recording" has the meaning given in s. 943.206 (5).

(c) "Recording device" means a camera, an audio or video recorder or any other device that may be used to record or transfer sounds or images.

(d) "Theater owner" means an owner or operator of a motion picture theater.

(2) USE OF RECORDING DEVICE IN MOVIE THEATER. (a) No person may operate a recording device in a motion picture theater without written consent from the theater owner or a person authorized by the theater owner to provide written consent.

(b) 1. Except as provided in subd. 2., a person who violates par. (a) is guilty of a Class A misdemeanor.

2. A person who violates par. (a) is guilty of a Class I felony if the violation occurs after the person has been convicted under this subsection.

(4) DETENTION OF PERSON COMMITTING VIOLATION. A theater owner, a theater owner's adult employee or a theater owner's security agent who has reasonable cause to believe 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. The theater owner, the theater owner's adult employee or the theater owner's security agent may release the detained person before the arrival of a peace officer or parent or guardian. Any theater owner, theater owner's adult employee or theater owner's security agent who acts in good faith in any act authorized under this section is immune from civil or criminal liability for those acts.

History: 1999 a. 51; 2001 a. 109.

943.50 943.50 Retail theft; theft of services. (1) In this section:

(ad) "Merchandise" includes a service provided by a service provider.

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

(am) "Service provider" means a merchant who provides a service to retail customers without a written contract with the expectation that the service will be paid for by the customer upon completion of the service.

(ar) "Theft detection device" means any tag or other device that is used to prevent or detect theft and that is attached to merchandise held for resale by a merchant or to property of a merchant.

(as) "Theft detection device remover" means any tool or device used, designed for use or primarily intended for use in removing a theft detection device from merchandise held for resale by a merchant or property of a merchant.

(at) "Theft detection shielding device" means any laminated or coated bag or device designed to shield merchandise held for resale by a merchant or property of a merchant from being detected by an electronic or magnetic theft alarm sensor.

(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.

3. For a service provided by a service provider, the price that the service provider stated for the service before the service was provided.

(1m) A person may be penalized as provided in sub. (4) if he or she does any of the following without the merchant's consent and with intent to deprive the merchant permanently of possession or the full purchase price of the merchandise or property:

(a) Intentionally alters indicia of price or value of merchandise held for resale by a merchant or property of a merchant.

(b) Intentionally takes and carries away merchandise held for resale by a merchant or property of a merchant.

(c) Intentionally transfers merchandise held for resale by a merchant or property of a merchant.

(d) Intentionally conceals merchandise held for resale by a merchant or property of a merchant.

(e) Intentionally retains possession of merchandise held for resale by a merchant or property of a merchant.

(f) While anywhere in the merchant's store, intentionally removes a theft detection device from merchandise held for resale by a merchant or property of a merchant.

(g) Uses, or possesses with intent to use, a theft detection shielding device to shield merchandise held for resale by a merchant or property of merchant from being detected by an electronic or magnetic theft alarm sensor.

(h) Uses, or possesses with intent to use, a theft detection device remover to remove a theft detection device from merchandise held for resale by a merchant or property of a merchant.

(1r) Any person may be penalized as provided in sub. (4) if, having obtained a service from a service provider, he or she, without the service provider's consent and with intent to deprive the service provider permanently of the full price of the service, absconds and intentionally fails or refuses to pay for the service.

(3) A merchant or service provider, a merchant's or service provider's adult employee or a merchant's or service provider's security agent who has reasonable cause for believing that a person has violated this section in his or her presence may detain, within or at the merchant's or service provider's place of business where the suspected violation took place, 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. The merchant or service provider, merchant's or service provider's adult employee or merchant's or service provider's security agent may release the detained person before the arrival of a peace officer or parent or guardian. Any

merchant or service provider, merchant's or service provider's adult employee or merchant's or service provider's security agent 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.

(am) For the purpose of sub. (4m), evidence that a person sold by means of the Internet merchandise that is similar to the merchandise that is the subject of a violation under sub. (1m) (a), (b), (c), (d), (e), or (f), within 90 days before the violation, is prima facie evidence of the person's intent to sell the merchandise by means of the Internet.

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

(4) Whoever violates this section is guilty of:

(a) Except as provided in sub. (4m), a Class A misdemeanor, if the value of the merchandise does not exceed $500.

(bf) A Class I felony, if the value of the merchandise exceeds $500 but does not exceed $5,000.

(bm) A Class H felony, if the value of the merchandise exceeds $5,000 but does not exceed $10,000.

(c) A Class G felony, if the value of the merchandise exceeds $10,000.

(4m) Whoever violates sub. (1m) (a), (b), (c), (d), (e), or (f) is guilty of a Class I felony if all of the following apply:

(a) The value of the merchandise does not exceed $500.

(b) The person agrees or combines with another to commit the violation.

(c) The person intends to sell the merchandise by means of the Internet.

(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.

(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.

(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; 1993 a. 71; 1997 a. 262; 2001 a. 16, 109; 2011 a. 110, 174.

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

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

Reasonableness under sub. (3) requires: 1) reasonable cause to believe that the person violated this section; 2) that the manner of the detention and the actions taken in an attempt to detain must be reasonable; and 3) that the length of the detention and the actions taken in an attempt to detain must be reasonable. An attempt to detain may include pursuit, including reasonable pursuit off the merchant's premises. Peters v. Menard, Inc. 224 Wis. 2d 174, 589 N.W.2d 395 (1999), 97-1514.

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 individual 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.

(am) The retail value of the service provided by a service provider, as defined in s. 943.50 (1) (am). A person may recover under this paragraph only if he or she exercises due diligence in demanding payment for the service.

(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. Except as provided in subd. 1m., exemplary damages of not more than 3 times the amount under sub. (1).

1m. If the action is brought against a minor or against the parent who has custody of their minor child for the loss caused by the minor, the exemplary damages may not exceed 2 times the amount under sub. (1).

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) and except as provided in sub. (3m), the total amount awarded for exemplary damages and reasonable attorney fees may not exceed $500 for each violation.

(3m) Notwithstanding sub. (2), the total amount awarded for exemplary damages and reasonable attorney fees may not exceed $300 for each violation if the action is brought against a minor or against the parent who has custody of their minor child for the loss caused by the minor.

(3r) Any recovery under this section shall be reduced by the amount recovered as restitution for the same act under ss. 800.093 and 973.20 or as recompense under s. 969.13 (5) (a) for the same act.

(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; 1993 a. 71; 1995 a. 77; 2003 a. 138; 2005 a. 447; 2011 a. 110.

Employee salary for time spent processing retail theft is compensable as "actual damages" under sub. (1) (b). Shopko Stores, Inc. v. Kujak, 147 Wis. 2d 589, 433 N.W.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 permanently of

possession of such property shall forfeit an amount not to exceed $500 for each shopping cart or stroller so removed.

History: 1977 c. 99; 2003 a. 159.

943.60 Criminal slander of title. (1) Any person who submits for filing, entering or recording any lien, claim of lien, lis pendens, writ of attachment, financing statement or any other instrument relating to a security interest in or title to real or personal property, and who knows or should have known that the contents or any part of the contents of the instrument are false, a sham or frivolous, is guilty of a Class H 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 employee who acts in the course of his or her official duties and files, enters or records any instrument relating to title on behalf of another person.

History: 1979 c. 221; 1995 a. 224; 1997 a. 27; 2001 a. 109.

Whether a document is frivolous was for the jury to answer. State v. Leist, 141 Wis. 2d 34, 414 N.W.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 employee 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 employee 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 employee 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 employee 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 $2,500.

(c) A Class H 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; 2001 a. 16, 109.

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, mortgage loan originator, or mortgage broker licensed under s. 224.72 or 224.725.

(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 boldface 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 $2,500.

(c) A Class F 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; 1995 a. 27; 1997 a. 145; 2001 a. 16, 109; 2009 a. 2.

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

(ag) "Access" means to instruct, communicate with, interact with, intercept, store data in, retrieve data from, or otherwise use the resources of.

(am) "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.

(gm) "Interruption in service" means inability to access a computer, computer program, computer system, or computer network, or an inability to complete a transaction involving a computer.

(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 willfully, knowingly and without authorization does any of the following may be penalized as provided in pars. (b) and (c):

1. Modifies data, computer programs or supporting documentation.

2. Destroys data, computer programs or supporting documentation.

3. Accesses 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.

(am) Whoever intentionally causes an interruption in service by submitting a message, or multiple messages, to a computer, computer program, computer system, or computer network that exceeds the processing capacity of the computer, computer program, computer system, or computer network may be penalized as provided in pars. (b) and (c).

(b) Whoever violates par. (a) or (am) is guilty of:

1. A Class A misdemeanor unless any of subds. 2. to 4. applies.

2. A Class I felony if the offense is committed to defraud or to obtain property.

3g. A Class F felony if the offense results in damage valued at more than $2,500.

3r. A Class F felony if the offense 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 F felony if the offense creates a substantial and unreasonable risk of death or great bodily harm to another.

(c) If a person disguises the identity or location of the computer at which he or she is working while committing an offense under par. (a) or (am) with the intent to make it less likely that he or she will be identified with the crime, the penalties under par. (b) may be increased as follows:

1. In the case of a misdemeanor, the maximum fine prescribed by law for the crime may be increased by not more than $1,000 and the maximum term of imprisonment prescribed by law for the crime may be increased so that the revised maximum term of imprisonment is one year in the county jail.

2. In the case of a felony, the maximum fine prescribed by law for the crime may be increased by not more than $2,500 and the maximum term of imprisonment prescribed by law for the crime may be increased by not more than 2 years.

(3) OFFENSES AGAINST COMPUTERS, COMPUTER EQUIPMENT OR SUPPLIES. (a) Whoever willfully, 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 I felony if the offense is committed to defraud or obtain property.

3. A Class H felony if the damage to the computer, computer system, computer network, equipment or supplies is greater than $2,500.

4. A Class F 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; 2001 a. 16, 109.

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]

This section is constitutional. Copyright law does not give a programmer a copyright in data entered into the programmer's program, and copyright law does not preempt prosecution of the programmer for destruction of data entered into the program. State v. Corcoran, 186 Wis. 2d 616, 522 N.W.2d 226 (Ct. App. 1994).

"Access codes or other restricted access information" in sub. (2) (a) 6. refers to codes, passwords, or other information that permits access to a computer system or to programs or data within a system; the phrase does not refer to the system, program, or data accessed. The statute was not meant to criminalize the disclosure of all types of information that could be stored on a computer, when that information was obtained with authorization in the first instance. Burbank Grease Services v. Sokolowski, 2006 WI 103, 294 Wis. 2d 274, 717 N.W.2d 781, 04-0468.

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

21st Century White Collar Crime: Intellectual Property Crimes in the Cyber World. Simon & Jones. Wis. Law. Oct. 2004.

943.74 Theft of farm-raised fish. (1) In this section:

(a) "Farm-raised fish" means a fish that is kept on a fish farm for propagation purposes or reared on a fish farm and that has not been introduced, stocked, or planted into waters outside a fish farm and that has not escaped from a fish farm.

(b) "Fish farm" means a facility at which a person, including this state or a local governmental unit, hatches fish eggs or rears fish for the purpose of introduction into the waters of the state, human or animal consumption, permitting fishing, or use as bait or fertilizer or for sale to another person to rear for one of those purposes.

(c) "Local governmental unit" means a political subdivision of this state, a special purpose district in this state, an instrumentality or corporation of the political subdivision or special purpose district, or a combination or subunit of any of the foregoing.

(2) No person may intentionally take and carry away, transfer, conceal, or retain possession of farm-raised fish of another without the other's consent and with intent to deprive the owner permanently of possession of the farm-raised fish.

(3) (a) Except as provided in par. (b), whoever violates sub. (2) is guilty of a Class A misdemeanor.

(b) Whoever violates sub. (2) after having been convicted of a violation of sub. (2) is guilty of a Class D felony.

History: 2001 a. 91, 105.

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

(ad) "Animal" means all vertebrate and invertebrate species, including mammals, birds, fish and shellfish but excluding humans.

(am) "Humane officer" means an officer appointed under s. 173.03.

(b) "Local health officer" has the meaning given in s. 250.01 (5).

(2) Whoever intentionally releases an animal that is lawfully confined for companionship or protection of persons or property, recreation, exhibition, 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 subsection by a person is a Class A misdemeanor. A 3rd or subsequent violation of this subsection by a person is a Class I felony.

(2m) Whoever intentionally releases an animal that is lawfully confined for scientific, farming, restocking, research or commercial purposes, acting without the consent of the owner or custodian of the animal, is guilty of a Class H felony.

(3) Subsections (2) and (2m) do not apply to any humane officer, local health officer, peace officer, employee of the department of natural resources while on any land licensed under s. 169.15, 169.18, or 169.19, subject to certification under s. 90.21, or designated as a wildlife refuge under s. 29.621 (1) or employee of the department of agriculture, trade and consumer protection if the officer's or employee'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) or (2m).

History: 1991 a. 20, 269; 1993 a. 27; 1995 a. 79; 1997 a. 27, 192, 248; 1999 a. 45; 2001 a. 56, 109.

943.76 Infecting animals with a contagious disease. (1) In this section:

(a) "Livestock" means cattle, horses, swine, sheep, goats, farm-raised deer, as defined in s. 95.001 (1) (ag), poultry, and other animals used or to be used in the production of food, fiber, or other commercial products.

(b) "Paratuberculosis" has the meaning given in s. 95.001 (1) (c).

(c) "Reckless conduct" means conduct that creates a substantial risk of an animal's death or a substantial risk of bodily harm to an animal if the actor is aware of that risk.

(2) (a) Whoever intentionally introduces a contagious or infectious disease into livestock without the consent of the owner of the livestock is guilty of a Class F felony.

(b) Whoever intentionally introduces a contagious or infectious disease into wild deer without the consent of the department of natural resources is guilty of a Class F felony.

(3) (a) Whoever, through reckless conduct, introduces a contagious or infectious disease other than paratuberculosis into livestock without the consent of the owner of the livestock is guilty of a Class A misdemeanor.

(b) Whoever, through reckless conduct, introduces a contagious or infectious disease other than paratuberculosis into wild deer without the consent of the department of natural resources is guilty of a Class A misdemeanor.

(c) This subsection does not apply if the actor's conduct is undertaken pursuant to a directive issued by the department of agriculture, trade and consumer protection or an agreement between the actor and the department of agriculture, trade and consumer protection, if the purpose of the directive or the agreement is to prevent or control the spread of the disease.

(4) (a) Whoever intentionally threatens to introduce a contagious or infectious disease into livestock located in this state without the consent of the owner of the livestock is guilty of a Class H felony if one of the following applies:

1. The owner of the livestock is aware of the threat and reasonably believes that the actor will attempt to carry out the threat.

2. The owner of the livestock is unaware of the threat, but if the owner were apprised of the threat, it would be reasonable for the owner to believe that the actor would attempt to carry out the threat.

(b) Whoever intentionally threatens to introduce a contagious or infectious disease into wild deer located in this state without the consent of the department of natural resources is guilty of a Class H felony if one of the following applies:

1. The department of natural resources is aware of the threat and reasonably believes that the actor will attempt to carry out the threat.

2. The department of natural resources is unaware of the threat, but if the department were apprised of the threat, it would be reasonable for the department to believe that the actor would attempt to carry out the threat.

History: 2001 a. 16, 109; 2003 a. 321.

SUBCHAPTER IV

CRIMES AGAINST FINANCIAL INSTITUTIONS

943.80 Definitions. In this subchapter:

(1) "Financial crime" means a crime under ss. 943.81 to 943.90 or any other felony committed against a financial institution or an attempt or conspiracy to commit one of these crimes.

(2) "Financial institution" means a bank, as defined in s. 214.01 (1) (c), a savings bank, as defined in s. 214.01 (1) (t), a savings and loan association, a trust company, a credit union, as defined in s. 186.01 (2), a mortgage banker, as defined in s. 224.71 (3) (a), or a mortgage broker, as defined in s. 224.71 (4) (a), whether chartered under the laws of this state, another state or territory, or under the laws of the United States; a company that controls, is controlled by, or is under common control with a bank, a savings bank, a savings and loan association, a trust company, a credit union, a mortgage banker, or a mortgage broker; or a person licensed under s. 138.09, other than a person who agrees for a fee to hold a check for a period of time before negotiating or presenting the check for payment and other than a pawnbroker, as defined in s. 138.10 (1) (a).

History: 2005 a. 212.

943.81 Theft from a financial institution. Whoever knowingly uses, transfers, conceals, or takes possession of money, funds, credits, securities, assets, or property owned by or under the custody or control of a financial institution without authorization from the financial institution and with intent to convert it to his or her own use or to the use of any person other than the owner or financial institution may be penalized as provided in s. 943.91.

History: 2005 a. 212.

943.82 Fraud against a financial institution. (1) Whoever obtains money, funds, credits, assets, securities, or other property owned by or under the custody or control of a financial institution by means of false pretenses, representations, or promises, or by use of any fraudulent device, scheme, artifice, or monetary instrument may be penalized as provided in s. 943.91.

(2) Whoever falsely represents that he or she is a financial institution or a representative of a financial institution for the purpose of obtaining money, goods, or services from any person or for the purpose of obtaining or recording a person's personal identifying information, as defined in s. 943.201 (1) (b), is guilty of Class H felony.

History: 2005 a. 212.

943.83 Loan fraud. Whoever with intent to defraud a financial institution knowingly overvalues or makes a false statement concerning any land, security, or other property for the purpose of influencing the financial institution to take or defer any action in connection with a loan or loan application may be penalized as provided in s. 943.91 according to the value of the loan.

History: 2005 a. 212.

943.84 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 may be penalized as provided in s. 943.91.

(2) Whoever, with intent to defraud, does any of the following may be penalized as provided in s. 943.91:

(a) Conceals, removes or transfers any personal property in which he or she 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 the person 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; 1993 a. 486; 2001 a. 109; 2005 a. 212 s. 7m; Stats. 2005 s. 943.84.

It is not necessary that a security interest be perfected by filing to support a conviction under this section. State v. Tew, 54 Wis. 2d 361, 195 N.W.2d 615 (1972).

"Removal" under sub. (2) (a) refers to a permanent change in situs, not necessarily across state lines. A showing of diligence by the secured party in

seeking the secured property is not required. Jameson v. State, 74 Wis. 2d 176, 246 N.W.2d 501 (1976).

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

943.85 Bribery involving a financial institution. (1) Whoever, with intent to defraud a financial institution, confers, offers, or agrees to confer a benefit on an employee, agent, or fiduciary of the financial institution without the consent of the financial institution and with intent to influence the employee's, agent's, or fiduciary's conduct in relation to the affairs of the institution is guilty of a Class H felony.

(2) Any employee, agent, or fiduciary of a financial institution who without the consent of the financial institution and with intent to defraud the financial institution solicits, accepts, or agrees to accept any benefit from another person pursuant to an agreement that the employee, agent, or fiduciary will act in a certain manner in relation to the affairs of the financial institution is guilty of a Class H felony.

History: 2005 a. 212.

943.86 Extortion against a financial institution. Whoever for the purpose of obtaining money, funds, credits, securities, assets, or property owned by or under the custody or control of a financial institution threatens to cause bodily harm to an owner, employee, or agent of a financial institution or to cause damage to property owned by or under the custody or control of the financial institution is guilty of a Class H felony.

History: 2005 a. 212.

943.87 Robbery of a financial institution. Whoever by use of force or threat to use imminent force takes from an individual or in the presence of an individual money or property that is owned by or under the custody or control of a financial institution is guilty of Class C felony.

History: 2005 a. 212.

943.88 Organizer of financial crimes. Whoever commits 3 or more financial crimes within an 18-month period is guilty of a Class E felony if all of the following conditions apply:

(1) Each of the crimes is committed in concert with a person whom the actor supervises, organizes, finances, or manages. The person need not be the same for each of the crimes.

(2) At least one of the crimes is committed on or after April 11, 2006.

History: 2005 a. 212.

943.89 Mail fraud. Whoever does any of the following to further commission of a financial crime or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, furnish, or procure for an unlawful purpose any counterfeit currency, obligation, or security is guilty of a Class H felony:

(1) Deposits or causes any matter to be deposited in a United States post office or authorized depository for United States mail.

(2) Deposits or causes to be deposited any matter or thing to be sent or delivered by a commercial carrier.

(3) Takes or receives any matter or a thing sent or delivered by United States mail or by a commercial carrier.

History: 2005 a. 212.

943.90 Wire fraud against a financial institution. Whoever transmits or causes to be transmitted electrically, electromagnetically, or by light any signal, writing, image, sound, or data for the purpose of committing a financial crime is guilty of a Class H felony.

History: 2005 a. 212.

943.91 Penalties. Whoever violates s. 943.81, 943.82 (1), 943.83, or 943.84 is guilty of the following:

(1) If the value of the money, funds, credits, securities, assets, property, proceeds from sale, or loan does not exceed $500, a Class A misdemeanor.

(2) If the value of the money, funds, credits, securities, assets, property, proceeds from sale, or loan does not exceed $500, and the person has previously been convicted of an misdemeanor or felony under s. 943.10, 943.12, 943.20 to 943.75, or 943.81 to 943.90, a Class I felony.

(3) If the value of the money, funds, credits, securities, assets, property, proceeds from sale, or loan exceeds $500 but does not exceed $10,000, a Class H felony.

(4) If the value of the money, funds, credits, securities, assets, property, proceeds from sale, or loan exceeds $10,000 but does not exceed $100,000, a Class G felony.

(5) If the value of the money, funds, credits, securities, assets, property, proceeds from sale, or loan exceeds $100,000, a Class E felony.

History: 2005 a. 212.

943.92 Increased penalty for multiple financial crimes. If a person is convicted of committing 3 or more financial crimes in an 18-month period, the term of imprisonment for the 3rd or subsequent crime in the 18-month period may be increased as follows:

(1) A maximum term of imprisonment of one year or less may be increased to not more than 2 years.

(2) A maximum term of imprisonment of more than one year but not more than 10 years may be increased by not more than 2 years if the prior convictions were for misdemeanors and by not more than 4 years if at least one of the prior convictions was for a felony.

(3) A maximum term of imprisonment of more than 10 years may be increased by not more than 2 years if the prior convictions were for misdemeanors and by not more than 6 years if at least one of the prior convictions was for a felony.

History: 2005 a. 212.

CHAPTER 944

CRIMES AGAINST SEXUAL MORALITY

Cross-reference: See definitions in s. 939.22.

SUBCHAPTER II

SEXUAL CRIMES WHICH AFFECT THE FAMILY

944.05 Bigamy. (1) Whoever does any of the following is guilty of a Class I felony:

(a) Contracts a marriage in this state with knowledge that his or her prior marriage is not dissolved; or

(b) Contracts a marriage in this state with knowledge that the prior marriage of the person he or she marries is not dissolved; or

(c) Cohabits in this state with a person whom he or she married outside this state with knowledge that his or her own prior marriage had not been dissolved or with knowledge that the prior marriage of the person he or she married had not been dissolved.

(2) In this section "cohabit" means to live together under the representation or appearance of being married.

History: 1977 c. 173; 1993 a. 486; 2001 a. 109.

944.06 Incest. Whoever marries or has nonmarital sexual intercourse, as defined in s. 948.01 (6), with a person he or she knows is a blood relative and such relative is in fact related in a degree within which the marriage of the parties is prohibited by the law of this state is guilty of a Class F felony.

History: 1977 c. 173; 2001 a. 109; 2009 a. 13.

Lawrence v. Texas, 539 U.S. 558 (2003), did not announce a fundamental right of adults to engage in all forms of private consensual sexual conduct. There was no clearly established federal law in 2001 that supported defendant's claim that he had a fundamental right to engage in incest free from government proscription. Muth v. Frank, 412 F.3d 808 (2005).

SUBCHAPTER III

FORNICATION; ADULTERY; GRATIFICATION

944.15 Public fornication. (1) In this section, "in public" means in a place where or in a manner such that the person knows or has reason to know that his or her conduct is observable by or in the presence of persons other than the person with whom he or she is having sexual intercourse.

(2) Whoever has sexual intercourse in public is guilty of a Class A misdemeanor.

History: 1977 c. 173; 1983 a. 17, 27; 1987 a. 332; 2001 a. 109.

944.16 Adultery. Whoever does either of the following is guilty of a Class I felony:

(1) A married person who has sexual intercourse with a person not the married person's spouse; or

(2) A person who has sexual intercourse with a person who is married to another.

History: 1977 c. 173; 1993 a. 486; 2001 a. 109.

944.17 Sexual gratification. (1) In this section, "in public" means in a place where or in a manner such that the person knows or has reason to know that his or her conduct is observable by or in the presence of persons other than the person with whom he or she is having sexual gratification.

(2) Whoever does any of the following is guilty of a Class A misdemeanor:

(a) Commits an act of sexual gratification in public involving the sex organ of one person and the mouth or anus of another.

(c) Commits an act of sexual gratification involving his or her sex organ and the sex organ, mouth or anus of an animal.

(d) Commits an act of sexual gratification involving his or her sex organ, mouth or anus and the sex organ of an animal.

(3) Subsection (2) does not apply to a mother's breast-feeding of her child.

History: 1977 c. 173; 1983 a. 17; 1987 a. 332; 1995 a. 165.

SUBCHAPTER IV

OBSCENITY

944.20 Lewd and lascivious behavior. (1) Whoever does any of the following is guilty of a Class A misdemeanor:

(a) Commits an indecent act of sexual gratification with another with knowledge that they are in the presence of others; or

(b) Publicly and indecently exposes genitals or pubic area.

(2) Subsection (1) does not apply to a mother's breast-feeding of her child.

History: 1977 c. 173; 1983 a. 17; 1989 a. 31; 1995 a. 165.

"Publicly" is susceptible to a construction that will avoid the question of constitutional overbreadth, by limiting the application of the statute to constitutionally permissible goals of protecting children from exposure to obscenity and preventing assaults on the sensibilities of unwilling adults in public. Reichenberger v. Warren, 319 F. Supp. 1237 (1970).

944.21 Obscene material or performance. (1) The legislature intends that the authority to prosecute violations of this section shall be used primarily to combat the obscenity industry and shall never be used for harassment or censorship purposes against materials or performances having serious artistic, literary, political, educational or scientific value. The legislature further intends that the enforcement of this section shall be consistent with the first amendment to the U.S. constitution, article I, section 3, of the Wisconsin constitution and the compelling state interest in protecting the free flow of ideas.

(2) In this section:

(a) "Community" means this state.

(am) "Exhibit" has the meaning given in s. 948.01 (1d).

(b) "Internal revenue code" has the meaning specified in s. 71.01 (6).

(c) "Obscene material" means a writing, picture, film, or other recording that:

1. The average person, applying contemporary community standards, would find appeals to the prurient interest if taken as a whole;

2. Under contemporary community standards, describes or shows sexual conduct in a patently offensive way; and

3. Lacks serious literary, artistic, political, educational or scientific value, if taken as a whole.

(d) "Obscene performance" means a live exhibition before an audience which:

1. The average person, applying contemporary community standards, would find appeals to the prurient interest if taken as a whole;

2. Under contemporary community standards, describes or shows sexual conduct in a patently offensive way; and

3. Lacks serious literary, artistic, political, educational or scientific value, if taken as a whole.

(dm) "Recording" has the meaning given in s. 948.01 (3r).

(e) "Sexual conduct" means the commission of any of the following: sexual intercourse, sodomy, bestiality, necrophilia, human excretion, masturbation, sadism, masochism, fellatio, cunnilingus or lewd exhibition of human genitals.

(f) "Wholesale transfer or distribution of obscene material" means any transfer for a valuable consideration of obscene material for purposes of resale or commercial distribution; or any distribution of obscene material for commercial exhibition. "Wholesale transfer or distribution of obscene material" does not require transfer of title to the obscene material to the purchaser, distributee or exhibitor.

(3) Whoever does any of the following with knowledge of the character and content of the material or performance and for commercial purposes is subject to the penalties under sub. (5):

(a) Imports, prints, sells, has in his or her possession for sale, publishes, exhibits, plays, or distributes any obscene material.

(b) Produces or performs in any obscene performance.

(c) Requires, as a condition to the purchase of periodicals, that a retailer accept obscene material.

(4) Whoever does any of the following with knowledge of the character and content of the material is subject to the penalties under sub. (5):

(a) Distributes, exhibits, or plays any obscene material to a person under the age of 18 years.

(b) Has in his or her possession with intent to distribute, exhibit, or play to a person under the age of 18 years any obscene material.

(5) (a) Except as provided under pars. (b) to (e), any person violating sub. (3) or (4) is subject to a Class A forfeiture.

(b) If the person violating sub. (3) or (4) has one prior conviction under this section, the person is guilty of a Class A misdemeanor.

(c) If the person violating sub. (3) or (4) has 2 or more prior convictions under this section, the person is guilty of a Class H felony.

(d) Prior convictions under pars. (b) and (c) apply only to offenses occurring on or after June 17, 1988.

(e) Regardless of the number of prior convictions, if the violation under sub. (3) or (4) is for a wholesale transfer or distribution of obscene material, the person is guilty of a Class H felony.

(5m) A contract printer or employee or agent of a contract printer is not subject to prosecution for a violation of sub. (3) regarding the printing of material that is not subject to the contract printer's editorial review or control.

(6) Each day a violation under sub. (3) or (4) continues constitutes a separate violation under this section.

(7) A district attorney may submit a case for review under s. 165.25 (3m). No civil or criminal proceeding under this section may be commenced against any person for a violation of sub. (3) or (4) unless the attorney general determines under s. 165.25 (3m) that the proceeding may be commenced.

(8) (a) The legislature finds that the libraries and educational institutions under par. (b) carry out the essential purpose of making available to all citizens a current, balanced collection of books, reference materials, periodicals, sound recordings and audiovisual materials that reflect the cultural diversity and pluralistic nature of American society. The legislature further finds that it is in the interest of the state to protect the financial resources of libraries and educational

institutions from being expended in litigation and to permit these resources to be used to the greatest extent possible for fulfilling the essential purpose of libraries and educational institutions.

(b) No person who is an employee, a member of the board of directors or a trustee of any of the following is liable to prosecution for violation of this section for acts or omissions while in his or her capacity as an employee, a member of the board of directors or a trustee:

1. A public elementary or secondary school.

2. A private school, as defined in s. 115.001 (3r), or a tribal school, as defined in s. 115.001 (15m).

3. Any school offering vocational, technical or adult education that:

a. Is a technical college, is a school approved by the educational approval board under s. 38.50, or is a school described in s. 38.50 (1) (e) 6., 7. or 8.; and

b. Is exempt from taxation under section 501 (c) (3) of the internal revenue code.

4. Any institution of higher education that is accredited, as described in s. 39.30 (1) (d), and is exempt from taxation under section 501 (c) (3) of the internal revenue code.

5. A library that receives funding from any unit of government.

(9) In determining whether material is obscene under sub. (2) (c) 1. and 3., a judge or jury shall examine individual pictures, recordings of images, or passages in the context of the work in which they appear.

(10) The provisions of this section, including the provisions of sub. (8), are severable, as provided in s. 990.001 (11).

History: 1977 c. 173, 272; 1987 a. 416; 1993 a. 399; 1995 a. 27 s. 9154 (1); 1997 a. 27; 1999 a. 9; 2001 a. 16, 104, 109; 2005 a. 22, 25, 254; 2009 a. 302.

The sufficiency of an obscenity complaint and the correctness of jury instructions are discussed. State v. Simpson, 56 Wis. 2d 27, 201 N.W.2d 558.

To charge a defendant with the possession or sale of obscene materials, the complaint must allege that the defendant knew the nature of the materials; a charge that the defendant acted "feloniously" is insufficient to charge scienter. State v. Schneider, 60 Wis. 2d 563, 211 N.W.2d 630.

NOTE: The preceding annotations relate to this section as it existed prior to its treatment by 1987 Wis. Act. 416.

This section is not unconstitutionally overbroad or vague. States are not prevented from deviating from the *Miller v. California*, 413 U.S. 15, language in regulating obscenity. Jury instructions that use synonymous or explanatory terms not used in *Miller* are not improper. County of Kenosha v. C. & S. Management, Inc. 223 Wis. 2d 373, 588 N.W.2d 236 (1999), 97-0642.

A telephone survey regarding community standards is irrelevant. A relevant survey must address whether the material at issue depicts acts in a patently offensive manner and appeals to the prurient interest. County of Kenosha v. C. & S. Management, Inc. 223 Wis. 2d 373, 588 N.W.2d 236 (1999), 97-0642.

Contemporary community standards must be applied by juries in accordance with their own understanding of the average tolerance of the average person in their community. The community to be considered is the state. Material is obscene if it appeals to prurient interest, not if it intends or attempts to appeal to prurient interest. State v. Tee & Bee, Inc. 229 Wis. 2d 446, 600 N.W.2d 230 (Ct. App. 1999), 98-0602.

The federal constitution does not mandate that juries be instructed to apply standards of a hypothetical statewide community. Jenkins v. Georgia, 418 U.S. 153 (1974).

A motion picture cannot be seized without a prior adversary hearing. Detco, Inc. v. Neelen, 356 F. Supp. 289 (1973).

Behind the Curtain of Privacy: How Obscenity Law Inhibits the Expression of Ideas About Sex and Gender. Peterson. 1998 WLR 625.

From Ulysses to Portnoy: A pornography primer. Eich, 53 MLR 155.

944.23 Making lewd, obscene or indecent drawings. Whoever makes any lewd, obscene or indecent drawing or writing in public or in a public place is guilty of a Class C misdemeanor.

History: 1977 c. 173.

944.25 Sending obscene or sexually explicit electronic messages. (1) In this section:

(a) "Electronic mail solicitation" means an electronic mail message, including any attached program or document, that is sent for the purpose of encouraging a person to purchase property, goods, or services.

(b) "Obscene material" has the meaning given in s. 944.21 (2) (c).

(c) "Sexually explicit conduct" has the meaning given in s. 948.01 (7).

(2) Whoever sends an unsolicited electronic mail solicitation to a person that contains obscene material or a depiction of sexually explicit conduct without including the words "ADULT ADVERTISEMENT" in the subject line of the electronic mail solicitation is guilty of a Class A misdemeanor.

History: 2001 a. 16.

SUBCHAPTER V

PROSTITUTION

944.30 Prostitution. Any person who intentionally does any of the following is guilty of a Class A misdemeanor:

(1) Has or offers to have or requests to have nonmarital sexual intercourse for anything of value.

(2) Commits or offers to commit or requests to commit an act of sexual gratification, in public or in private, involving the sex organ of one person and the mouth or anus of another for anything of value.

(3) Is an inmate of a place of prostitution.

(4) Masturbates a person or offers to masturbate a person or requests to be masturbated by a person for anything of value.

(5) Commits or offers to commit or requests to commit an act of sexual contact for anything of value.

History: 1977 c. 173; 1979 c. 221; 1983 a. 17; 1993 a. 213.

In order for a female prostitute to avoid prosecution upon equal protection grounds, it must be shown that the failure to prosecute male patrons was selective, persistent, discriminatory, and without justifiable prosecutorial discretion. State v. Johnson, 74 Wis. 2d 169, 246 N.W.2d 503 (1976).

Prosecuting for solicitation under s. 939.30, rather than for prostitution under s. 944.30, did not deny equal protection. Sears v. State, 94 Wis. 2d 128, 287 N.W.2d 785 (1980).

A prostitution raid focusing only on female participants amounts to selective prosecution in violation of equal protection. The applicable constitutional analysis is discussed. State v. McCollum, 159 Wis. 2d 184, 464 N.W.2d 44 (Ct. App. 1990).

As long as someone compensates another for engaging in nonmarital sex, the elements of prostitution are met. The person making payment need not engage in the sexual act. State v. Kittilstad, 231 Wis. 2d 245, 603 N.W.2d 732 (1999), 98-1456.

Since sub. (1) requires a request for nonmarital sexual intercourse be coupled with the offer of anything of value, evidence that the defendant was willing to pay to watch the witness masturbate did not satisfy sub. (1). State v. Turnpaugh, 2007 WI App 222, 305 Wis. 2d 722, 741 N.W.2d 488, 06-2301.

944.31 Patronizing prostitutes. Any person who enters or remains in any place of prostitution with intent to have nonmarital sexual intercourse or to commit an act of sexual gratification, in public or in private, involving the sex organ of one person and the mouth or anus of another, masturbation or sexual contact with a prostitute is guilty of a Class A misdemeanor.

History: 1977 c. 173; 1979 c. 221; 1983 a. 17.

944.32 Soliciting prostitutes. Except as provided under s. 948.08, whoever intentionally solicits or causes any person to practice prostitution or establishes any person in a place of prostitution is guilty of a Class H felony.

History: 1977 c. 173; 1987 a. 332; 2001 a. 109.

Section 944.32, 1985 stats., prohibiting solicitation of prostitutes, does not violate right of free speech. Shillcutt v. State, 74 Wis. 2d 642, 247 N.W.2d 694 (1976).

This section is not unconstitutionally vague or overbroad and its penalty is not disproportionate. State v. Johnson, 108 Wis. 2d 703, 324 N.W.2d 447 (Ct. App. 1982).

Monetary gain is not an element of the crime. State v. Huff, 123 Wis. 2d 397, 367 N.W.2d 226 (Ct. App. 1985).

944.33 Pandering. (1) Whoever does any of the following is guilty of a Class A misdemeanor:

(a) Solicits another to have nonmarital sexual intercourse or to commit an act of sexual gratification, in public or in private, involving the sex organ of one person and the mouth or anus of another, masturbation or sexual contact with a person the solicitor knows is a prostitute; or

(b) With intent to facilitate another in having nonmarital intercourse or committing an act of sexual gratification, in public or in private, involving the sex organ of one person and the mouth or anus of another, masturbation or sexual contact with a prostitute, directs or transports the person to a prostitute or directs or transports a prostitute to the person.

(2) If the person received compensation from the earnings of the prostitute, such person is guilty of a Class F felony.

(3) In a prosecution under this section, it is competent for the state to prove other similar acts by the accused for the purpose of showing the accused's intent and disposition.

History: 1977 c. 173; 1979 c. 221, 355; 1983 a. 17; 1993 a. 486; 2001 a. 109.

944.34 Keeping place of prostitution. Whoever intentionally does any of the following is guilty of a Class H felony:

(1) Keeps a place of prostitution; or

(2) Grants the use or allows the continued use of a place as a place of prostitution.

History: 1977 c. 173; 2001 a. 109.

A conviction under sub. (2) requires proof that the defendant has authority to exclude those engaging in prostitution from the use of the place for prohibited acts. Shillcutt v. State, 74 Wis. 2d 642, 247 N.W.2d 694 (1976).

Under sub. (2), "grants the use" requires the prosecution to prove a single affirmative approval of the use of the premises as a place of prostitution, while "allows the continued use of" requires proof of intentional but passive acquiescence or toleration of the use on more than one occasion. Johnson v. State, 76 Wis. 2d 672, 251 N.W.2d 834 (1977).

944.36 Solicitation of drinks prohibited. Any licensee, permittee or bartender of a retail alcohol beverage establishment covered by a license or permit issued under ch. 125 who permits an entertainer or employee to solicit a drink of any alcohol beverage, as defined in s. 125.02 (1), or any other drink from a customer on the premises, or any entertainer or employee who solicits such drinks from any customer, is guilty of a Class B misdemeanor.

History: 1975 c. 39 s. 675x; 1975 c. 199; Stats. 1975 s. 944.36; 1977 c. 173; 1981 c. 79.

Legislative Council Note, 1981: The amendment to s. 944.36 reflects the combining of s. 66.054 and ch. 176 into one chapter, ch. 125, and the definition of "alcohol beverage" in that chapter. [Bill 300-A]

CHAPTER 945

GAMBLING

Cross-reference: See definitions in s. 939.22.

945.01 Definitions. In this chapter:

(1) BET. A bet is a bargain in which the parties agree that, dependent upon chance even though accompanied by some skill, one stands to win or lose something of value specified in the agreement. But a bet does not include:

(a) Bona fide business transactions which are valid under the law of contracts including without limitation:

1. Contracts for the purchase or sale at a future date of securities or other commodities, and

2. Agreements to compensate for loss caused by the happening of the chance including without limitation contracts of indemnity or guaranty and life or health and accident insurance;

(b) Offers of purses, prizes or premiums to the actual contestants in any bona fide contest for the determination of skill, speed, strength, or endurance or to the bona fide owners of animals or vehicles entered in such contest;

(cm) Participation in bingo or a raffle conducted under ch. 563.

(d) Pari-mutuel wagering subject to ch. 562.

(e) Participation in a lottery conducted under ch. 565.

(f) An agreement under which an employee is given an opportunity to win a prize, the award of which is determined by chance, in return for the employee making a referral or identification described in s. 945.01 (5) (b) 2. h.

(2) BOOKMAKING. "Bookmaking" means the receiving, recording or forwarding of a bet or offer to bet on any contest of skill, speed, strength or endurance of persons or animals.

(3) GAMBLING MACHINE. (a) A gambling machine is a contrivance which for a consideration affords the player an opportunity to obtain something of value, the award of which is determined by chance, even though accompanied by some skill and whether or not the prize is automatically paid by the machine.

(b) "Gambling machine" does not include any of the following:

1. A device used in conducting a bingo occasion or raffle event under ch. 563, used in conducting a lottery under ch. 565 or used in conducting a race under ch. 562.

2. Any amusement device if it rewards the player exclusively with one or more nonredeemable free replays for achieving certain scores and does not change the ratio or record the number of the free replays so awarded.

3. An amusement device involving skill, if it rewards the player exclusively with merchandise contained within the amusement device proper and limited to prizes, toys and novelties, each having a wholesale value which is not more than 7 times the cost charged to play the amusement device once or $5, whichever is less. In this subdivision, "skill" means, within an opportunity provided for all players fairly to obtain prizes or rewards of merchandise, a player's precision, dexterity or ability to use his or her knowledge which enables him or her to obtain more frequent rewards or prizes than does another less precise, dextrous or knowledgeable player.

(4) GAMBLING PLACE. (a) A gambling place is any building or tent, any vehicle (whether self-propelled or not) or any room within any of them, one of whose principal uses is any of the following: making and settling bets; receiving, holding, recording or forwarding bets or offers to bet; conducting lotteries; or playing gambling machines.

(am) "Gambling place" does not include a place where bingo or a raffle is conducted under ch. 563, where a lottery is conducted under ch. 565 or where a race is conducted under ch. 562 and does not include a gambling vessel that is in the process of construction, delivery, conversion or repair by a shipbuilding business that complies with s. 945.095.

(b) Evidence that the place has a general reputation as a gambling place or that, at or about the time in question, it was frequently visited by persons known to be professional gamblers or known as frequenters of gambling places is admissible on the issue of whether it is a gambling place.

(c) Any gambling place is a public nuisance and may be proceeded against under ch. 823.

(5) LOTTERY. (a) A lottery is an enterprise wherein for a consideration the participants are given an opportunity to win a prize, the award of which is determined by chance, even though accompanied by some skill.

(am) "Lottery" does not include bingo or a raffle conducted under ch. 563, pari-mutuel wagering conducted under ch. 562 or the state lottery or any multijurisdictional lottery conducted under ch. 565.

(b) 1. "Consideration" in this subsection means anything which is a commercial or financial advantage to the promoter or a disadvantage to any participant, but does not include any advantage to the promoter or disadvantage to any participant caused when any participant learns from newspapers, magazines and other periodicals, radio or television where to send the participant's name and address to the promoter.

2. In any game, drawing, contest, sweepstakes, or other promotion, none of the following constitutes consideration under this subsection:

a. Listening to or watching a television or radio program.

b. Filling out a coupon or entry form that is received through the mail or published in a newspaper or magazine, if facsimiles of the coupon or entry form or handwritten and other informal entries are acceptable or if no purchase is required.

c. Furnishing proof of purchase if the proof required does not consist of more than the container of any product as packaged by the manufacturer, or a part of the container, or a facsimile of either.

d. Sending the coupon or entry form and proof of purchase by mail to a designated address.

e. Filling out a coupon or entry form obtained and deposited on the premises of a bona fide trade fair or trade show defined as an exhibition by 5 or more competitors of goods, wares, or merchandise at a location other than a retail establishment or shopping center or other place where goods and services are customarily sold; but if an admission fee is charged to the exhibition all facilities for obtaining and depositing coupons or entry forms shall be outside the area for which an admission fee is required.

f. Visiting a mercantile establishment or other place without being required to make a purchase or pay an admittance fee.

g. Using a chance promotion exempt under s. 100.16 (2).

h. An employee referring a person to the employee's employer to purchase goods or services from the employer, or identifying for the employer a person who may purchase goods or services from the employer, regardless of whether the employee who makes the referral or identification is compensated in any manner for the referral or identification.

(6) WIRE COMMUNICATION FACILITY. "Wire communication facility" means any and all instrumentalities, personnel and services, and among other things the receipt, forwarding or delivery of communications used or useful in the transmission of writings, signs, pictures and sounds of all kinds by means of wire, cable, microwave or other like connection between the points of origin and reception of such transmission.

History: 1973 c. 156; Sup. Ct. Order, 67 Wis. 2d 585, 784 (1973); 1975 c. 94; 1977 c. 90, 426; 1979 c. 40, 91; 1981 c. 351; 1983 a. 189; 1987 a. 119, 329, 354, 403; 1989 a. 31; 1991 a. 269, 321; 1993 a. 486; 1995 a. 11; 1997 a. 27; 2001 a. 107; 2009 a. 354; 2011 a. 109.

The defendant's use of a warehouse to conduct pyramid club meetings was a "principal use" under sub. (4) (a). State v. Dahlk, 111 Wis. 2d 287, 330 N.W.2d 611 (Ct. App. 1983).

Evidence of prior gambling activity is necessary to prove the existence of a "gambling place." State v. Nixa, 121 Wis. 2d 160, 360 N.W.2d 52 (Ct. App. 1984).

A video poker machine is not a gambling machine *per se*. State v. Hahn, 203 Wis. 2d 450, 553 N.W.2d 292 (Ct. App. 1996), 94-2567.

The definition of "gambling machine" in sub. (3) is not unconstitutionally vague. State v. Hahn, 221 Wis. 2d 670, 586 N.W.2d 5 (Ct. App. 1998), 97-3065.

If the defendant satisfied all the requirements of s. 100.16 (2), it is entitled to the exemption under sub. (5) (b) 2. g. No additional, unstated requirements will be read in. Bohrer v. City of Milwaukee, 2001 WI App 237, 248 Wis. 2d 319, 635 N.W.2d 816, 00-3088.

For a machine to fall under the definition of a gambling machine under sub. (3), there is no requirement that patrons actually receive payouts or prizes in exchange for redeemable credits. Champeau v. City of Milwaukee, 2002 WI App 79, 252 Wis. 2d 604, 642 N.W.2d 634, 01-2060.

Monies paid by individuals to subscribe to cable TV could be consideration that would make a bingo game offered over cable TV gambling. 60 Atty. Gen. 382.

A silent auction is not a lottery because the element of prize is not present. 62 Atty. Gen. 122.

The illegality of Michigan lottery activities in Wisconsin is discussed. 62 Atty. Gen. 186.

If any element of Indian tribe's television bingo game occurs off the reservation, it is subject to prosecution under Wisconsin criminal law. 80 Atty. Gen. 332.

945.02 Gambling. Whoever does any of the following is guilty of a Class B misdemeanor:

(1) Makes a bet; or

(2) Enters or remains in a gambling place with intent to make a bet, to participate in a lottery, or to play a gambling machine; or

(3) Conducts a lottery, or with intent to conduct a lottery, possesses facilities to do so.

History: 1977 c. 173.

Games such as "Las Vegas nights" constitute illegal lotteries; the law does not exempt benevolent and nonprofit organizations. 70 Atty. Gen. 59.

945.03 Commercial gambling. (1m) Whoever intentionally does any of the following is engaged in commercial gambling and, except as provided in sub. (2m), is guilty of a Class I felony:

(a) Participates in the earnings of or for gain operates or permits the operation of a gambling place; or

(b) For gain, receives, records or forwards a bet or offer to bet or, with intent to receive, record or forward a bet or offer to bet, possesses facilities to do so; or

(c) For gain, becomes a custodian of anything of value bet or offered to be bet; or

(d) Conducts a lottery where both the consideration and the prize are money, or with intent to conduct such a lottery, possesses facilities to do so; or

(e) Sets up for use for the purpose of gambling or collects the proceeds of any gambling machine; or

(f) For gain, maintains in this state any record, paraphernalia, tickets, certificates, bills, slip, token, paper, writing or other device used, or to be used, or adapted, devised or designed for use in gambling; or

(g) For gain, uses a wire communication facility for the transmission or receipt of information assisting in the placing of a bet or offer to bet on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of a bet or offer to bet.

(2m) If the violation of sub. (1m) involves the possession, operation, setup, collection of proceeds, participation in earnings or maintenance of, or involves acting as the custodian of anything of value bet or offered to be bet on, not more than 5 video gambling machines on premises for which a Class "B" or "Class B" license or permit has been issued under ch. 125, the person may be penalized as follows:

(a) If the violation involves one video gambling machine, the person may be required to forfeit not more than $500.

(b) If the violation involves 2 video gambling machines, the person may be required to forfeit not more than $1,000.

(c) If the violation involves 3 video gambling machines, the person may be required to forfeit not more than $1,500.

(d) If the violation involves 4 video gambling machines, the person may be required to forfeit not more than $2,000.

(e) If the violation involves 5 video gambling machines, the person may be required to forfeit not more than $2,500.

History: 1977 c. 173; 1999 a. 9, 185; 2001 a. 109.

The offense of commercial gambling is distinguishable from the offense of making a bet. The statute is not unconstitutionally vague. State v. Vlahos, 50 Wis. 2d 609, 184 N.W.2d 817 (1971).

A complaint charging 30 counts of commercial gambling, one for a specific bet allegedly taken by the defendant and 29 for the regular receipt of bets from 8 bettors with all but one named in 2 or more counts, on unspecified athletic events over extended periods was multiplicitous and defective as to the 29, because the counts divided a single charge of continuous commercial gambling into several counts. State v. George, 69 Wis. 2d 92, 230 N.W.2d 253 (1975).

A video poker machine is not a gambling machine *per se*. The defendant must have collected proceeds from video poker machines knowing they were being used for gambling and that the proceeds were derived from the gambling. State v. Hahn, 203 Wis. 2d 450, 553 N.W.2d 292 (Ct. App. 1996), 94-2567.

An Iowa-licensed river boat equipped with casino-style gambling games may be engaged in illegal commercial gambling if it enters Wisconsin waters. 79 Atty. Gen. 206.

Although an indictment failed to state which of 7 subsections the defendants' alleged gambling business violated, more specificity was not required to enable the defendants to successfully plead the bar of double jeopardy and to inform them of what they would have to meet to formulate a defense; thus the indictment was not subject to dismissal. U.S. v. Halmo, 386 F. Supp. 593 (1974).

945.035 Certain slot machines on licensed premises. **(1)** In this section, "exempt slot machine" means a slot machine manufactured before December 31, 1974, that is exempt from the prohibition under s. 945.05 (1) because it is intended to be used solely for display, restoration and preservation purposes.

(2) No person to whom a license or permit has been issued under ch. 125 may do any of the following:

(a) Set up or keep an exempt slot machine on the premises for which the license or permit is issued.

(b) Permit another person to set up or keep an exempt slot machine on the premises for which the license or permit is issued.

(3) A person who violates sub. (2) may be required to forfeit not more than $500 for each violation.

History: 1999 a. 134.

945.04 Permitting premises to be used for commercial gambling. **(1m)** Except as provided in sub. (2m), whoever intentionally does any of the following is guilty of a Class A misdemeanor:

(a) Permits any real estate owned or occupied by him or her or under his or her control to be used as a gambling place; or

(b) Permits a gambling machine to be set up for use for the purpose of gambling in a place under his or her control.

(2m) If the violation of sub. (1m) involves the setup or use of not more than 5 video gambling machines on premises for which a Class "B" or "Class B" license or permit has been issued under ch. 125, the person may be penalized as follows:

(a) If the violation involves one video gambling machine, the person may be required to forfeit not more than $500.

(b) If the violation involves 2 video gambling machines, the person may be required to forfeit not more than $1,000

(c) If the violation involves 3 video gambling machines, the person may be required to forfeit not more than $1,500.

(d) If the violation involves 4 video gambling machines, the person may be required to forfeit not more than $2,000

(e) If the violation involves 5 video gambling machines, the person may be required to forfeit not more than $2,500.

History: 1977 c. 173; 1993 a. 486; 1999 a. 9, 185.

The defendant's use of a warehouse to conduct pyramid club meetings was a "principal use" under s. 945.01 (4) (a). State v. Dahlk, 111 Wis. 2d 287, 330 N.W.2d 611 (Ct. App. 1983).

945.041 Revocation of license and injunction against gambling devices. **(1)** A license or permit issued under ch. 125 to any person who knowingly permits any slot machine, roulette wheel, other similar mechanical gambling device, or number jar or other device designed for like form of gambling, or any horse race betting or other bookmaking as defined in s. 945.01, or solicitation of drinks from customers under s. 944.36 to be set up, kept, managed, used or conducted upon the licensed premises or in connection therewith upon premises controlled directly or indirectly by the person, shall be revoked by the circuit courts by a special proceeding as provided in this section. If a license or permit has been revoked no other license or permit of any character provided for by ch. 125 may be issued to the person who held the license or permit, prior to the expiration of one year from the effective date of the revocation. If any appeal is taken from the revocation, any period during which the order is stayed shall be added to the one year.

(2) Any sheriff, undersheriff, deputy sheriff, constable or other municipal police officer or any person authorized to enforce the gambling laws under s. 165.60 shall within 10 days after acquiring such information report to the district attorney of the county the name and address of any licensee or permittee under ch. 125 who to his or her knowledge has knowingly suffered or permitted any device in sub. (1) or any horse race betting to be set up, kept, managed, used or conducted upon the licensed premises or in connection therewith upon premises controlled directly or indirectly by such licensee or permittee. Such officer or person shall also report to the district attorney knowledge of the circumstances and the name of the municipality or officer by whom the license or permit has been issued. Any other person may in writing and signed by that person report any such name, address and other information to the district attorney. Within 10 days after any report the district attorney shall institute a proceeding as hereinafter provided before the circuit court of the county or shall within such time report to the attorney general the reasons why such a proceeding has not been instituted. The attorney general may direct the department of justice or the district attorney to institute such proceeding within a reasonable time.

(3) Such proceeding shall be in the name of the state and the issues may be determined by a jury. It shall be instituted by the filing of a petition and service of a notice as herein provided. The petition shall be directed to the circuit court and shall set forth a clear and concise statement of the grounds that are alleged to exist justifying a revocation of the license or permit under sub. (1), and shall request an order revoking such license or permit. It shall also request an injunction restraining the defendant from thereafter knowingly suffering or permitting any such devices or any horse race betting to be set up, kept, managed, used or conducted upon premises directly or indirectly controlled by the defendant. Upon the filing of such petition the court shall fix a time for hearing not to exceed 30 days from the date of filing at a place within the judicial circuit, and a copy of the petition and a notice of the time and place of hearing shall be served upon the defendant not less than 20 days prior to the date of hearing. Such service shall be made in the same manner as a summons is served in a civil action, except that it may also be made by leaving a copy of said petition and notice with any person charged with the operation of the licensed premises under s. 125.68 (2). The allegations of the

petition shall be deemed controverted and shall be at issue without further pleading by the defendant. No hearing shall be adjourned except for cause. If upon such hearing the court finds that the allegations of the petition are true, it shall issue a written order revoking the license or permit and shall likewise enjoin the defendant from thereafter knowingly suffering or permitting any gambling devices referred to in sub. (1) or any horse race betting to be set up, kept, managed, used or conducted upon premises directly or indirectly controlled by the defendant. The district attorney shall forthwith cause a copy of the order to be filed with the issuing authority of the license or permit and shall cause a copy to be served upon the defendant as above provided or the defendant's attorney. The revocation and injunction shall become effective upon such service. In cases where a license is issued by a town, city or village, a copy of the order shall also be filed with the department of revenue.

(4) The law enforcement officials referred to in sub. (2) shall also report to the district attorney the names and addresses of persons other than licensees under ch. 125 who permit devices referred to in sub. (1) or any horse race betting to be set up, kept, managed, used or conducted upon premises controlled directly or indirectly by such persons. They shall also report their knowledge of the circumstances and the location of such premises. Thereupon the district attorney shall proceed as in the case of licensees or permittees, except that the only request of the petition shall be for the issuance of the injunction referred to in sub. (3) and the other required allegations shall be correspondingly changed. Such proceeding shall be had and such injunctional orders entered and served as under sub. (3).

(5) Violations of injunctional orders under this section are punishable by the court as contempts of court under ch. 785.

(6) Appeals may be taken from orders issued by the circuit court hereunder as in the case of special proceedings.

(7) Any proceeding instituted by a district attorney shall not be dismissed with the district attorney's consent except upon the written approval of the circuit court.

(8) Any officer or employee referred to in sub. (2) or any district attorney who shall without proper excuse neglect or refuse to perform the duties required of him or her herein within such times as may be specified shall be subject to removal. The governor may remove any such sheriff or district attorney under s. 17.16 by filing a complaint on the governor's own motion.

(9) Every officer and district attorney shall keep a written record of reports made by or to him or her under sub. (2).

(10) No proceeding under this section may be commenced for violations of ch. 563.

(11) No proceeding under this section may be commenced to revoke a Class "B" or "Class B" license or permit issued under ch. 125 to a person solely because the person knowingly permits 5 or fewer video gambling machines to be set up, kept, managed, used or conducted upon the licensed premises.

History: 1973 c. 156; 1975 c. 39 s. 675v; 1975 c. 199; Stats. 1975 s. 945.041; 1977 c. 26, 173; 1977 c. 187 s. 135; 1979 c. 257; 1981 c. 79 s. 18; 1987 a. 399; 1991 a. 269; 1993 a. 486; 1999 a. 9.

945.05 Dealing in gambling devices. (1) Except as provided in subs. (1e) (b) and (1m), whoever manufactures, transfers commercially or possesses with intent to transfer commercially either of the following is guilty of a Class I felony:

(a) Anything which he or she knows evidences, purports to evidence or is designed to evidence participation in a lottery or the making of a bet; or

(b) Any device which he or she knows is designed exclusively for gambling purposes or anything which he or she knows is designed exclusively as a subassembly or essential part of such device. This includes without limitation gambling machines, numbers jars, punch boards and roulette wheels. Playing cards, dice, permanently disabled gambling machines and slot machines manufactured before December 31, 1974, that are intended to be used solely for display, restoration and preservation purposes shall not be considered devices exclusively for gambling purposes.

(1e) (a) In this subsection, "authorized gambling facility" means any of the following:

1. An Indian gaming facility, as defined in s. 569.01 (1j).

2. A gaming establishment located on lands acquired after October 17, 1998, by the U.S. secretary of the interior in trust for the benefit of an Indian tribe.

3. A facility at which gambling lawfully takes place.

(b) Subsection (1) does not apply to a person who manufactures, transfers commercially or possesses with intent to transfer commercially gambling devices described in sub. (1) (a) and (b) to any of the following:

1. An authorized gambling facility.

2. A nonprofit or public educational institution that provides an educational program for which it awards a bachelor's or higher degree for the use in a casino gaming management class.

(1m) If a violation of sub. (1) involves the commercial transfer of a video gambling machine or possession of a video gambling machine with the intent to transfer commercially, the person is subject to a Class C forfeiture.

(2) Proof of possession of any device designed exclusively for gambling purposes, which is less than 25 years old, is not in a gambling place and is not set up for use, is prima facie evidence of possession with intent to transfer.

(3) Any motor vehicle or aircraft, used or employed to aid in or to facilitate the unlawful manufacture or commercial transfer of those gambling devices enumerated in sub. (1), may be seized by any peace officer and shall be forfeited to the state in an action brought by the attorney general or the district attorney of the county where the vehicle or aircraft is subject to forfeiture and such action shall be in the name of and on behalf of the state in accordance with ch. 778. Lienholders and owners shall have the same rights as provided in s. 139.40.

History: 1977 c. 173, 297; 1979 c. 32 s. 92 (8); 1993 a. 486; 1999 a. 9, 134; 2001 a. 16, 109.

Dissemination of out-of-state lottery tickets by business establishments in Wisconsin, with or without a purchase, violates sub. (1) (a). 75 Atty. Gen. 47.

945.06 Public utilities to cease service. When any public utility, common carrier, contract carrier, or railroad, subject to the jurisdiction of the public service commission, office of the commissioner of railroads or department of transportation of this state, is notified in writing by a federal, state or local law enforcement agency, acting within its jurisdiction, that any facility furnished by it is being used or will be used for the purpose of transmitting or receiving gambling information in violation of the laws of this state it shall discontinue or refuse the leasing, furnishing or maintaining of

such facility, after reasonable notice to the subscriber, but no damages, penalty or forfeiture, civil or criminal, shall be found against any such public utility, common carrier, contract carrier or railroad, for any act done in compliance with any notice received from a law enforcement agency under this section. Nothing in this section shall be deemed to prejudice the right of any person affected thereby to secure an appropriate determination as otherwise provided by law in any court or tribunal or agency, that such facility should not be discontinued or removed, or should be restored.

History: 1977 c. 29 s. 1654 (9) (i); 1981 c. 347 s. 80 (2); 1993 a. 16, 123.

945.07 Gambling by participants in contest. (1) Any participant in, or any owner, employer, coach or trainer of a participant in, any contest of skill, speed, strength or endurance of persons, machines or animals at which admission is charged, who makes a bet upon any opponent in such contest is guilty of a Class A misdemeanor.

(2) In this section, "participant" includes any person who is selected or who expects to take part in any such contest.

History: 1975 c. 94; 1977 c. 173.

945.08 Bribery of participant in contest. (1) Any person who, with intent to influence any participant to refrain from exerting full skill, speed, strength or endurance, transfers or promises any property or any personal advantage to or on behalf of any participant in a contest of skill, speed, strength or endurance is guilty of a Class H felony.

(2) Any participant in any such contest who agrees or offers to refrain from exerting full skill, speed, strength or endurance in return for any property or any personal advantage transferred or promised to the participant or another is guilty of a Class A misdemeanor.

(3) In this section "participant" includes any person who is selected to or who expects to take part in any such contest.

History: 1977 c. 173; 2001 a. 109.

945.09 Commercial printing. Sections 945.02, 945.03 and 945.05 do not apply to any person who operates a commercial printing business and without consideration other than for regular and customary printing charges, prints and sells tickets in the ordinary course of business which have been ordered by a customer in another state to be sold in that state, if the lottery is lawful in the state from which the order is placed and the order is shipped to such customer in that state.

History: 1977 c. 66.

945.095 Shipbuilding business. (1) Notwithstanding ss. 945.03, 945.04 and 945.05, a person may construct, deliver, convert or repair a vessel that is equipped with gambling devices if all of the following conditions are satisfied:

(a) The work performed on the vessel is ordered by a customer who shall use or possess the vessel outside of this state in a locality where the use or possession of the gambling devices on the vessel is lawful.

(b) The person performs the work on the vessel that is equipped with the gambling devices at a shipbuilding business that is located in Sturgeon Bay, Manitowoc, Marinette, Superior or La Crosse, Wisconsin.

(c) The person registers with the U.S. attorney general, pursuant to 15 USC 1173, and specifies in that registration that the person is in the business of installing and removing gambling devices, as defined in 15 USC 1171 (a), as part of the process of performing work on vessels ordered by a customer who shall use or possess the vessel outside of this state in a locality where the use or possession of the gambling devices on the vessel is lawful.

(d) The person provides the department of administration, prior to the importation of the gambling devices into the state, all records that account for the gambling devices, including the identification number affixed to each gambling device by the manufacturer, and that identify the location where the gambling devices will be stored prior to the installation of the gambling devices on the vessel.

(e) The person stores the gambling devices at a secured warehouse facility and permits any person authorized to enforce the gambling laws under s. 165.50 to inspect the facility where the gambling devices are stored and any records relating to the gambling devices.

(f) If the person removes used gambling devices from a vessel, the person shall provide the department of administration with an inventory of the used gambling devices prior to their removal from the vessel. The inventory shall include the identification number affixed to each gambling device by the manufacturer.

(g) The person submits documentation to the department of administration, no later than 30 days after the date of delivery, that the vessel equipped with gambling devices has been delivered to the customer who ordered the work performed on the vessel.

(h) The person does not sell a gambling device to any other person except to a customer who shall use or possess the gambling device outside of this state in a locality where the use or possession of the gambling device is lawful. If a person sells a gambling device to such a customer, the person shall submit documentation to the department of administration, no later than 30 days after the date of delivery, that the gambling device has been delivered to the customer.

(2) If any person who constructs, delivers, converts or repairs a vessel that is equipped with gambling devices does not satisfy all of the conditions under sub. (1), the person is subject to ss. 945.03, 945.04 and 945.05.

History: 1995 a. 11, 27, 225; 1997 a. 27.

945.10 Prizes forfeited. Anything of value received by any person as a prize in any lottery conducted in violation of this chapter shall be forfeited to the state and may be recovered in any proper action brought by the attorney general or any district attorney in the name and on behalf of the state.

945.12 Endless sales chains. Whoever sets up, promotes or aids in the promotion of a plan by which motor vehicles are sold to a person for a consideration and upon the further consideration that the purchaser agrees to secure one or more persons to participate in the plan by respectively making a similar purchase and in turn agreeing to secure one or more persons likewise to join in said plan, each purchaser being given the right to secure money, credits, goods or something of value, depending upon the number of persons joining in the plan, shall be held to have set up and promoted a lottery and shall be punished as provided in s. 945.02. The further prosecution of any such plan may be enjoined.

Cross-reference: See also s. 218.0116 (1) (jm) as to endless chain vehicle sales.

945.13 Interstate transportation of gambling devices. Pursuant to the authority granted the state in 15 USC 1172, which makes unlawful the transportation of any gambling device to any place in a state or a possession of the United States from any place outside of the state or the possession, this state exempts Sturgeon Bay, Manitowoc, Marinette, Superior and La Crosse, Wisconsin, from the application of 15 USC 1172.

History: 1995 a. 11, 225.

CHAPTER 946

CRIMES AGAINST GOVERNMENT AND ITS ADMINISTRATION

Cross-reference: See definitions in s. 939.22.

SUBCHAPTER I

TREASON AND DISLOYAL ACTS

946.01 Treason. (1) Any person owing allegiance to this state who does any of the following is guilty of a Class A felony:

(a) Levies war against this state; or

(b) Adheres to the enemies of this state, giving them aid and comfort.

(2) No person may be convicted of treason except on the testimony of 2 witnesses to the same overt act, or on the person's confession in open court.

History: 1977 c. 173; 1993 a. 486.

946.02 Sabotage. (1) Whoever does any of the following is guilty of a Class F felony:

(a) Intentionally damages, interferes with, or tampers with any property with reasonable grounds to believe that his or her act will hinder, delay, or interfere with the prosecution of war or other military action or the preparation for defense, war, or other military action by the United States or its allies; or

(b) Intentionally makes a defective article or on inspection omits to note any defect in an article with reasonable grounds to believe that such article is intended to be used in the prosecution of war or other military action or the preparation for defense, war, or other military action by the United States or its allies.

(2) Nothing in this section shall be construed to impair, curtail, or destroy the rights of employees and their representatives to self-organization, to form, join or assist labor organization, to strike, to bargain collectively through representatives of their own choosing, or to engage in lawful concerted activities for the purpose of collective bargaining or other mutual aid or protection under any state or federal statutes regulating labor relations.

History: 1977 c. 173; 1993 a. 486; 2001 a. 109.

946.03 Sedition. (1) Whoever does any of the following is guilty of a Class F felony:

(a) Attempts the overthrow of the government of the United States or this state by the use or threat of physical violence; or

(b) Is a party to a conspiracy with or a solicitation of another to overthrow the government of the United States or this state by the use or threat of physical violence; or

(c) Advocates or teaches the duty, necessity, desirability or propriety of overthrowing the government of the United States

or this state by the use or threat of physical violence with intent that such government be overthrown; or

(d) Organizes or assists in the organization of an assembly with knowledge that the purpose of the assembly is to advocate or teach the duty, necessity, desirability or propriety of overthrowing the government of the United States or this state by the use or threat of physical violence with intent that such government be overthrown.

(2) Whoever permits any premises under his or her care, control or supervision to be used by an assembly with knowledge that the purpose of the assembly is to advocate or teach the duty, necessity, desirability or propriety of overthrowing the government of the United States or this state by the use or threat of physical violence with intent that such government be overthrown or, after learning that the premises are being so used, permits such use to be continued is guilty of a Class I felony.

History: 1977 c. 173; 2001 a. 109.

946.06 Improper use of the flag. (1) Whoever intentionally does any of the following is guilty of a Class A misdemeanor:

(a) Places on or attaches to the flag any word, mark, design, or advertisement not properly a part of such flag; or

(b) Exposes to public view a flag upon which has been placed or attached a word, mark, design, or advertisement not properly a part of such flag; or

(c) Manufactures or exposes to public view an article of merchandise or a wrapper or receptacle for merchandise upon which the flag is depicted; or

(d) Uses the flag for commercial advertising purposes.

(2) This section does not apply to flags depicted on written or printed documents or periodicals or on stationery, ornaments, pictures, or jewelry, provided there are no unauthorized words or designs on such flag and provided the flag is not connected with any advertisement.

(3) In this section "flag" means anything that is or purports to be the Stars and Stripes, the United States shield, the United States coat of arms, the Wisconsin state flag, or a copy, picture, or representation of any of them.

History: 1977 c. 173; 2003 a. 243.

A flag misuse statute was unconstitutional as applied to a flag hung upside down with a peace symbol affixed. The context imbued the display with protected elements of communication. Spence v. State of Washington, 418 U.S. 405 (1974).

The Washington flag desecration statute held unconstitutional in *Spence*, when applied to a mere display of an altered flag in the absence of a disturbance of the peace, was identical in all essential ways to this section. Koser v. County of Price, 834 F. Supp. 305 (1993).

SUBCHAPTER II

BRIBERY AND OFFICIAL MISCONDUCT

946.10 Bribery of public officers and employees. Whoever does either of the following is guilty of a Class H felony:

(1) Whoever, with intent to influence the conduct of any public officer or public employee in relation to any matter which by law is pending or might come before the officer or employee in the officer's or employee's capacity as such officer or employee or with intent to induce the officer or employee to do or omit to do any act in violation of the officer's or employee's lawful duty transfers or promises to the officer or employee or on the officer's or employee's behalf any property or any personal advantage which the officer or employee is not authorized to receive; or

(2) Any public officer or public employee who directly or indirectly accepts or offers to accept any property or any personal advantage, which the officer or employee is not authorized to receive, pursuant to an understanding that the officer or employee will act in a certain manner in relation to any matter which by law is pending or might come before the officer or employee in the officer's or employee's capacity as such officer or employee or that the officer or employee will do or omit to do any act in violation of the officer's or employee's lawful duty.

History: 1977 c. 173; 1993 a. 486; 2001 a. 109.

Circumstantial evidence supported an inference that the defendant intended to influence a public official's actions. State v. Rosenfeld, 93 Wis. 2d 325, 286 N.W.2d 596 (1980).

A sworn juror is a public employee under sub. (2). State v. Sammons, 141 Wis. 2d 833, 417 N.W.2d 190 (Ct. App. 1987).

946.11 Special privileges from public utilities. (1) Whoever does the following is guilty of a Class I felony:

(a) Whoever offers or gives for any purpose to any public officer or to any person at the request or for the advantage of such officer any free pass or frank, or any privilege withheld from any person, for the traveling accommodation or transportation of any person or property or for the transmission of any message or communication; or

(b) Any public officer who asks for or accepts from any person or uses in any manner or for any purpose any free pass or frank, or any privilege withheld from any person for the traveling accommodation or transportation of any person or property or for the transmission of any message or communication; or

(c) Any public utility or agent or officer thereof who offers or gives for any purpose to any public officer or to any person at the request or for the advantage of such officer, any frank or any privilege withheld from any person for any product or service produced, transmitted, delivered, furnished or rendered or to be produced, transmitted, delivered, furnished or rendered by any public utility, or any free product or service whatsoever; or

(d) Any public officer who asks for or accepts or uses in any manner or for any purpose any frank or privilege withheld from any person for any product or service produced, transmitted, delivered, furnished or rendered by any public utility.

(2) In this section:

(a) "Free pass" means any form of ticket or mileage entitling the holder to travel over any part of a railroad or other public transportation system and issued to the holder as a gift or in consideration or partial consideration of any service performed or to be performed by such holder, except that it does not include such ticket or mileage when issued to an employee of the railroad or public transportation system pursuant to a contract of employment and not in excess of the transportation rights of other employees of the same class and seniority, nor does it include free transportation to police officers or fire fighters when on duty;

(b) "Privilege" has the meaning designated under s. 11.40;

(c) "Public utility" has the meaning designated in s. 196.01 (5) and includes a telecommunications carrier, as defined in s. 196.01 (8m).

(3) This section does not apply to notaries public and regular employees or pensioners of a railroad or other public utility who hold public offices for which the annual compensation is not more than $300 to whom no passes or privileges are extended beyond those which are extended to other regular employees or pensioners of such corporation.

History: 1975 c. 93; 1977 c. 173; 1985 a. 135; 1993 a. 496; 2001 a. 109.

946.12 Misconduct in public office. Any public officer or public employee who does any of the following is guilty of a Class I felony:

(1) Intentionally fails or refuses to perform a known mandatory, nondiscretionary, ministerial duty of the officer's or employee's office or employment within the time or in the manner required by law; or

(2) In the officer's or employee's capacity as such officer or employee, does an act which the officer or employee knows is in excess of the officer's or employee's lawful authority or which the officer or employee knows the officer or employee is forbidden by law to do in the officer's or employee's official capacity; or

(3) Whether by act of commission or omission, in the officer's or employee's capacity as such officer or employee exercises a discretionary power in a manner inconsistent with the duties of the officer's or employee's office or employment or the rights of others and with intent to obtain a dishonest advantage for the officer or employee or another; or

(4) In the officer's or employee's capacity as such officer or employee, makes an entry in an account or record book or return, certificate, report or statement which in a material respect the officer or employee intentionally falsifies; or

(5) Under color of the officer's or employee's office or employment, intentionally solicits or accepts for the performance of any service or duty anything of value which the officer or employee knows is greater or less than is fixed by law.

History: 1977 c. 173; 1993 a. 486; 2001 a. 109.

Sub. (5) prohibits misconduct in public office with constitutional specificity. Ryan v. State, 79 Wis. 2d 83, 255 N.W.2d 910 (1977).

Sub. (3) applies to a corrupt act under color of office and under de facto powers conferred by practice and usage. A person who is not a public officer may be charged as a party to the crime of official misconduct. State v. Tronca, 84 Wis. 2d 68, 267 N.W.2d 216 (1978).

An on-duty prison guard did not violate sub. (2) by fornicating with a prisoner in a cell. State v. Schmit, 115 Wis. 2d 657, 340 N.W.2d 752 (Ct. App. 1983).

Sub. (3) is not unconstitutionally vague. It does not fail to give notice that hiring and directing staff to work on political campaigns on state time with state resources is a violation. A legislator's duty under this section may be determined by reference to a variety of sources including the Senate Policy Manual, applicable statutes, and legislative rules and guidelines. The Senate Policy Manual and senate guidelines restricted political campaigning with public resources. State v. Chvala, 2004 WI App 53, 271 Wis. 2d 115, 678 N.W.2d 880, 03-0442. Affirmed. 2005 WI 30, 279 Wis. 2d 216, 693 N.W.2d 747, 03-0442. See also State v. Jensen, 2004 WI App 89, 272 Wis. 2d 707, 684 N.W.2d 136, 03-0106. Affirmed. 2005 WI 31, 279 Wis. 2d 220, 694 N.W.2d 56, 03-0106.

Sub. (3) regulates conduct and not speech and is not subject to an overbreadth challenge under the 1st amendment. Legislators or their employees are not prohibited from doing or saying anything related to participation in political campaigns so long as they do not use state resources for that purpose. Legitimate legislative activity is not constrained by this statute. The line between "legislative activity" and "political activity" is sufficiently clear to prevent any confusion as to what conduct is prohibited under this statute. State v. Chvala, 2004 WI App 53, 271 Wis. 2d 115, 678 N.W.2d 880, 03-0442. Affirmed. 2005 WI 30, 279 Wis. 2d 216, 693 N.W.2d 747, 03-0442. See also State v. Jensen, 2004 WI App 89, 272 Wis. 2d 707, 684 N.W.2d 136, 03-0106. Affirmed. 2005 WI 31, 279 Wis. 2d 220, 694 N.W.2d 56, 03-0106.

Enforcement of sub. (3) against a legislator does not violate the separation of powers doctrine. Enforcement does not require the courts to enforce legislative rules governing the enactment of legislation. Rather, the courts are asked to enforce a penal statute that relates to the duties of a legislator. A court may interpret an internal legislative rule to determine criminal liability if, when applied to the facts of the specific case, the rule is not ambiguous. State v. Chvala, 2004 WI App 53, 271 Wis. 2d 115, 678 N.W.2d 880, 03-0442. Affirmed. 2005 WI 30, 279 Wis. 2d 216, 693 N.W.2d 747, 03-0442. See also State v. Jensen, 2004 WI App 89, 272 Wis. 2d 707, 684 N.W.2d 136, 03-0106. Affirmed. 2005 WI 31, 279 Wis. 2d 220, 694 N.W.2d 56, 03-0106.

946.13 Private interest in public contract prohibited. **(1)** Any public officer or public employee who does any of the following is guilty of a Class I felony:

(a) In the officer's or employee's private capacity, negotiates or bids for or enters into a contract in which the officer or employee has a private pecuniary interest, direct or indirect, if at the same time the officer or employee is authorized or required by law to participate in the officer's or employee's capacity as such officer or employee in the making of that contract or to perform in regard to that contract some official function requiring the exercise of discretion on the officer's or employee's part; or

(b) In the officer's or employee's capacity as such officer or employee, participates in the making of a contract in which the officer or employee has a private pecuniary interest, direct or indirect, or performs in regard to that contract some function requiring the exercise of discretion on the officer's or employee's part.

(2) Subsection (1) does not apply to any of the following:

(a) Contracts in which any single public officer or employee is privately interested that do not involve receipts and disbursements by the state or its political subdivision aggregating more than $15,000 in any year.

(b) Contracts involving the deposit of public funds in public depositories.

(c) Contracts involving loans made pursuant to s. 67.12.

(d) Contracts for the publication of legal notices required to be published, provided such notices are published at a rate not higher than that prescribed by law.

(e) Contracts for the issuance to a public officer or employee of tax titles, tax certificates, or instruments representing an interest in, or secured by, any fund consisting in whole or in part of taxes in the process of collection, provided such titles, certificates, or instruments are issued in payment of salary or other obligations due such officer or employee.

(f) Contracts for the sale of bonds or securities issued by a political subdivision of the state; provided such bonds or securities are sold at a bona fide public sale to the highest bidder and the public officer or employee acquiring the private interest has no duty to vote upon the issuance of the bonds or securities.

(g) Contracts with, or tax credits or payments received by, public officers or employees for wildlife damage claims or abatement under s. 29.889, for farmland preservation under s. 91.13, 2007 stats., or s. 91.60 or subch. IX of ch. 71, soil and water resource management under s. 92.14, soil erosion control under s. 92.10, 1985 stats., animal waste management under s. 92.15, 1985 stats., and nonpoint source water pollution abatement under s. 281.65.

(3) A contract entered into in violation of this section is void and the state or the political subdivision in whose behalf the contract was made incurs no liability thereon.

(4) In this section "contract" includes a conveyance.

(5) Subsection (1) (b) shall not apply to a public officer or public employee by reason of his or her holding not more than 2% of the outstanding capital stock of a corporate body involved in such contract.

(6) Subsection (3) shall not apply to contracts creating a public debt, as defined in s. 18.01 (4), if the requirements of s. 18.14 (1) have been met. No evidence of indebtedness, as defined in s. 18.01 (3), shall be invalidated on account of a violation of this section by a public officer or public employee, but such officer or employee and the surety on the officer's or employee's official bond shall be liable to the state for any loss to it occasioned by such violation.

(7) Subsection (1) shall not apply to any public officer or public employee, who receives compensation for the officer's or employee's services as such officer or employee, exclusive of advances or reimbursements for expenses, of less than $10,000 per year, merely by reason of his or her being a director, officer, employee, agent or attorney of or for a state or national bank, savings bank or trust company, or any holding company thereof. This subsection shall not apply to any such person whose compensation by such financial institution is directly dependent upon procuring public business. Compensation determined by longevity, general quality of work or the overall performance and condition of such financial institution shall not be deemed compensation directly dependent upon procuring public business.

(8) Subsection (1) shall not apply to contracts or transactions made or consummated or bonds issued under s. 66.1103.

(9) Subsection (1) does not apply to the member of a local committee appointed under s. 289.33 (7) (a) acting as a member of that committee in negotiation, arbitration or ratification of agreements under s. 289.33.

(10) Subsection (1) (a) does not apply to a member of a local workforce development board established under 29 USC 2832 or to a member of the council on workforce investment established under 29 USC 2821.

(11) Subsection (1) does not apply to an individual who receives compensation for services as a public officer or public employee of less than $10,000 annually, exclusive of advances or reimbursements for expenses, merely because that individual is a partner, shareholder or employee of a law firm that serves as legal counsel to the public body that the officer or employee serves, unless one of the following applies:

(a) The individual has an interest in that law firm greater than 2% of its net profit or loss.

(b) The individual participates in making a contract between that public body and that law firm or exercises any official discretion with respect to a contract between them.

(c) The individual's compensation from the law firm directly depends on the individual's procurement of business with public bodies.

(12) (a) In this subsection, "research company" means an entity engaged in commercial activity that is related to research conducted by an employee or officer of the University of Wisconsin System or to a product of such research.

(b) Subsection (1) does not apply to a contract between a research company and the University of Wisconsin System or any institution or college campus within the system for purchase of goods or services, including research, if the following apply:

1. The contract is approved by a University of Wisconsin System employee or officer responsible for evaluating and managing potential conflicts of interest.

2. Either of the following apply:

a. The contract together with all other contracts between the same parties require less than $250,000 in payments over a 24-month period.

b. The University of Wisconsin System submits the contract to the University of Wisconsin Board of Regents and, within 45 days, the University of Wisconsin Board of Regents does not notify the University of Wisconsin System that entering the contract would constitute a violation of sub. (1).

(c) Paragraphs (a) and (b) apply regardless of the date on which a contract was entered into.

History: 1971 c. 40 s. 93; 1973 c. 12 s. 37; 1973 c. 50, 265; 1977 c. 166, 173; 1983 a. 282; 1987 a. 344, 378, 399; 1989 a. 31, 232; 1993 a. 486; 1995 a. 27, 225, 227, 435; 1997 a. 35, 248; 1999 a. 9, 85; 1999 a. 150 s. 672; 2001 a. 109; 2005 a. 417; 2009 a. 28.

A county board member did not violate sub. (1) by accepting a job as airport manager while he was serving as a county board member for a county that was co-owner of the airport when he was appointed pursuant to advice and approval of the county corporation counsel. State v. Davis, 63 Wis. 2d 75, 216 N.W.2d 31 (1974).

Sub. (1) (b) is a strict liability offense. It does not include the element of corrupt motive. State v. Stoehr, 134 Wis. 2d 66, 396 N.W.2d 177 (1986).

The defendant could not have had a pecuniary interest in, or have negotiated in his private capacity for, a position that had not yet been posted. State v. Venema, 2002 WI App 202, 257 Wis. 2d. 491, 650 N.W.2d 898, 01-2502.

This section provides, as separate elements of the crime, the requirement that the conduct be inconsistent with the duties of one's office and the requirement that the conduct be done with intent to obtain a dishonest advantage. Although both elements may be proved through the same transaction, there must nevertheless be proof as to both elements. The state is required to prove beyond a reasonable doubt that the defendant exercised his or her discretionary power with the purpose to obtain a dishonest advantage. Guilt of misconduct in office does not require the defendant to have acted corruptly. State v. Jensen, 2007 WI App 256, 06-2095. See also State v. Schultz, 2007 WI App 257, 306 Wis. 2d 598, 743 N.W.2d 823, 06-2121.

A county board member employed by an engineering and survey firm may have a possible conflict of interest in public contracts. 60 Atty. Gen. 98.

A member of the Wisconsin board of vocational, technical and adult education [now Technical college] may not bid on and contract for the construction of a building project for a vocational-technical district that would entail expenditures exceeding $2,000 in any year, when availability of federal funds for use on such project is subject to his approval as a member of the board. 60 Atty. Gen. 310.

Discussion of conflicts arising from election of a school principal to the office of alderperson. 60 Atty. Gen. 367.

Appointment of counsel for indigents involves a public contract. 62 Atty. Gen. 118.

A county supervisor who is a pharmacist probably does not violate this section in furnishing prescription services to medicaid patients when the state is solely liable for payment. 64 Atty. Gen. 108.

The marital property law does not change the applicability of this section to a member of a governmental body when that body employs the member's spouse. 76 Atty. Gen. 15.

This section applies to county board or department purchases aggregating more than $5,000 from a county supervisor-owned business. 76 Atty. Gen. 178.

When the village board administers a community development block grant program, a member of the village board would violate this section if he or she obtained a loan in excess of $5,000 under the program. Acting as a private contractor, the board member would violate sub. (1) if he contracted to perform the construction work for a 3rd person who obtained a loan under the program. 76 Atty. Gen. 278.

Sub. (1) (a) may be violated by members of the Private Industry Councils when private or public entities of which they are executives, directors or board members receive benefits under the Job Training Partnership Act. 77 Atty. Gen. 306.

946.14 Purchasing claims at less than full value. Any public officer or public employee who in a private capacity directly or indirectly intentionally purchases for less than full value or discounts any claim held by another against the state or a political subdivision thereof or against any public fund is guilty of a Class I felony.

History: 1977 c. 173; 2001 a. 109.

946.15 Public construction contracts at less than full rate. (1) Any employer, or any agent or employee of an employer, who induces any person who seeks to be or is employed pursuant to a public contract as defined in s. 66.0901 (1) (c) or who seeks to be or is employed on a project on which a prevailing wage rate determination has been issued by the department of workforce development under s. 66.0903 (3), 103.49 (3), 103.50 (3), or 229.8275 (3) to give up, waive, or return any part of the compensation to which that person is entitled under his or her contract of employment or under the prevailing wage rate determination issued by the department, or who reduces the hourly basic rate of pay normally paid to an employee for work on a project on which a prevailing wage rate determination has not been issued under s. 66.0903 (3), 103.49 (3), 103.50 (3), or 229.8275 (3) during a week in which the employee works both on a project on which a prevailing wage rate determination has been issued and on a project on which a prevailing wage rate determination has not been issued, is guilty of a Class I felony.

(2) Any person employed pursuant to a public contract as defined in s. 66.0901 (1) (c) or employed on a project on which a prevailing wage rate determination has been issued by the department of workforce development under s. 66.0903 (3), 103.49 (3), 103.50 (3), or 229.8275 (3) who gives up, waives, or returns to the employer or agent of the employer any part of the compensation to which the employee is entitled under his or her contract of employment or under the prevailing wage determination issued by the department, or who gives up any part of the compensation to which he or she is normally entitled for work on a project on which a prevailing wage rate determination has not been issued under s. 66.0903 (3), 103.49 (3), 103.50 (3), or 229.8275 (3) during a week in which the person works part-time on a project on which a prevailing wage rate determination has been issued and part-time on a project on which a prevailing wage rate determination has not been issued, is guilty of a Class C misdemeanor.

(3) Any employer or labor organization, or any agent or employee of an employer or labor organization, who induces any person who seeks to be or is employed on a project on which a prevailing wage rate determination has been issued by the department of workforce development under s. 66.0903 (3), 103.49 (3), 103.50 (3), or 229.8275 (3) to permit any part of the wages to which that person is entitled under the prevailing wage rate determination issued by the department or local governmental unit to be deducted from the person's pay is guilty of a Class I felony, unless the deduction would be permitted under 29 CFR 3.5 or 3.6 from a person who is working on a project that is subject to 40 USC 3142.

(4) Any person employed on a project on which a prevailing wage rate determination has been issued by the department of workforce development under s. 66.0903 (3), 103.49 (3), 103.50 (3), or 229.8275 (3) who permits any part of the wages to which that person is entitled under the prevailing wage rate determination issued by the department or local governmental unit to be deducted from his or her pay is guilty of a Class C misdemeanor, unless the deduction would be permitted under 29 CFR 3.5 or 3.6 from a person who is working on a project that is subject to 40 USC 3142.

History: 1979 c. 269; 1995 a. 27 s. 9130 (4); 1995 a. 215; 1997 a. 3; 1999 a. 150, 167; 2001 a. 30, 109; 2009 a. 28; 2011 a. 32.

946.16 Judicial officer collecting claims. Any judicial officer who causes to be brought in a court over which the officer presides any action or proceeding upon a claim placed with the officer as agent or attorney for collection is guilty of a Class B misdemeanor.

History: 1977 c. 173.

946.17 Corrupt means to influence legislation; disclosure of interest. Any person who gives or agrees or offers to give anything of value to any person, for the service of such person or of any other person in procuring the passage or defeat of any measure before the legislature or before either house or any committee thereof, upon the contingency or condition of the passage or defeat of the measure, or who receives, or agrees to receive anything of value for such service, upon any such contingency or condition, or who, having a pecuniary or other interest, or acting as the agent or attorney of any person in procuring or attempting to procure the passage or defeat of any measure before the legislature or before either house or any committee thereof, attempts in any manner to influence any member of the legislature for or against the measure, without first making known to the member the real and true interest he or she has in the measure, either personally or as such agent or attorney, is guilty of a class A misdemeanor.

History: 1977 c. 278 s. 1; Stats. 1977 s. 946.17; 1993 a. 213.

946.18 Misconduct sections apply to all public officers. Sections 946.10 to 946.17 apply to public officers, whether legally constituted or exercising powers as if legally constituted.

History: 1977 c. 278; 1979 c. 110.

SUBCHAPTER III

PERJURY AND FALSE SWEARING

946.31 Perjury. (1) Whoever under oath or affirmation orally makes a false material statement which the person does not believe to be true, in any matter, cause, action or proceeding, before any of the following, whether legally constituted or exercising powers as if legally constituted, is guilty of a Class H felony:

(a) A court;

(b) A magistrate;

(c) A judge, referee or court commissioner;

(d) An administrative agency or arbitrator authorized by statute to determine issues of fact;

(e) A notary public while taking testimony for use in an action or proceeding pending in court;

(f) An officer authorized to conduct inquests of the dead;

(g) A grand jury;

(h) A legislative body or committee.

(2) It is not a defense to a prosecution under this section that the perjured testimony was corrected or retracted.

History: 1977 c. 173; 1979 c. 110; 2001 a. 109.

An arbitrator selected from a list provided by WERC is authorized by s. 111.10 to arbitrate as provided in ch. 298 [now ch. 788] and so is "authorized by statute" within meaning of s. 946.31 (1) (d). Layton School of Art & Design v. WERC, 82 Wis. 2d 324, 262 N.W.2d 218 (1978).

Perjury consists of a false statement that the defendant knew was false, was made under oath in a proceeding before a judge, and was material to the proceeding. Materiality is determined by whether the trial court could have relied on the testimony in making a decision, not on whether it actually did. State v. Munz, 198 Wis. 2d 379, 541 N.W.2d 821 (Ct. App. 1995), 95-0635.

A defendant may be charged with multiple counts of perjury based on testimony given in the same proceeding when each charge requires proof of an additional fact that the others do not. State v. Warren, 229 Wis. 2d 172, 599 N.W.2d 431 (Ct. App. 1999), 99-0129.

Issue preclusion does not bar the prosecution of a defendant for perjury who was tried and acquitted on a single issue when newly discovered evidence suggests that the defendant falsely testified on the issue. The state must show that: 1) the evidence came to the state's attention after trial; 2) the state was not negligent in failing to discover the evidence; 3) the evidence is material to the issue; and 4) the evidence is not merely cumulative. State v. Canon, 2001 WI 11, 241 Wis. 2d 164, 622 N.W.2d 270, 98-3519.

Perjury prosecutions after acquittals. Shellenberger. 71 MLR 703 (1988).

946.32 False swearing. (1) Whoever does either of the following is guilty of a Class H felony:

(a) Under oath or affirmation or upon signing a statement pursuant to s. 887.015 makes or subscribes a false statement which he or she does not believe is true, when such oath, affirmation, or statement is authorized or required by law or is required by any public officer or governmental agency as a prerequisite to such officer or agency taking some official action.

(b) Makes or subscribes 2 inconsistent statements under oath or affirmation or upon signing a statement pursuant to s. 887.015 in regard to any matter respecting which an oath, affirmation, or statement is, in each case, authorized or required by law or required by any public officer or governmental agency as a prerequisite to such officer or agency taking some official action, under circumstances which demonstrate that the witness or subscriber knew at least one of the statements to be false when made. The period of limitations within which prosecution may be commenced runs from the time of the first statement.

(2) Whoever under oath or affirmation or upon signing a statement pursuant to s. 887.015 makes or subscribes a false statement which the person does not believe is true is guilty of a Class A misdemeanor.

History: 1977 c. 173; 1993 a. 486; 2001 a. 109; 2009 a. 166.

This section applies to oral statements. The mere fact that a statement is permitted by law does not mean it is "authorized by law" within meaning of sub. (1) (a). State v. Devitt, 82 Wis. 2d 262, 262 N.W.2d 73 (1978).

The reference to the statute of limitations in sub. (1) (b) does not make it an element of the offense. The statute of limitations is an affirmative defense and is subject to tolling under s. 939.74. State v. Slaughter, 200 Wis. 2d 190, 546 N.W.2d 490 (Ct. App. 1996), 95-0141.

What is to be "authorized or required" under sub. (1) (b) is the oath itself, not the matter respecting which the oath is taken. State v. Slaughter, 200 Wis. 2d 190, 546 N.W.2d 490 (Ct. App. 1996), 95-0141.

SUBCHAPTER IV

INTERFERENCE WITH LAW ENFORCEMENT

946.40 Refusing to aid officer. (1) Whoever, without reasonable excuse, refuses or fails, upon command, to aid any person known by the person to be a peace officer is guilty of a Class C misdemeanor.

(2) This section does not apply if under the circumstances the officer was not authorized to command such assistance.

History: 1977 c. 173.

Under s. 343.305, hospital personnel must administer a blood alcohol test and report the results at the request of an officer, subject to the penalty under 946.40. 68 Atty. Gen. 209.

In certain circumstances a peace officer may command medical staff at a hospital or clinic to gather evidence from a sexual assault victim. 72 Atty. Gen. 107.

946.41 Resisting or obstructing officer. (1) Except as provided in subs. (2m) and (2r), whoever knowingly resists or obstructs an officer while such officer is doing any act in an official capacity and with lawful authority is guilty of a Class A misdemeanor.

(2) In this section:

(a) "Obstructs" includes without limitation knowingly giving false information to the officer or knowingly placing physical evidence with intent to mislead the officer in the performance of his or her duty including the service of any summons or civil process.

(b) "Officer" means a peace officer or other public officer or public employee having the authority by virtue of the officer's or employee's office or employment to take another into custody.

(c) "Soft tissue injury" means an injury that requires medical attention to a tissue that connects, supports, or surrounds other structures and organs of the body and includes tendons, ligaments, fascia, skin, fibrous tissues, fat, synovial membranes, muscles, nerves, and blood vessels.

(2m) Whoever violates sub. (1) under all of the following circumstances is guilty of a Class H felony:

(a) The violator gives false information or places physical evidence with intent to mislead an officer.

(b) At a criminal trial, the trier of fact considers the false information or physical evidence.

(c) The trial results in the conviction of an innocent person.

(2r) Whoever violates sub. (1) and causes substantial bodily harm or a soft tissue injury to an officer is guilty of a Class H felony.

(2t) Whoever violates sub. (1) and causes great bodily harm to an officer is guilty of a Class G felony.

(3) Whoever by violating this section hinders, delays or prevents an officer from properly serving or executing any summons or civil process, is civilly liable to the person injured for any actual loss caused thereby and to the officer or the officer's superior for any damages adjudged against either of them by reason thereof.

History: 1977 c. 173; 1983 a. 189; 1989 a. 121; 1993 a. 486; 2001 a. 109; 2009 a. 251; 2011 a. 74.

The state must prove that the accused knew that the officer was acting in an official capacity and knew that the officer was acting with lawful authority when

the accused allegedly resisted or obstructed the officer. State v. Lossman, 118 Wis. 2d 526, 348 N.W.2d 159 (1984).

Knowingly providing false information with intent to mislead is obstruction as a matter of law. State v. Caldwell, 154 Wis. 2d 683, 454 N.W.2d 13 (Ct. App. 1990).

No law allows officers to arrest for obstruction on a person's refusal to give his or her name. Mere silence is insufficient to constitute obstruction. Henes v. Morrissey, 194 Wis. 2d 339, 533 N.W.2d 802 (1995).

Fleeing and hiding from an officer may constitute obstructing. State v. Grobstick, 200 Wis. 2d 242, 546 N.W.2d 187 (1996), 94-1045.

There is no exculpatory denial exception under this section. The statute criminalizes all false statements knowingly made and with intent to mislead the police. The state should have sound reasons for believing that a defendant knowingly made false statements with intent to mislead the police and not out of a good-faith attempt to defend against accusations of a crime. The latter can never include the former. State v. Reed, 2005 WI 53, 280 Wis. 2d 68, 695 N.W.2d 315, 03-1781.

"Lawful authority," as that term is used in sub. (1), requires that police conduct be in compliance with both the federal and state constitutions, in addition to any applicable statutes. State v. Ferguson, 2009 WI 50, 317 Wis. 2d 586, 767 N.W.2d 187, 07-2095.

946.415 Failure to comply with officer's attempt to take person into custody. (1) In this section, "officer" has the meaning given in s. 946.41 (2) (b).

(2) Whoever intentionally does all of the following is guilty of a Class I felony:

(a) Refuses to comply with an officer's lawful attempt to take him or her into custody.

(b) Retreats or remains in a building or place and, through action or threat, attempts to prevent the officer from taking him or her into custody.

(c) While acting under pars. (a) and (b), remains or becomes armed with a dangerous weapon or threatens to use a dangerous weapon regardless of whether he or she has a dangerous weapon.

History: 1995 a. 93; 2001 a. 109.

This section delineates one crime: a suspect's armed, physical refusal to be taken into custody. It can be committed by action or threat, which are alternative ways of threatening an officer to avoid being taken into custody. A jury instruction requiring unanimity on which occurred is not required. State v. Koeppen, 2000 WI App 121, 237 Wis. 2d 418, 614 N.W.2d 530, 99-0418.

946.42 Escape. (1) In this section:

(a) 1. "Custody" includes without limitation all of the following:

a. Actual custody of an institution, including a juvenile correctional facility, as defined in s. 938.02 (10p), a secured residential care center for children and youth, as defined in s. 938.02 (15g), a juvenile detention facility, as defined in s. 938.02 (10r), a Type 2 residential care center for children and youth, as defined in s. 938.02 (19r), a facility used for the detention of persons detained under s. 980.04 (1), a facility specified in s. 980.065, or a juvenile portion of a county jail.

b. Actual custody of a peace officer or institution guard.

bm. Actual custody or authorized physical control of a correctional officer.

c. Actual custody or authorized physical control of a probationer, parolee, or person on extended supervision by the department of corrections.

e. Constructive custody of persons placed on supervised release under ch. 980.

f. Constructive custody of prisoners and juveniles subject to an order under s. 48.366, 938.183, 938.34 (4d), (4h), or (4m), or 938.357 (4) or (5) (e) temporarily outside the institution whether for the purpose of work, school, medical care, a leave granted under s. 303.068, a temporary leave or furlough granted to a juvenile, or otherwise.

g. Custody of the sheriff of the county to which the prisoner was transferred after conviction.

h. Custody of a person subject to a confinement order under s. 973.09 (4).

2. "Custody" does not include the constructive custody of a probationer, parolee, or person on extended supervision by the department of corrections or a probation, extended supervision, or parole agent or the constructive custody of a person who has been released to aftercare supervision under ch. 938.

(b) "Escape" means to leave in any manner without lawful permission or authority.

(c) "Legal arrest" includes without limitation an arrest pursuant to process fair on its face notwithstanding insubstantial irregularities and also includes taking a juvenile into custody under s. 938.19.

(2) A person in custody who intentionally escapes from custody under any of the following circumstances is guilty of a Class A misdemeanor:

(a) Pursuant to a legal arrest for or lawfully charged with or convicted of a violation of a statutory traffic regulation, a statutory offense for which the penalty is a forfeiture or a municipal ordinance.

(b) Lawfully taken into custody under s. 938.19 for a violation of or lawfully alleged or adjudged under ch. 938 to have violated a statutory traffic regulation, a statutory provision for which the penalty is a forfeiture or a municipal ordinance.

(c) Pursuant to a civil arrest or body execution.

(2m) A person who is in the custody of a probation, parole, or extended supervision agent, or a correctional officer, based on an allegation or a finding that the person violated the rules or conditions of probation, parole, or extended supervision and who intentionally escapes from custody is guilty of a Class H felony.

(3) A person in custody who intentionally escapes from custody under any of the following circumstances is guilty of a Class H felony:

(a) Pursuant to a legal arrest for, lawfully charged with or convicted of or sentenced for a crime.

(b) Lawfully taken into custody under s. 938.19 for or lawfully alleged or adjudged under ch. 938 to be delinquent on the basis of a violation of a criminal law.

(c) Subject to a disposition under s. 938.34 (4d), (4h) or (4m), to a placement under s. 938.357 (4) or to aftercare revocation under s. 938.357 (5) (e).

(d) Subject to an order under s. 48.366.

(e) In custody under the circumstances described in sub. (2) and leaves the state to avoid apprehension. Leaving the state and failing to return is prima facie evidence of intent to avoid apprehension.

(f) Pursuant to a legal arrest as a fugitive from justice in another state.

(g) Committed to the department of health services under ch. 971 or 975.

(3m) A person who intentionally escapes from custody under any of the following circumstances is guilty of a Class F felony:

(a) While subject to a detention order under s. 980.04 (1) or a custody order under s. 980.04 (3).

(b) While subject to an order issued under s. 980.06 committing the person to custody of the department of health services, regardless of whether the person is placed in institutional care or on supervised release.

(4) If a person is convicted of an escape under this section, the maximum term of imprisonment for the escape may be increased by not more than 5 years if an individual who had custody of the person who escaped is injured during the course of the escape.

History: 1971 c. 164 s. 89; 1975 c. 39; 1977 c. 173, 312, 354, 418; 1985 a. 320; 1987 a. 27, 238, 352; 1987 a. 403 ss. 238, 239, 256; 1989 a. 31; 1993 a. 16, 377, 385, 491; 1995 a. 27 ss. 7233m, 7233p, 9126 (19); 1995 a. 77, 154, 352, 390; 1997 a. 35, 283; 1999 a. 9; 2001 a. 109; 2005 a. 344, 434; 2007 a. 20 s. 9121 (6) (a); 2007 a. 97, 226.

There is no denial of equal protection in the punishment under sub. (3) (d) [now (3) (g)] of persons committed under the sex crimes law when persons civilly committed are not subject to the same statute. State v. Neutz, 69 Wis. 2d 292, 230 N.W.2d 806 (1975).

A defendant's escape under the work-release statute was an escape under s. 946.42 (3). Brown v. State, 73 Wis. 2d 703, 245 N.W.2d 670 (1976).

Because an individual committed under ch. 975 has not been sentenced within the meaning of sub. (4), a sentence for an escape from commitment custody need not be served consecutive to the commitment. State v. Hungerford, 76 Wis. 2d 171, 251 N.W.2d 9 (1977).

The sentence for an escape conviction may be consecutive to a sex crime commitment. State v. Kruse, 101 Wis. 2d 387, 305 N.W.2d 85 (1981).

It is not necessary to leave the physical boundaries of an institution to complete an act of escape. State v. Sugden, 143 Wis. 2d 728, 422 N.W.2d 624 (1988).

Under sub. (5) (b) [now sub. (1) (a)], an individual is "in custody" once freedom of movement is restricted; one lawfully arrested may not leave without permission. State v. Adams, 152 Wis. 2d 68, 447 N.W.2d 90 (Ct. App. 1989).

A person can be "in custody" without being under "legal arrest," but a person cannot be under "legal arrest" without being "in custody." State v. Hoffman, 163 Wis. 2d 752, 472 N.W.2d 558 (Ct. App. 1991).

A traffic regulation under sub. (2) (a) does not include any offense punishable as a crime. State v. Beasley, 165 Wis. 2d 97, 477 N.W.2d 57 (Ct. App. 1991).

Upon conviction of a crime, a person is in custody regardless of physical control. Leaving without the court's granting release is escape. State v. Scott, 191 Wis. 2d 146, 528 N.W.2d 46 (Ct. App. 1995).

As used in sub. (1) (a), "medical care" includes treatment at drug and alcohol rehabilitation centers. State v. Sevelin, 204 Wis. 2d 127, 554 N.W.2d 521 (Ct. App. 1996), 96-0729.

Failure to return to jail while on work release from incarceration for failure to pay a municipal forfeiture is escape under this section. State v. Smith, 214 Wis. 2d 541, 571 N.W.2d 472 (Ct. App. 1997), 97-0266.

Detention at the Wisconsin Resource Center while awaiting evaluation and trial on a petition for commitment as a sexually violent person under Chapter 980 does not subject the detainee to escape charges under this section. Thorson v. Schwarz, 2004 WI 96, 274 Wis. 2d 1, 681 N.W.2d 914, 02-3380.

Testimony adduced at trial may establish the element of being sentenced for a crime, regardless of whether the jury actually sees the certified judgment of conviction. State v. Hughes, 2011 WI App 87, 334 Wis. 2d 445, 799 N.W.2d 504, 10-1322.

946.425 Failure to report to jail. (1) Any person who is subject to a series of periods of imprisonment under s. 973.03 (5) (b) and who intentionally fails to report to the county jail as required under the sentence is guilty of a Class H felony.

(1m) (a) Any person who receives a stay of execution of a sentence of imprisonment of less than 10 days to a county jail under s. 973.15 (8) (a) and who intentionally fails to report to the county jail as required under the sentence is guilty of a Class A misdemeanor.

(b) Any person who receives a stay of execution of a sentence of imprisonment of 10 or more days to a county jail under s. 973.15 (8) (a) and who intentionally fails to report to the county jail as required under the sentence is guilty of a Class H felony.

(1r) (a) Any person who is subject to a confinement order under s. 973.09 (4) as the result of a conviction for a misdemeanor and who intentionally fails to report to the county jail or house of correction as required under the order is guilty of a Class A misdemeanor.

(b) Any person who is subject to a confinement order under s. 973.09 (4) as the result of a conviction for a felony and who intentionally fails to report to the county jail or house of correction as required under the order is guilty of a Class H felony.

(3) A prosecutor may not charge a person with violating both subs. (1) and (1m) regarding the same incident or occurrence.

History: 1989 a. 85; 1993 a. 273; 1995 a. 154; 2001 a. 109.

Custody under sub. (1) (a) does not include the custody of a parole or probation officer. State v. Zimmerman, 2001 WI App 238, 248 Wis. 2d 370, 635 N.W.2d 864, 00-3173.

946.43 Assaults by prisoners. (1m) Any prisoner confined to a state prison or other state, county or municipal detention facility who intentionally does any of the following is guilty of a Class F felony:

(a) Places an officer, employee, visitor or another inmate of such prison or institution in apprehension of an immediate battery likely to cause death or great bodily harm; or

(b) Confines or restrains an officer, employee, visitor or another inmate of such prison or institution without the person's consent.

(2m) (a) Any prisoner confined to a state prison or other state, county or municipal detention facility who throws or expels blood, semen, vomit, saliva, urine, feces or other bodily substance at or toward an officer, employee or visitor of the prison or facility or another prisoner of the prison or facility under all of the following circumstances is guilty of a Class I felony:

1. The prisoner throws or expels the blood, semen, vomit, saliva, urine, feces or other bodily substance with the intent that it come into contact with the officer, employee, visitor or other prisoner.

2. The prisoner throws or expels the blood, semen, vomit, saliva, urine, feces or other bodily substance with the intent either to cause bodily harm to the officer, employee, visitor or other prisoner or to abuse, harass, offend, intimidate or frighten the officer, employee, visitor or other prisoner.

3. The officer, employee, visitor or other prisoner does not consent to the blood, semen, vomit, saliva, urine, feces or other bodily substance being thrown or expelled at or toward him or her.

(b) A court shall impose a sentence for a violation of par. (a) consecutive to any sentence previously imposed or which may be imposed for any crime or offense for which the person was in custody when he or she committed the violation of par. (a).

History: 1977 c. 173, 273; 1999 a. 188; 2001 a. 109.

946.44 Assisting or permitting escape. (1) Whoever does the following is guilty of a Class H felony:

(a) Any officer or employee of an institution where prisoners are detained who intentionally permits a prisoner in the officer's or employee's custody to escape; or

(b) Whoever with intent to aid any prisoner to escape from custody introduces into the institution where the prisoner is detained or transfers to the prisoner anything adapted or useful in making an escape.

(1g) Any public officer or public employee who violates sub. (1) (a) or (b) is guilty of a Class F felony.

(1m) Whoever intentionally introduces into an institution where prisoners are detained or transfers to a prisoner any firearm, whether loaded or unloaded, or any article used or fashioned in a manner to lead another person to believe it is a firearm, is guilty of a Class F felony.

(2) In this section:

(a) "Custody" has the meaning designated in s. 946.42 (1) (a).

(b) "Escape" has the meaning designated in s. 946.42 (1) (b).

(c) "Institution" includes a juvenile correctional facility, as defined in s. 938.02 (10p), a secured residential care center for children and youth, as defined in s. 938.02 (15g), and a Type 2 residential care center for children and youth, as defined in s. 938.02 (19r).

(d) "Prisoner" includes a person who is under the supervision of the department of corrections under s. 938.34 (4h), who is placed in a juvenile correctional facility or a secured residential care center for children and youth under s. 938.183, 938.34 (4m), or 938.357 (4) or (5) (e), who is placed in a Type 2 residential care center for children and youth under s. 938.34 (4d), or who is subject to an order under s. 48.366.

History: 1977 c. 173; 1985 a. 320; 1987 a. 27, 236, 238, 403; 1989 a. 31, 107; 1993 a. 16, 377, 385, 486, 491; 1995 a. 27, 77, 352; 1999 a. 9; 2001 a. 109; 2005 a. 344.

946.45 Negligently allowing escape. (1) Any officer or employee of an institution where prisoners are detained who, through his or her neglect of duty, allows a prisoner in his or her custody to escape is guilty of a Class B misdemeanor.

(2) In this section:

(a) "Custody" has the meaning designated in s. 946.42 (1) (a).

(b) "Escape" has the meaning designated in s. 946.42 (1) (b).

(c) "Institution" includes a juvenile correctional facility, as defined in s. 938.02 (10p), a secured residential care center for children and youth, as defined in s. 938.02 (15g), and a Type 2 residential care center for children and youth, as defined in s. 938.02 (19r).

(d) "Prisoner" includes a person who is under the supervision of the department of corrections under s. 938.34 (4h), who is placed in a juvenile correctional facility or a secured residential care center for children and youth under s. 938.183, 938.34 (4m) or 938.357 (4) or (5) (e), who is placed in a Type 2 residential care center for children and youth under s. 938.34 (4d), or who is subject to an order under s. 48.366.

History: 1977 c. 173; 1985 a. 320; 1987 a. 27, 238; 1989 a. 31, 107; 1993 a. 16, 377, 385, 491; 1995 a. 27, 77, 352; 1999 a. 9; 2005 a. 344.

946.46 Encouraging violation of probation, extended supervision or parole. Whoever intentionally aids or encourages a parolee, probationer or person on extended supervision or any person committed to the custody or supervision of the department of corrections or a county department under s. 46.215, 46.22 or 46.23 by reason of crime or delinquency to abscond or violate a term or condition of parole, extended supervision or probation is guilty of a Class A misdemeanor.

History: 1971 c. 164 s. 89; 1977 c. 173; 1989 a. 31, 107; 1993 a. 385; 1995 a. 27; 1997 a. 283.

946.465 Tampering with a global positioning system tracking device. Whoever, without the authorization of the department of corrections, intentionally tampers with, or blocks, diffuses, or prevents the clear reception of, a signal transmitted by, a global positioning system tracking device or comparable technology that is provided under s. 301.48 is guilty of a Class I felony.

NOTE: This section is amended eff. 1-1-14 by 2011 Wis. Act 266 to read:

946.465 Tampering with a global positioning system tracking device. Whoever, without the authorization of the department of corrections, intentionally tampers with, or blocks, diffuses, or prevents the clear reception of, a signal transmitted by, a global positioning system tracking device or comparable technology that is provided under s. 301.48 or 301.49 is guilty of a Class I felony.

History: 2005 a. 431; 2007 a. 181; 2011 a. 266.

946.47 Harboring or aiding felons. (1) Whoever does either of the following is guilty of a Class I felony:

(a) With intent to prevent the apprehension of a felon, harbors or aids him or her; or

(b) With intent to prevent the apprehension, prosecution or conviction of a felon, destroys, alters, hides, or disguises physical evidence or places false evidence.

(2) As used in this section "felon" means either of the following:

(a) A person who commits an act within the jurisdiction of this state which constitutes a felony under the law of this state; or

(b) A person who commits an act within the jurisdiction of another state which is punishable by imprisonment for one year or more in a state prison or penitentiary under the law of that state and would, if committed in this state, constitute a felony under the law of this state.

(3) This section does not apply to the felon, to the felon's spouse or to a parent, grandparent, child, grandchild, brother or sister of the felon, whether by blood, marriage or adoption.

History: 1977 c. 173; 1993 a. 486; 1999 a. 162; 2001 a. 109.

A person may be a "felon" under (2) (a) even though not convicted of felony. State v. Jones, 98 Wis. 2d 679, 298 N.W.2d 100 (Ct. App. 1980).

The application of this section is not restricted to persons wanted for conduct constituting a felony for which there has been no conviction, but also applies to persons previously convicted of a felony who are sought for other reasons. State v. Schmidt, 221 Wis. 2d 189, 585 N.W.2d 16 (Ct. App. 1998), 97-3131.

946.48 Kidnapped or missing persons; false information. (1) Whoever sends, delivers, or causes to be transmitted to another any written or oral communication with intent to induce a false belief that the sender has knowledge of the whereabouts, physical condition, or terms imposed upon the return of a kidnapped or missing person is guilty of a Class H felony.

(2) Violation of this section may be prosecuted in either the county where the communication was sent or the county in which it was received.

History: 1977 c. 173; 2001 a. 109.

946.49 Bail jumping. (1) Whoever, having been released from custody under ch. 969, intentionally fails to comply with the terms of his or her bond is:

(a) If the offense with which the person is charged is a misdemeanor, guilty of a Class A misdemeanor.

(b) If the offense with which the person is charged is a felony, guilty of a Class H felony.

(2) A witness for whom bail has been required under s. 969.01 (3) is guilty of a Class I felony for failure to appear as provided.

History: 1977 c. 173; 2001 a. 109.

Under sub. (1), a charge underlying a bail-jumping charge is not a lesser-included offense, and punishment for both does not offend double-jeopardy protection. State v. Nelson, 146 Wis. 2d 442, 432 N.W.2d 115 (Ct. App. 1988).

Conviction under this section resulting from the conviction for another crime committed while released on bail does not constitute double jeopardy. State v. West, 181 Wis. 2d 792, 510 N.W.2d (Ct. App. 1993).

A defendant released without bail is not subject to a bond and cannot violate this section. State v. Dawson, 195 Wis. 2d 161, 536 N.W.2d 119 (Ct. App. 1995), 94-2570.

A court in sentencing a defendant for a violation of this section may take into account the underlying acts that resulted in the violation. State v. Schordie, 214 Wis. 2d 229, 570 N.W.2d 881 (Ct. App. 1997), 97-0071.

Charging a defendant with 2 counts of bail jumping when the defendant violated multiple conditions of a single bond was not multiplicitous. State v. Anderson, 219 Wis. 2d 739, 580 N.W.2d 329 (1998), 96-0087.

A positive urine test was sufficient to establish that the defendant intentionally violated the conditions of a bond prohibiting the use of illegal drugs. State v. Taylor, 226 Wis. 2d 490, 595 N.W.2d 56 (Ct. App. 1999), 98-0962.

When the meaning and scope of a bond condition is at issue for purposes of determining whether there is the basis for a criminal charge, the threshold question is whether the bond condition itself covers the defendant's conduct in the case, and not whether the evidence plausibly establishes that the defendant believed that he or she was violating the condition. State v. Schaab, 2000 WI App 204, 238 Wis. 2d 598, 617 N.W.2d 872, 99-2203.

When a bail jumping charge is premised upon the commission of a further crime, the jury must be properly instructed regarding the elements of that further crime. When a bail jumping charge is premised upon the commission of a lesser-included offense of the further crime, the jury must be properly instructed under the law of lesser-included offenses. State v. Henning, 2003 WI App 54, 261 Wis. 2d 664, 660 N.W.2d 698, 02-1287. Reversed on other grounds, 2004 WI 89, 273 Wis. 2d 352, 681 N.W.2d 871, 02-1287.

"Release" refers to the defendant posting the bond, be it signature or cash, and need not be accompanied by the defendant's physical departure from the jailhouse. Here, the defendant made bond on a signature bond by signing it, therefore committing himself to its conditions, although he did not post 2 required cash bonds. While not physically released, the defendant was subject to this section for violating the conditions of the signature bond. State v. Dewitt, 2008 WI App 134, 313 Wis. 2d 794, 758 N.W.2d 201, 07-2869.

The defendant's argument that his conviction on two bail-jumping counts was multiplicitous because the preliminary hearings at which he failed to appear were scheduled for the same time and he had signed only one bond for the two underlying cases failed because the counts were different in fact. Proof of notification and failure to appear in one case would not prove notification and failure to appear in the other, making the two charges different in nature and therefore different in fact. State v. Eaglefeathers, 2009 WI App 2, 316 Wis. 2d 152, 762 N.W.2d 690, 07-0845.

946.495 Violation of nonsecure custody order. If a person has been placed in nonsecure custody by an intake worker under s. 938.207 or by a judge or circuit court commissioner under s. 938.21 (4) and the person is alleged to be delinquent under s. 938.12, alleged to be in need of protection or services under s. 938.13 (12) or has been taken into custody for committing an act that is a violation of a state or federal criminal law, the person is guilty of a Class A misdemeanor if he or she intentionally fails to comply with the conditions of his or her placement in nonsecure custody.

History: 1997 a. 328; 2001 a. 61.

946.50 Absconding. Any person who is adjudicated delinquent, but who intentionally fails to appear before the court assigned to exercise jurisdiction under chs. 48 and 938 for his or her dispositional hearing under s. 938.335, and who does not return to that court for a dispositional hearing before attaining the age of 17 years is guilty of the following:

(1) A Class A felony, if the person was adjudicated delinquent for committing an act that would be a Class A felony if committed by an adult.

(2) A Class B felony, if the person was adjudicated delinquent for committing an act that would be a Class B felony if committed by an adult.

(3) A Class C felony, if the person was adjudicated delinquent for committing an act that would be a Class C felony if committed by an adult.

(4) A Class D felony, if the person was adjudicated delinquent for committing an act that would be a Class D felony if committed by an adult.

(5) A Class E felony, if the person was adjudicated delinquent for committing an act that would be a Class E felony if committed by an adult.

(5d) A Class F felony, if the person was adjudicated delinquent for committing an act that would be a Class F felony if committed by an adult.

(5h) A Class G felony, if the person was adjudicated delinquent for committing an act that would be a Class G felony if committed by an adult.

(5p) A Class H felony, if the person was adjudicated delinquent for committing an act that would be a Class H felony if committed by an adult.

(5t) A Class I felony, if the person was adjudicated delinquent for committing an act that would be a Class I felony if committed by an adult.

(6) A Class A misdemeanor, if the person was adjudicated delinquent for committing an act that would be a misdemeanor if committed by an adult.

History: 1995 a. 77; 2001 a. 109.

SUBCHAPTER V

OTHER CRIMES AFFECTING THE ADMINISTRATION OF GOVERNMENT

946.60 Destruction of documents subject to subpoena. **(1)** Whoever intentionally destroys, alters, mutilates, conceals, removes, withholds or transfers possession of a document, knowing that the document has been subpoenaed by a court or by or at the request of a district attorney or the attorney general, is guilty of a Class I felony.

(2) Whoever uses force, threat, intimidation or deception, with intent to cause or induce another person to destroy, alter, mutilate, conceal, remove, withhold or transfer possession of a subpoenaed document, knowing that the document has been subpoenaed by a court or by or at the request of a district attorney or the attorney general, is guilty of a Class I felony.

(3) It is not a defense to a prosecution under this section that:

(a) The document would have been legally privileged or inadmissible in evidence.

(b) The subpoena was directed to a person other than the defendant.

History: 1981 c. 306; 2001 a. 109.

946.61 Bribery of witnesses. **(1)** Whoever does any of the following is guilty of a Class H felony:

(a) With intent to induce another to refrain from giving evidence or testifying in any civil or criminal matter before any court, judge, grand jury, magistrate, court commissioner, referee or administrative agency authorized by statute to determine issues of fact, transfers to him or her or on his or her behalf, any property or any pecuniary advantage; or

(b) Accepts any property or any pecuniary advantage, knowing that such property or pecuniary advantage was transferred to him or her or on his or her behalf with intent to induce him or her to refrain from giving evidence or testifying in any civil or criminal matter before any court, judge, grand jury, magistrate, court commissioner, referee, or administrative agency authorized by statute to determine issues of fact.

(2) This section does not apply to a person who is charged with a crime, or any person acting in his or her behalf, who transfers property to which he or she believes the other is legally entitled.

History: 1977 c. 173; 1979 c. 175; 1993 a. 486; 2001 a. 109.

A conviction under this section cannot be sustained if the evidence shows that the defendant only transferred property to induce false testimony. State v. Duda, 60 Wis. 2d 431, 210 N.W.2d 763 (1973).

This section only prohibits paying a person to "refrain" from testifying and does not include influencing testimony. State v. Manthey, 169 Wis. 2d 673, 487 N.W.2d 44 (Ct. App. 1992).

946.64 Communicating with jurors. Whoever, with intent to influence any person, summoned or serving as a juror, in relation to any matter which is before that person or which may be brought before that person, communicates with him or her otherwise than in the regular course of proceedings in the trial or hearing of that matter is guilty of a Class I felony.

History: 1977 c. 173; 2001 a. 109.

946.65 Obstructing justice. **(1)** Whoever for a consideration knowingly gives false information to any officer of any court with intent to influence the officer in the performance of official functions is guilty of a Class I felony.

(2) "Officer of any court" includes the judge, reporter, bailiff and district attorney.

History: 1977 c. 173; 2001 a. 109.

Only conduct that involves a 3rd-party contracting with another to give false information to a court officer in an attempt to influence the performance of the officer's official function is proscribed by this section. State v. Howell, 141 Wis. 2d 58, 414 N.W.2d 54 (Ct. App. 1987).

946.66 False complaints of police misconduct. **(1)** In this section:

(a) "Complaint" means a complaint that is filed as part of a procedure established under s. 66.0511 (3).

(b) "Law enforcement officer" has the meaning given in s. 165.85 (2) (c).

(2) Whoever knowingly makes a false complaint regarding the conduct of a law enforcement officer is subject to a Class A forfeiture.

History: 1997 a. 176; 2001 a. 30.

946.67 Compounding crime. **(1)** Whoever receives any property in return for a promise, express or implied, to refrain from prosecuting a crime or to refrain from giving information bearing on the probable success of a criminal prosecution is guilty of a Class A misdemeanor.

(2) Subsection (1) does not apply if the act upon which the actual or supposed crime is based has caused a loss for which a civil action will lie and the person who has sustained such loss reasonably believes that he or she is legally entitled to the property received.

(3) No promise mentioned in this section shall justify the promisor in refusing to testify or to produce evidence against the alleged criminal when subpoenaed to do so.

History: 1977 c. 173; 1993 a. 486.

946.68 Simulating legal process. (1g) In this section, "legal process" includes a subpoena, summons, complaint, warrant, injunction, writ, notice, pleading, order or other document that directs a person to perform or refrain from performing a specified act and compliance with which is enforceable by a court or governmental agency.

(1r) (a) Except as provided in pars. (b) and (c), whoever sends or delivers to another any document which simulates legal process is guilty of a Class I felony.

(b) If the document under par. (a) is sent or delivered with intent to induce payment of a claim, the person is guilty of a Class H felony.

(c) If the document under par. (a) simulates any criminal process, the person is guilty of a Class H felony.

(2) Proof that a document specified under sub. (1r) was mailed or was delivered to any person with intent that it be forwarded to the intended recipient is sufficient proof of sending.

(3) This section applies even though the simulating document contains a statement to the effect that it is not legal process.

(4) Violation of this section may be prosecuted in either the county where the document was sent or the county in which it was delivered.

History: 1977 c. 173; 1997 a. 27; 2001 a. 109.

946.69 Falsely assuming to act as a public officer or employee or a utility employee. (1) In this section, "utility" means any of the following:

(a) A public utility, as defined in s. 196.01 (5).

(b) A municipal power district, as defined in s. 198.01 (6).

(c) A cooperative association organized under ch. 185 or 193 to furnish or provide telecommunications service, or a cooperative organized under ch. 185 to furnish or provide gas, electricity, power or water.

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

(a) Assumes to act in an official capacity or to perform an official function, knowing that he or she is not the public officer or public employee or the employee of a utility that he or she assumes to be.

(b) Exercises any function of a public office, knowing that he or she has not qualified so to act or that his or her right so to act has ceased.

History: 1977 c. 173; 1993 a. 146, 486; 1995 a. 225; 1997 a. 27; 2001 a. 109; 2005 a. 441.

Sub. (1) is not unconstitutionally vague or overbroad. State v. Wickstrom, 118 Wis. 2d 339, 348 N.W.2d 183 (Ct. App. 1984).

946.70 Impersonating peace officers, fire fighters, or other emergency personnel. (1) (a) Except as provided in sub. (2), whoever impersonates a peace officer with intent to mislead others into believing that the person is actually a peace officer is guilty of a Class A misdemeanor.

(b) Except as provided in sub. (2), whoever impersonates a fire fighter with intent to mislead others into believing that the person is actually a fire fighter is guilty of a Class A misdemeanor.

(c) Except as provided in sub. (2), whoever impersonates an emergency medical technician, as defined in s. 256.01 (5), with intent to mislead others into believing that the person is actually an emergency medical technician is guilty of a Class A misdemeanor.

(d) Except as provided in sub. (2), whoever impersonates a first responder, as defined in s. 256.01 (9), with intent to mislead others into believing that the person is actually a first responder is guilty of a Class A misdemeanor.

(2) Any person violating sub. (1) with the intent to commit or aid or abet the commission of a crime other than a crime under this section is guilty of a Class H felony.

History: 1977 c. 173; 1985 a. 97, 332; 2001 a. 109; 2011 a. 276.

Cross-reference: See s. 125.105 for the offense of impersonating an employee of the department of revenue or the department of justice.

946.71 Unlawful use of license for carrying concealed weapons. (1) In this section, "license" means a license issued under s. 175.60 (2) or (9r).

(2) Whoever does any of the following is guilty of a Class A misdemeanor:

(a) Intentionally represents as valid any revoked, suspended, fictitious, or fraudulently altered license.

(b) If the actor holds a license, intentionally sells or lends the license to any other individual or knowingly permits another individual to use the license.

(c) Intentionally represents as one's own any license not issued to him or her.

(d) If the actor holds a license, intentionally permits any unlawful use of that license.

(e) Intentionally reproduces by any means a copy of a license for a purpose that is prohibited under this subsection.

(f) Intentionally defaces or intentionally alters a license.

History: 2011 a. 35.

946.72 Tampering with public records and notices. (1) Whoever with intent to injure or defraud destroys, damages, removes or conceals any public record is guilty of a Class H felony.

(2) Whoever intentionally damages, alters, removes or conceals any public notice, posted as authorized by law, before the expiration of the time for which the notice was posted, is guilty of a Class B misdemeanor.

History: 1977 c. 173; 1981 c. 335; 2001 a. 109.

946.73 Penalty for violating laws governing state or county institutions. Whoever violates any state law or any lawful rule made pursuant to state law governing state fair park or any state or county charitable, curative, reformatory, or penal institution while within the same or the grounds thereof is guilty of a Class C misdemeanor.

History: 1977 c. 173; 1993 a. 213, 215, 491.

946.74 Aiding escape from mental institutions. (1) Whoever intentionally does or attempts to do any of the following is guilty of a Class A misdemeanor:

(a) Aids any person committed to an institution for the care of the mentally ill, infirm or deficient to escape therefrom.

(b) Introduces into any institution for the care of the mentally ill, infirm or deficient, or transfers to any person

committed to such institution, anything adapted or useful in making an escape therefrom, with intent to aid any person to escape.

(c) Removes from any institution for the care of the mentally ill, infirm or deficient any person committed thereto.

(2) Whoever violates sub. (1) with intent to commit a crime against sexual morality with or upon the inmate of the institution is guilty of a Class H felony.

History: 1977 c. 173; 2001 a. 109.

946.75 Denial of right of counsel. Whoever, while holding another person in custody and if that person requests a named attorney, denies that other person the right to consult and be advised by an attorney at law at personal expense, whether or not such person is charged with a crime, is guilty of a Class A misdemeanor.

History: 1977 c. 173.

946.76 Search warrant; premature disclosure. Whoever discloses prior to its execution that a search warrant has been applied for or issued, except so far as may be necessary to its execution, is guilty of a Class I felony.

History: 1977 c. 173; 2001 a. 109.

946.79 False statements to financial institutions. (1) In this section:

(a) "Financial institution" means a bank, savings bank, savings and loan association, credit union, loan company, sales finance company, insurance premium finance company, community currency exchange, seller of checks, insurance company, trust company, securities broker-dealer, as defined in s. 551.102 (4), mortgage banker, mortgage broker, pawnbroker, as defined in s. 134.71 (1) (e), telegraph company, or dealer in precious metals, stones, or jewels.

(b) "Financial transaction information" means information being submitted to a financial institution in connection with a transaction with that financial institution.

(c) "Monetary instrument" includes any of the following:

1. Coin or currency of the United States or any other country.

2. Traveler's check, personal check, money order, or share draft or other draft for payment.

3. Investment security or negotiable instrument, in bearer form, book entry, or other form that provides that title to the security or instrument passes upon delivery or transfer of the security or instrument.

4. Precious metals, stones, or jewels.

(d) "Personal identification document" has the meaning given in s. 943.201 (1) (a).

(e) "Personal identifying information" has the meaning given in s. 943.201 (1) (b).

(f) "Transaction" means the acquisition or disposition of property by any means, including any of the following:

1. The purchase, sale, trade, transfer, transmission, exchange, loan, pledge, investment, delivery, deposit, or withdrawal of a monetary instrument.

2. The use of a safe deposit box.

3. The extension of credit.

(2) Whoever knowingly does any of the following in connection with the submission of financial transaction information is guilty of a Class H felony:

(a) Falsifies or conceals or attempts to falsify or conceal an individual's identity.

(b) Makes a false statement regarding an individual's identity.

(c) Makes or uses a writing containing false information regarding an individual's identity.

(d) Uses a false personal identification document or false personal identifying information.

History: 2003 a. 36; 2007 a. 196.

SUBCHAPTER VI

RACKETEERING ACTIVITY AND CONTINUING CRIMINAL ENTERPRISE

946.80 Short title. Sections 946.80 to 946.88 may be cited as the Wisconsin Organized Crime Control Act.

History: 1981 c. 280; 1989 a. 121.

RICO and WOCCA. Gegios and Jervis. Wis. Law. Apr. 1990.

946.81 Intent. The legislature finds that a severe problem is posed in this state by the increasing organization among certain criminal elements and the increasing extent to which criminal activities and funds acquired as a result of criminal activity are being directed to and against the legitimate economy of the state. The legislature declares that the intent of the Wisconsin Organized Crime Control Act is to impose sanctions against this subversion of the economy by organized criminal elements and to provide compensation to private persons injured thereby. It is not the intent of the legislature that isolated incidents of misdemeanor conduct be prosecuted under this act, but only an interrelated pattern of criminal activity the motive or effect of which is to derive pecuniary gain.

History: 1981 c. 280.

946.82 Definitions. In ss. 946.80 to 946.88:

(1) "Commission of a crime" means being concerned in the commission of a crime under s. 939.05.

(2) "Enterprise" means any sole proprietorship, partnership, limited liability company, corporation, business trust, union organized under the laws of this state or other legal entity or any union not organized under the laws of this state, association or group of individuals associated in fact although not a legal entity. "Enterprise" includes illicit and licit enterprises and governmental and other entities.

(3) "Pattern of racketeering activity" means engaging in at least 3 incidents of racketeering activity that have the same or similar intents, results, accomplices, victims or methods of commission or otherwise are interrelated by distinguishing characteristics, provided at least one of the incidents occurred after April 27, 1982 and that the last of the incidents occurred within 7 years after the first incident of racketeering activity. Acts occurring at the same time and place which may form the basis for crimes punishable under more than one statutory provision may count for only one incident of racketeering activity.

(4) "Racketeering activity" means any activity specified in 18 USC 1961 (1) in effect as of April 27, 1982, or the attempt, conspiracy to commit, or commission of any of the felonies specified in: chs. 945 and 961, subch. V of ch. 551, and ss.

49.49, 134.05, 139.44 (1), 180.0129, 181.0129, 185.825, 201.09 (2), 215.12, 221.0625, 221.0636, 221.0637, 221.1004, 553.41 (3) and (4), 553.52 (2), 940.01, 940.19 (4) to (6), 940.20, 940.201, 940.203, 940.21, 940.30, 940.302 (2), 940.305, 940.31, 941.20 (2) and (3), 941.26, 941.28, 941.298, 941.31, 941.32, 942.09, 943.01 (2), (2d), or (2g), 943.011, 943.012, 943.013, 943.02, 943.03, 943.04, 943.05, 943.06, 943.10, 943.20 (3) (bf) to (e), 943.201, 943.203, 943.23 (1g), (2) and (3), 943.24 (2), 943.27, 943.28, 943.30, 943.32, 943.34 (1) (bf), (bm), and (c), 943.38, 943.39, 943.40, 943.41 (8) (b) and (c), 943.50 (4) (bf), (bm), and (c) and (4m), 943.60, 943.70, 943.76, 943.81, 943.82, 943.83, 943.84, 943.85, 943.86, 943.87, 943.88, 943.89, 943.90, 944.21 (5) (c) and (e), 944.32, 944.33 (2), 944.34, 945.03 (1m), 945.04 (1m), 945.05 (1), 945.08, 946.10, 946.11, 946.12, 946.13, 946.31, 946.32 (1), 946.48, 946.49, 946.61, 946.64, 946.65, 946.72, 946.76, 946.79, 947.015, 948.05, 948.051, 948.08, 948.12, and 948.30.

History: 1981 c. 280; 1983 a. 438; 1985 a. 104; 1985 a. 236 s. 15; 1987 a. 266 s. 5; 1987 a. 332, 348, 349, 403; 1989 a. 121, 303; 1991 a. 32, 39, 189; 1993 a. 50, 92, 94, 112, 280, 441, 491; 1995 a. 133, 249, 336, 448; 1997 a. 35, 79, 101, 140, 143, 252; 1999 a. 9, 150; 2001 a. 16, 105, 109; 2003 a. 36, 321; 2005 a. 212; 2007 a. 116, 196; 2009 a. 180; 2011 a. 174.

The definition of "pattern of racketeering" is not unconstitutionally vague. The definition of "enterprise" is discussed. State v. O'Connell, 179 Wis. 2d 598, 508 N.W.2d 23 (Ct. App. 1993).

Repeated use of illegally copied computer software did not constitute a pattern of racketeering. Management Computer Services v. Hawkins, 196 Wis. 2d 578, 539 N.W.2d 111 (Ct. App. 1995), 93-0140.

WOCCA does not require proof of intent or knowledge beyond that required for the underlying predicate offense. State v. Mueller, 201 Wis. 2d 121, 549 N.W.2d 455 (Ct. App. 1996), 93-3227.

The analysis for a "pattern of racketeering activity" under WOCCA is the same as under RICO. Brunswick Corp. v. E.A. Doyle Mfg. Co. 770 F. Supp. 1351 (1991).

946.83 Prohibited activities. (1) No person who has received any proceeds with knowledge that they were derived, directly or indirectly, from a pattern of racketeering activity may use or invest, whether directly or indirectly, any part of the proceeds or the proceeds derived from the investment or use thereof in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise.

(2) No person, through a pattern of racketeering activity, may acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property.

(3) No person employed by, or associated with, any enterprise may conduct or participate, directly or indirectly, in the enterprise through a pattern of racketeering activity.

History: 1981 c. 280.

Sub. (3) requires that the person be separate from the enterprise; as matter of law, an individual is separate from a solely-owned enterprise if it is a corporation. State v. Judd, 147 Wis. 2d 398, 433 N.W.2d 260 (Ct. App. 1988).

946.84 Penalties. (1) Any person convicted of engaging in racketeering activity in violation of s. 946.83 is guilty of a Class E felony.

(2) In lieu of a fine under sub. (1), any person convicted of engaging in conduct in violation of s. 946.83, through which he or she derived pecuniary value, or by which he or she caused personal injury or property damage or other loss, may be fined not to exceed 2 times the gross value gained or 2 times the gross loss caused, whichever is the greater, plus court costs and the costs of investigation and prosecution, reasonably incurred. In calculating the amount of fine based on personal injury, any measurement of pain and suffering shall be excluded.

(3) The court shall hold a hearing to determine the amount of the fine authorized by sub. (2).

(4) In sub. (2), "pecuniary value" means:

(a) Anything of value in the form of money, a negotiable instrument, or a commercial interest or anything else the primary significance of which is economic advantage; or

(b) Any other property or service that has a value in excess of $100.

History: 1981 c. 280, 391; 2001 a. 109.

946.85 Continuing criminal enterprise. (1) Any person who engages in a continuing criminal enterprise is guilty of a Class E felony.

(2) In this section a person is considered to be engaged in a continuing criminal enterprise, if he or she engages in a prohibited activity under s. 946.83, and:

(a) The activity is undertaken by the person in concert with 5 or more other persons, each of whom acted with intent to commit a crime and with respect to whom the person occupies a supervisory position; and

(b) The person obtains gross income or resources in excess of $25,000 from the activity.

History: 1981 c. 280; 1997 a. 283; 2001 a. 109.

There are 3 separate offenses chargeable under sec. 946.85, each requiring proof of a fact the others do not. Prosecution of continuing criminal enterprise violations and the predicate offenses does not violate double jeopardy. State v. Evers, 163 Wis. 2d 725, 472 N.W.2d 828 (Ct. App. 1991).

946.86 Criminal forfeitures. (1) In addition to the penalties under ss. 946.84 and 946.85, the court shall order forfeiture, according to the procedures set forth in subs. (2) to (4), of all real or personal property used in the course of, or intended for use in the course of, derived from or realized through conduct in violation of s. 946.83 or 946.85. All forfeitures under this section shall be made with due provision for the rights of innocent persons. Property constituting proceeds derived from conduct in violation of s. 946.83 or 946.85 includes, but is not limited to, any of the following:

(a) Any position, office, appointment, tenure, commission or employment contract of any kind that the defendant acquired or maintained in violation of s. 946.83 or 946.85, through which the defendant conducted or participated in the conduct of the affairs of an enterprise in violation of s. 946.83 or 946.85, or that afforded the defendant a source of influence or control over the affairs of an enterprise that the defendant exercised in violation of s. 946.83 or 946.85.

(b) Any compensation, right or benefit derived from a position, office, appointment, tenure, commission or employment contract that accrued to the defendant during the period of conduct in violation of s. 946.83 or 946.85.

(c) Any interest in, security of, claim against or property or contractual right affording the defendant a source of influence or control over the affairs of an enterprise in which the defendant participated in violation of s. 946.83 or 946.85.

(d) Any amount payable or paid under any contract for goods or services that was awarded or performed in violation of s. 946.83 or 946.85.

(2) Any criminal complaint alleging violation of s. 946.83 or 946.85 shall allege the extent of property subject to forfeiture under this section. At trial, the trier of fact shall return a

special verdict determining the extent of property, if any, to be subject to forfeiture under this section. When a special verdict contains a finding of property subject to a forfeiture under this section, a judgment of criminal forfeiture shall be entered along with the judgment of conviction under s. 972.13.

(3) If any property included in a special verdict of criminal forfeiture cannot be located, has been sold to a bona fide purchaser for value, has been placed beyond the jurisdiction of the court, has been substantially diminished in value by the conduct of the defendant, has been commingled with other property that cannot be divided without difficulty or undue injury to innocent persons or is otherwise unreachable without undue injury to innocent persons, the court may order forfeiture of any other property of the defendant up to the value of the property that is unreachable.

(4) Any injured person has a right or claim to forfeited property or the proceeds derived therefrom superior to any right or claim the state has under this section in the same property or proceeds. This subsection does not grant the injured person priority over state claims or rights by reason of a tax lien or other basis not covered by ss. 946.80 to 946.88. All rights, titles and interest in property described in sub. (1) vest in the state upon the commission of the act giving rise to forfeiture under this section.

History: 1989 a. 121.

946.87 Civil remedies. (1) After making due provision for the rights of innocent persons, any circuit court may enjoin violations of s. 946.83 or 946.85 and may issue appropriate orders and judgments related thereto, including, but not limited to:

(a) Ordering any defendant to divest himself or herself of any interest in any enterprise which is involved in the violation of s. 946.83 or 946.85, including real property.

(b) Imposing reasonable restrictions upon the future activities or investments of any defendant related to enjoining violations of s. 946.83 or 946.85, including, but not limited to, prohibiting any defendant from engaging in the same type of endeavor as the enterprise in which he or she was engaged in violation of s. 946.83 or 946.85.

(c) Ordering the dissolution or reorganization of any related enterprise.

(d) Ordering the suspension or revocation of a license, permit or prior approval granted to any related enterprise by any agency of the state, county or municipality.

(e) Ordering the dissolution of a corporation organized under ch. 180 or 181, or the revocation of a certificate authorizing a foreign corporation to conduct business within the state, upon finding that the board of directors or a managerial agent acting on behalf of the corporation, in conducting the affairs of the corporation, has authorized or engaged in conduct in violation of s. 946.83 or 946.85 and that, for the prevention of future criminal activity, the public interest requires the action under this paragraph.

(2) (a) All property, real or personal, including money, used in the course of, intended for use in the course of, derived from, or realized through, conduct which has resulted in a conviction for violation of s. 946.83 or 946.85 is subject to civil forfeiture to the state. The state shall dispose of all forfeited property as soon as commercially feasible. If property is not exercisable or transferable for value by the state, it shall expire. All forfeitures or dispositions under this section shall be made with due provision for the rights of innocent persons. The proceeds realized from the forfeitures and dispositions shall be deposited in the school fund.

(am) Notwithstanding par. (a), property described in par. (a) is subject to forfeiture if the person who violated s. 946.83 or 946.85 has not been convicted, but he or she is a defendant in a criminal proceeding, is released, pending trial, on bail, as defined in s. 969.001, and fails to appear in court regarding the criminal proceeding. However, before making the final determination of any action under this section, the court must determine that the party bringing the action can prove the person committed the violation of s. 946.83 or 946.85.

(b) Any injured person has a right or claim to forfeited property or the proceeds derived therefrom superior to any right or claim the state has under this section in the same property or proceeds. This paragraph does not grant the person priority over state claims or rights by reason of a tax lien or other basis not covered by ss. 946.80 to 946.88.

(3) The attorney general or any district attorney may institute civil proceedings under this section. Notwithstanding s. 59.42 (2) (b) 4., in counties having a population of 500,000 or more, the district attorney or the corporation counsel may proceed under this section. A corporation counsel in a county having a population of 500,000 or more or a district attorney may institute proceedings under this section only with the prior written approval of the attorney general. In any action brought under this section, the circuit court shall proceed as soon as practicable to the hearing and determination. Pending final determination of any action under this section, the circuit court may at any time enter such injunctions, prohibitions or restraining orders or take such actions, including the acceptance of satisfactory performance bonds, as the court deems proper. At any time pending final determination of a forfeiture action under sub. (2), the circuit court may order the seizure of property subject to forfeiture and may make such orders as it deems necessary to preserve and protect the property.

(4) Any person who is injured by reason of any violation of s. 946.83 or 946.85 has a cause of action for 2 times the actual damages sustained and, when appropriate, punitive damages. The person shall also recover attorney fees and costs of the investigation and litigation reasonably incurred. The defendant or any injured person may demand a trial by jury in any civil action brought under this section.

(5) The burden of proof under this section is that of satisfying or convincing to a reasonable certainty by a greater weight of the credible evidence that the property is subject to forfeiture under this section.

(6) A final judgment or decree rendered in favor of the state in any criminal proceeding under ss. 946.80 to 946.88 shall stop the defendant from denying the essential allegations of the criminal offense in any subsequent civil action or proceeding.

History: 1981 c. 280; 1989 a. 121 ss. 108, 110m; Stats. 1989 s. 946.87; 1993 a. 280; 1995 a. 201.

State courts have concurrent jurisdiction over federal civil RICO actions. Tafflin v. Levitt, 493 U.S. 455, 107 L. Ed. 2d 887 (1990).

A WOCCA double damage civil action is penal in nature and does not survive the death of a defendant, but a claim against the deceased defendant's employee does survive. Schimpf v. Gerald, Inc. 2 F. Supp. 2d 1150 (1998).

Reaching deep pocket under RICO. Poker. 72 MLR 511 (1989).

946.88 Enforcement and jurisdiction. (1) A criminal or civil action or proceeding under ss. 946.80 to 946.88 may be commenced at any time within 6 years after a violation under ss. 946.80 to 946.88 terminates or the cause of action accrues. If a criminal action or proceeding under ss. 946.80 to 946.88 is brought, or intervened in, to punish, prevent or restrain any such violation, the running of the period of limitations with respect to any civil action or proceeding, including an action or proceeding under s. 946.87, which is based in whole or in part upon any matter complained of in the criminal action or proceeding shall be suspended for 2 years following the termination of the criminal action or proceeding.

(2) The application of one civil or criminal remedy under ss. 946.80 to 946.88 does not preclude the application of any other remedy, civil or criminal, under ss. 946.80 to 946.88 or any other provision of law. Civil remedies under ss. 946.80 to 946.88 are supplemental, and not mutually exclusive, except the state may not proceed under both ss. 946.84 (2) and 946.87 (4).

(3) The attorney general and the district attorneys of this state have concurrent authority to institute criminal proceedings under ss. 946.80 to 946.88, except a district attorney may institute proceedings only with the prior written approval of the attorney general.

History: 1981 c. 280; 1989 a. 121 s. 110; Stats. 1989 s. 946.88.

CHAPTER 947

CRIMES AGAINST PUBLIC PEACE, ORDER AND OTHER INTERESTS

Cross-reference: See definitions in s. 939.22.

947.01 Disorderly conduct. (1) Whoever, in a public or private place, engages in violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct under circumstances in which the conduct tends to cause or provoke a disturbance is guilty of a Class B misdemeanor.

(2) Unless other facts and circumstances that indicate a criminal or malicious intent on the part of the person apply, a person is not in violation of, and may not be charged with a violation of, this section for loading, carrying, or going armed with a firearm, without regard to whether the firearm is loaded or is concealed or openly carried.

History: 1977 c. 173; 1979 c. 131; 2011 a. 35.

The defendant was properly convicted of disorderly conduct when he appeared on a stage wearing a minimum of clothing intending to and succeeding in causing a loud reaction in the audience. State v. Maker, 48 Wis. 2d 612, 180 N.W.2d 707 (1970).

An attorney was properly convicted under this section for refusing to leave a ward in a mental hospital until he had seen a client after having made statements in the presence of patients that caused some to become agitated. State v. Elson, 60 Wis. 2d 54, 208 N.W.2d 363 (1973).

It was not disorderly conduct for 4 people to enter an office with other members of the public for the purpose of protesting the draft and to refuse to leave on orders of the police when their conduct was not otherwise disturbing. State v. Werstein, 60 Wis. 2d 668, 211 N.W.2d 437 (1973).

This statute does not require a victim, but when the disorderly conduct is directed at a person, that person is the victim for the purpose of prosecuting the perpetrator for intimidating a victim under s. 940.44. State v. Vinje, 201 Wis. 2d 98, 548 N.W.2d 118 (Ct. App. 1996), 95-1484.

A "true threat" is a statement that a speaker would reasonably foresee that a listener would reasonably interpret as a serious expression of a purpose to inflict harm, as distinguished from hyperbole, jest, innocuous talk, expressions of political views, or other similarly protected speech. It is not necessary that the speaker have the ability to carry out the threat. State v. Perkins, 2001 WI 46, 243 Wis. 2d 141, 626 N.W.2d 762, 99-1924.

Purely written speech, even written speech that fails to cause an actual disturbance, can constitute disorderly conduct, but the state has the burden to prove that the speech is constitutionally unprotected "abusive" conduct. "Abusive" conduct is conduct that is injurious, improper, hurtful, offensive, or reproachful. "True threats" clearly fall within the scope of this definition. State v. Douglas D. 2001 WI 47, 243 Wis. 2d 204, 626 N.W.2d 725, 99-1767.

Application of the disorderly conduct statute to speech alone is permissible under appropriate circumstances. When speech is not an essential part of any exposition of ideas, when it is utterly devoid of social value, and when it can cause or provoke a disturbance, the disorderly conduct statute can be applicable. State v. A.S. 2001 WI 48, 243 Wis. 2d 173, 626 N.W.2d 712, 99-2317.

Disorderly conduct does not necessarily require disruptions that implicate the public directly. This section encompasses conduct that tends to cause a disturbance or disruption that is personal or private in nature, as long as there exists the real possibility that the disturbance or disruption will spill over and disrupt the peace, order, or safety of the surrounding community as well. Sending repeated, unwelcome, and anonymous mailings was "otherwise disorderly conduct." State v. Schwebke, 2002 WI 55, 253 Wis. 2d 1, 644 N.W.2d 666, 99-3204.

Defiance of a police officer's order to move is itself disorderly conduct if the order is lawful. Braun v. Baldwin, 346 F.3d 761 (2003).

947.011 Disrupting a funeral or memorial service. (1) In this section:

(a) "Facility" includes a cemetery in which a funeral or memorial service takes place.

(b) "Funeral or memorial service" includes a wake or a burial, as defined in s. 157.061 (1), but does not include a service that is not intended to honor or commemorate one or more specific decedents.

(2) (a) No person may do any of the following during a funeral or memorial service, during the 60 minutes immediately preceding the scheduled starting time of a funeral or memorial service if a starting time has been scheduled, or during the 60 minutes immediately following a funeral or memorial service:

1. Engage in conduct that is prohibited under s. 947.01 (1) within 500 feet of any entrance to a facility being used for the service with the intent to disrupt the service.

2. Intentionally block access to a facility being used for the service.

(b) No person, with the intent to disrupt a funeral procession, may impede vehicles that he or she knows are part of the procession.

(c) No person may do any of the following during a funeral or memorial service, during the 60 minutes immediately preceding the scheduled starting time of a funeral or memorial service if a starting time has been scheduled, or during the 60 minutes immediately following a funeral or memorial service:

1. Engage in conduct that is prohibited under s. 947.01 (1) within 500 feet of any entrance to a facility being used for the service.

2. Block access to a facility being used for the service.

(d) No person may impede vehicles that are part of a funeral procession if the person's conduct violates s. 947.01 (1).

(3) (a) Except as provided in par. (b), any person who violates this section is guilty of a Class A misdemeanor.

(b) Any person who violates sub. (2) (a) or (b) after having been convicted of a violation of this section is guilty of a Class I felony.

History: 2005 a. 114; 2011 a. 35.

947.012 Unlawful use of telephone. (1) Whoever does any of the following is guilty of a Class B misdemeanor:

(a) With intent to frighten, intimidate, threaten, abuse or harass, makes a telephone call and threatens to inflict injury or physical harm to any person or the property of any person.

(b) With intent to frighten, intimidate, threaten or abuse, telephones another and uses any obscene, lewd or profane language or suggests any lewd or lascivious act.

(c) Makes a telephone call, whether or not conversation ensues, without disclosing his or her identity and with intent to abuse or threaten any person at the called number.

(2) Whoever does any of the following is subject to a Class B forfeiture:

(a) With intent to harass or offend, telephones another and uses any obscene, lewd or profane language or suggests any lewd or lascivious act.

(b) Makes or causes the telephone of another repeatedly to ring, with intent to harass any person at the called number.

(c) Makes repeated telephone calls, whether or not conversation ensues, with intent solely to harass any person at the called number.

(d) Makes a telephone call, whether or not conversation ensues, without disclosing his or her identity and with intent to harass any person at the called number.

(e) Knowingly permits any telephone under his or her control to be used for any purpose prohibited by this section.

History: 1979 c. 131; 1991 a. 39.

947.0125 Unlawful use of computerized communication systems. (1) In this section, "message" means any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature, or any transfer of a computer program, as defined in s. 943.70 (1) (c).

(2) Whoever does any of the following is guilty of a Class B misdemeanor:

(a) With intent to frighten, intimidate, threaten, abuse or harass another person, sends a message to the person on an electronic mail or other computerized communication system and in that message threatens to inflict injury or physical harm to any person or the property of any person.

(b) With intent to frighten, intimidate, threaten, abuse or harass another person, sends a message on an electronic mail or other computerized communication system with the reasonable expectation that the person will receive the message and in that message threatens to inflict injury or physical harm to any person or the property of any person.

(c) With intent to frighten, intimidate, threaten or abuse another person, sends a message to the person on an electronic mail or other computerized communication system and in that message uses any obscene, lewd or profane language or suggests any lewd or lascivious act.

(d) With intent to frighten, intimidate, threaten or abuse another person, sends a message on an electronic mail or other computerized communication system with the reasonable expectation that the person will receive the message and in that message uses any obscene, lewd or profane language or suggests any lewd or lascivious act.

(e) With intent to frighten, intimidate, threaten or abuse another person, sends a message to the person on an electronic mail or other computerized communication system while intentionally preventing or attempting to prevent the disclosure of his or her own identity.

(f) While intentionally preventing or attempting to prevent the disclosure of his or her identity and with intent to frighten, intimidate, threaten or abuse another person, sends a message on an electronic mail or other computerized communication system with the reasonable expectation that the person will receive the message.

(3) Whoever does any of the following is subject to a Class B forfeiture:

(a) With intent to harass, annoy or offend another person, sends a message to the person on an electronic mail or other computerized communication system and in that message uses any obscene, lewd or profane language or suggests any lewd or lascivious act.

(b) With intent to harass, annoy or offend another person, sends a message on an electronic mail or other computerized communication system with the reasonable expectation that the person will receive the message and in that message uses any obscene, lewd or profane language or suggests any lewd or lascivious act.

(c) With intent solely to harass another person, sends repeated messages to the person on an electronic mail or other computerized communication system.

(d) With intent solely to harass another person, sends repeated messages on an electronic mail or other computerized communication system with the reasonable expectation that the person will receive the messages.

(e) With intent to harass or annoy another person, sends a message to the person on an electronic mail or other computerized communication system while intentionally preventing or attempting to prevent the disclosure of his or her own identity.

(f) While intentionally preventing or attempting to prevent the disclosure of his or her identity and with intent to harass or annoy another person, sends a message on an electronic mail or other computerized communication system with the reasonable expectation that the person will receive the message.

(g) Knowingly permits or directs another person to send a message prohibited by this section from any computer terminal or other device that is used to send messages on an electronic mail or other computerized communication system and that is under his or her control.

History: 1995 a. 353.

947.013 Harassment. (1) In this section:

(a) "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose.

(b) "Credible threat" means a threat made with the intent and apparent ability to carry out the threat.

(c) "Personally identifiable information" has the meaning given in s. 19.62 (5).

(d) "Record" has the meaning given in s. 19.32 (2).

(1m) Whoever, with intent to harass or intimidate another person, does any of the following is subject to a Class B forfeiture:

(a) Strikes, shoves, kicks or otherwise subjects the person to physical contact or attempts or threatens to do the same.

(b) Engages in a course of conduct or repeatedly commits acts which harass or intimidate the person and which serve no legitimate purpose.

(1r) Whoever violates sub. (1m) under all of the following circumstances is guilty of a Class A misdemeanor:

(a) The act is accompanied by a credible threat that places the victim in reasonable fear of death or great bodily harm.

(b) The act occurs while the actor is subject to an order or injunction under s. 813.12, 813.122 or 813.125 that prohibits or limits his or her contact with the victim.

(1t) Whoever violates sub. (1r) is guilty of a Class I felony if the person has a prior conviction under this subsection or sub. (1r), (1v), or (1x) or s. 940.32 (2), (2e), (2m), or (3) involving the same victim and the present violation occurs within 7 years of the prior conviction.

(1v) Whoever violates sub. (1r) is guilty of a Class H felony if he or she intentionally gains access to a record in electronic format that contains personally identifiable information regarding the victim in order to facilitate the violation under sub. (1r).

(1x) Whoever violates sub. (1r) under all of the following circumstances is guilty of a Class H felony:

(a) The person has a prior conviction under sub. (1r), (1t) or (1v) or this subsection or s. 940.32 (2), (2e), (2m), or (3).

(b) The person intentionally gains access to a record in order to facilitate the current violation under sub. (1r).

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

History: 1983 a. 336; 1991 a. 194; 1993 a. 496; 2001 a. 109.

This section is not a safety statute and does not grant a private right of action for its violation. In re Estate of Drab, 143 Wis. 2d 568, 422 N.W.2d 144 (Ct. App. 1988).

Read with the requirement that only "true threats" can be prosecuted, this section does not violate the guarantee of free free speech. State v. Robert T. 2008 WI App 22, 307 Wis. 2d 488, 746 N.W.2d 564, 06-2206.

947.015 Bomb scares. Whoever intentionally conveys or causes to be conveyed any threat or false information, knowing such to be false, concerning an attempt or alleged attempt being made or to be made to destroy any property by the means of explosives is guilty of a Class I felony.

History: 1977 c. 173; 2001 a. 109.

This section is not an included crime in s. 941.30, recklessly endangering safety. State v. Van Ark, 62 Wis. 2d 155, 215 N.W.2d 41 (1974).

947.017 Threats to release chemical, biological, or radioactive substances. (1) In this section:

(a) "Biological agent" means a microorganism or an infectious substance, or any naturally occurring, bioengineered, or synthesized toxin or component of a microorganism or an infectious substance that is capable of causing death, disease, or other biological malfunction in humans.

(b) "Harmful substance" means radioactive material that is harmful to human life, a toxic chemical or its precursor, or a biological agent.

(c) "Microorganism" includes a bacterium, virus, fungus, rickettsia, or protozoan.

(d) "Precursor" means any chemical reactant that takes part at any stage in the production by whatever method of a toxic chemical.

(e) "Toxic chemical" means any chemical that through its chemical action on life processes can cause death, temporary incapacitation, or permanent harm to humans.

(2) Whoever, knowing the threat to be false, intentionally threatens to release or disseminate a harmful substance, if the threat induces a reasonable expectation or fear that the person will release or disseminate a harmful substance, is guilty of a Class I felony.

History: 2003 a. 104.

947.02 Vagrancy. Any of the following are vagrants and are guilty of a Class C misdemeanor:

(1) A person, with the physical ability to work, who is without lawful means of support and does not seek employment; or

(3) A prostitute who loiters on the streets or in a place where intoxicating liquors are sold, or a person who, in public, solicits another to commit a crime against sexual morality; or

(4) A person known to be a professional gambler or known as a frequenter of gambling places or who derives part of his or her support from begging or as a fortune teller or similar impostor.

History: 1977 c. 173; 1993 a. 486; 1999 a. 83.

947.04 Drinking in common carriers. (1) Whoever while a passenger in a common carrier, publicly drinks intoxicants as a beverage or gives any other person intoxicants for that purpose under circumstances tending to provoke a disturbance, except in those portions of the common carrier in which intoxicants are specifically authorized by law to be sold or consumed, is guilty of a Class C misdemeanor.

(2) The person in charge of a common carrier may take from any passenger found violating this section any intoxicant then in the possession of such passenger, giving the passenger a receipt therefor, and shall keep the intoxicant until the passenger's point of destination is reached. Thereupon, the person in charge of the common carrier shall either return the intoxicant to the passenger or turn it over to the station agent. At any time within 10 days after the intoxicant is turned over to the station agent, the passenger may recover the intoxicant by surrendering the receipt given the passenger at the time the intoxicant was taken from the passenger.

History: 1973 c. 198; 1977 c. 173; 1993 a. 486; 1995 a. 225.

947.06 Unlawful assemblies and their suppression. (1) Sheriffs, their undersheriffs and deputies, constables, marshals and police officers have a duty to suppress unlawful assemblies within their jurisdiction. For that reason they may order all persons who are part of an assembly to disperse. An "unlawful assembly" is an assembly which consists of 3 or more persons and which causes such a disturbance of public order that it is reasonable to believe that the assembly will cause injury to persons or damage to property unless it is immediately dispersed.

(2) An "unlawful assembly" includes an assembly of persons who assemble for the purpose of blocking or obstructing the lawful use by any other person, or persons of any private or public thoroughfares, property or of any positions of access or exit to or from any private or public building, or dwelling place, or any portion thereof and which assembly does in fact so block or obstruct the lawful use by any other person, or persons of any such private or public thoroughfares, property or any position of access or exit to or from any private or public building, or dwelling place, or any portion thereof.

(3) Whoever intentionally fails or refuses to withdraw from an unlawful assembly which the person knows has been ordered to disperse is guilty of a Class A misdemeanor.

(4) Whoever causes, attempts to cause, or participates in an unlawful assembly upon any property of a public institution of higher education or upon any highway abutting on such property, is punishable under sub. (3) if he or she fails to withdraw from the assembly promptly upon issuance of an order to disperse, if such order is given in such manner that such person can reasonably be expected to hear or read such order.

(5) Whoever, being employed in any capacity by or enrolled as a student in the institution, is convicted under subs. (1) to (4) may be sentenced additionally or alternatively to not to exceed 6 months suspension without pay from his or her employment by the institution if an employee, or suspension from enrollment in the institution if a student, or both if both an employee and a student. If the suspension is thus imposed, the institution shall not thereafter impose any other discipline upon the person for his or her connection with the unlawful assembly. Any period of suspension from employment by or enrollment in the institution already served shall be deducted by the court in imposing this sentence. Any period of imprisonment, whether or not the person is authorized under s. 303.08 to continue as an employee or student while imprisoned, shall count as a period of suspension from employment or enrollment or both hereunder.

History: 1977 c. 173; 1985 a. 135 s. 83 (5); 1989 a. 31; 1993 a. 486.

This section is constitutional. Cassidy v. Ceci, 320 F. Supp. 223.

947.07 Causing violence or breach of the peace by damaging or destroying a U.S. flag. (1) In this section, "flag" means a flag of the United States consisting of horizontal stripes, alternately colored red and white, and a union of any number of white stars on a blue field.

(2) Whoever destroys, damages, or mutilates a flag, or causes a flag to come into contact with urine, feces, or expectoration, with the intent to cause imminent violence or a breach of the peace under circumstances in which the actor knows that his or her conduct is likely to cause violence or a breach of the peace is guilty of a Class A misdemeanor.

History: 2003 a. 243.

CHAPTER 948

CRIMES AGAINST CHILDREN

Cross-reference: See definitions in s. 939.22.

948.01 Definitions. In this chapter, the following words and phrases have the designated meanings unless the context of a specific section manifestly requires a different construction:

(1) "Child" means a person who has not attained the age of 18 years, except that for purposes of prosecuting a person who is alleged to have violated a state or federal criminal law, "child" does not include a person who has attained the age of 17 years.

(1d) "Exhibit," with respect to a recording of an image that is not viewable in its recorded form, means to convert the recording of the image into a form in which the image may be viewed.

(1g) "Joint legal custody" has the meaning given in s. 767.001 (1s).

(1r) "Legal custody" has the meaning given in s. 767.001 (2).

(2) "Mental harm" means substantial harm to a child's psychological or intellectual functioning which may be evidenced by a substantial degree of certain characteristics of the child including, but not limited to, anxiety, depression, withdrawal or outward aggressive behavior. "Mental harm" may be demonstrated by a substantial and observable change in behavior, emotional response or cognition that is not within the normal range for the child's age and stage of development.

(3) "Person responsible for the child's welfare" includes the child's parent; stepparent; guardian; foster parent; an employee of a public or private residential home, institution, or agency; other person legally responsible for the child's welfare in a residential setting; or a person employed by one legally responsible for the child's welfare to exercise temporary control or care for the child.

(3m) "Physical placement" has the meaning given in s. 767.001 (5).

(3r) "Recording" includes the creation of a reproduction of an image or a sound or the storage of data representing an image or a sound.

(4) "Sadomasochistic abuse" means the infliction of force, pain or violence upon a person for the purpose of sexual arousal or gratification.

(5) "Sexual contact" means any of the following:

(a) Any of the following types of intentional touching, whether direct or through clothing, if that intentional touching is either for the purpose of sexually degrading or sexually humiliating the complainant or sexually arousing or gratifying the defendant:

1. Intentional touching by the defendant or, upon the defendant's instruction, by another person, by the use of any body part or object, of the complainant's intimate parts.

2. Intentional touching by the complainant, by the use of any body part or object, of the defendant's intimate parts or, if done upon the defendant's instructions, the intimate parts of another person.

(b) Intentional penile ejaculation of ejaculate or intentional emission of urine or feces by the defendant or, upon the defendant's instruction, by another person upon any part of the body clothed or unclothed of the complainant if that ejaculation or emission is either for the purpose of sexually degrading or sexually humiliating the complainant or for the purpose of sexually arousing or gratifying the defendant.

(c) For the purpose of sexually degrading or humiliating the complainant or sexually arousing or gratifying the defendant, intentionally causing the complainant to ejaculate or emit urine or feces on any part of the defendant's body, whether clothed or unclothed.

(6) "Sexual intercourse" means vulvar penetration 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.

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

(a) Sexual intercourse, meaning vulvar penetration 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 a person or upon the person's instruction. The emission of semen is not required;

(b) Bestiality;

(c) Masturbation;

(d) Sexual sadism or sexual masochistic abuse including, but not limited to, flagellation, torture or bondage; or

(e) Lewd exhibition of intimate parts.

History: 1987 a. 332; 1989 a. 31; 1993 a. 446; 1995 a. 27, 67, 69, 100, 214; 2001 a. 16; 2005 a. 273, 435; 2007 a. 96; 2009 a. 28.

Instructions were proper that told the jury that "lewd" under sub. (7) (e), when applied to photographs, is not mere nudity but requires the display of the genital area and sexual suggestiveness as determined by the jury in the use of common sense. State v. Petrone, 161 Wis. 2d 530, 468 N.W.2d 676 (1991).

When a defendant allows sexual contact initiated by a child, the defendant is guilty of intentional touching as defined in sub. (5). State v. Traylor, 170 Wis. 2d 393, 489 N.W.2d 626 (Ct. App. 1992).

The definition of "parent" in sub. (3) is all-inclusive; a defendant whose paternity was admitted but had never been adjudged was a "parent." State v. Evans, 171 Wis. 2d 471, 492 N.W.2d 141 (1992).

A live-in boyfriend can be a person responsible for the welfare of a child if he was used by the child's legal guardian as a caretaker for the child. State v. Sostre, 198 Wis. 2d 409, 542 N.W.2d 774 (1996), 94-0778.

The phrase "by the defendant or upon the defendant's instruction" in sub. (6) modifies the entire list of acts and establishes that for intercourse to occur the defendant either had to perform one of the actions on the victim or instruct the victim to perform one of the actions on himself or herself. State v. Olson, 2000 WI App 158, 238 Wis. 2d 74, 616 N.W.2d 144, 99-2851.

A person under 18 years of age employed by his or her parent to care for a child for whom the parent was legally responsible can be a person responsible for the welfare of the child under sub. (3). State v. Hughes, 2005 WI App 155, 285 Wis. 2d 388, 702 N.W.2d 87, 04-2122.

Petrone established guidelines for defining "lewd" and "sexually explicit." It did not require that a child be "unclothed" in order for a picture to be lewd. Instead, the visible display of the child's pubic area and posing the child as a sex object with an unnatural or unusual focus on the child's genitalia should inform the common sense determination by the trier of fact regarding the pornographic nature of the image. It follows that when a child's pubic area is visibly displayed, the lack of a full opaque covering is a proper consideration that should inform the common sense determination by the trier of fact. State v. Lala, 2009 WI App 137, 321 Wis. 2d 292, 773 N.W.2d 218, 08-2893.

948.015 Other offenses against children. In addition to the offenses under this chapter, offenses against children include, but are not limited to, the following:

(1) Sections 103.19 to 103.32 and 103.64 to 103.82, relating to employment of minors.

(2) Section 118.13, relating to pupil discrimination.

(3) Section 125.07, relating to furnishing alcohol beverages to underage persons.

(4) Section 253.11, relating to infant blindness.

(5) Section 254.12, relating to applying lead-bearing paints or selling or transferring a fixture or other object containing a lead-bearing paint.

(6) Sections 961.01 (6) and (9) and 961.49, relating to delivering and distributing controlled substances or controlled substance analogs to children.

(7) Section 444.09 (4), relating to boxing.

(8) Section 961.573 (3) (b) 2., relating to the use or possession of methamphetamine-related drug paraphernalia in the presence of a child who is 14 years of age or younger.

(9) A crime that involves an act of domestic abuse, as defined in s. 968.075 (1) (a), if the court includes in its reasoning under s. 973.017 (10m) for its sentencing decision the aggravating factor under s. 973.017 (6m).

History: 1987 a. 332; 1989 a. 31; 1993 a. 27; 1995 a. 448; 2005 a. 263; 2011 a. 273.

948.02 Sexual assault of a child. (1) FIRST DEGREE SEXUAL ASSAULT. (am) Whoever has sexual contact or sexual intercourse with a person who has not attained the age of 13 years and causes great bodily harm to the person is guilty of a Class A felony.

(b) Whoever has sexual intercourse with a person who has not attained the age of 12 years is guilty of a Class B felony.

(c) Whoever has sexual intercourse with a person who has not attained the age of 16 years by use or threat of force or violence is guilty of a Class B felony.

(d) Whoever has sexual contact with a person who has not attained the age of 16 years by use or threat of force or violence is guilty of a Class B felony if the actor is at least 18 years of age when the sexual contact occurs.

(e) Whoever has sexual contact with a person who has not attained the age of 13 years is guilty of a Class B felony.

(2) SECOND DEGREE SEXUAL ASSAULT. Whoever has sexual contact or sexual intercourse with a person who has not attained the age of 16 years is guilty of a Class C felony.

(3) FAILURE TO ACT. A person responsible for the welfare of a child who has not attained the age of 16 years is guilty of a Class F felony if that person has knowledge that another person intends to have, is having or has had sexual intercourse or sexual contact with the child, is physically and emotionally capable of taking action which will prevent the intercourse or contact from taking place or being repeated, fails to take that action and the failure to act exposes the child to an unreasonable risk that intercourse or contact may occur between the child and the other person or facilitates the intercourse or contact that does occur between the child and the other person.

(4) 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.

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

History: 1987 a. 332; 1989 a. 31; 1995 a. 14, 69; 2001 a. 109; 2005 a. 430, 437; 2007 a. 80.

Relevant evidence in child sexual assault cases is discussed. In Interest of Michael R.B. 175 Wis. 2d 713, 499 N.W.2d 641 (1993).

Limits relating to expert testimony regarding child sex abuse victims is discussed. State v. Hernandez, 192 Wis. 2d 251, 531 N.W.2d 348 (Ct. App. 1995).

The criminalization, under sub. (2), of consensual sexual relations with a child does not violate the defendant's constitutionally protected privacy rights. State v. Fisher, 211 Wis. 2d 665, 565 N.W.2d 565 (Ct. App. 1997), 96-1764.

Second degree sexual assault under sub. (2) is a lesser included offense of first degree sexual assault under sub. (1). State v. Moua, 215 Wis. 2d 510, 573 N.W.2d 210 (Ct. App. 1997).

For a guilty plea to a sexual assault charge to be knowingly made, a defendant need not be informed of the potential of being required to register as a convicted sex offender under s. 301.45 or that failure to register could result in imprisonment, as the commitment is a collateral, not direct, consequence of the plea. State v. Bollig, 2000 WI 6, 232 Wis. 2d 561, 605 N.W.2d 199, 98-2196.

Expert evidence of sexual immaturity is relevant to a preadolescent's affirmative defense that he or she is not capable of having sexual contact with the purpose of becoming sexually aroused or gratified. State v. Stephen T. 2002 WI App 3, 250 Wis. 2d 26, 643 N.W.2d 151, 00-3045.

That the intended victim was actually an adult was not a bar to bringing the charge of attempted 2nd degree sexual assault of a child. The fictitiousness of the victim is an extraneous factor beyond the defendant's control within the meaning of the attempt statute. State v. Grimm, 2002 WI App 242, 258 Wis. 2d 166, 653 N.W.2d 284, 01-0138.

Section 939.22 (19) includes female and male breasts as each is "the breast of a human being." The touching of a boy's breast constitutes "sexual contact" under sub. (2). State v. Forster, 2003 WI App 29, 260 Wis. 2d 149, 659 N.W.2d 144, 02-0602.

Sub. (2), in conjunction with ss. 939.23 and 939.43 (2), precludes a defense predicated on a child's intentional age misrepresentation. The statutes do not violate an accused's rights under the 14th amendment to the U. S. Constitution. State v. Jadowski 2004 WI 68, 272 Wis. 2d 418, 680 N.W.2d 418, 03-1493.

The consent of the child in a sub. (2) violation is not relevant. Yet if the defendant asserts that she did not consent to the intercourse and that she was raped by the child, the issue of her consent becomes paramount. If the defendant was raped, the act of having sexual intercourse with a child does not constitute a crime. State v. Lackershire, 2007 WI 74, 301 Wis. 2d 418, 734 N.W.2d 23, 05-1189.

"Sexual intercourse" as used in this section does not include bona fide medical, health care, and hygiene procedures. This construction cures the statute's silence regarding medically appropriate conduct. Thus the statute is not unconstitutionally overbroad. State v. Lesik, 2010 WI App 12, 322 Wis. 2d 753, 780 N.W.2d 210, 08-3072.

The constitutionality of this statute is upheld. Sweeney v. Smith, 9 F. Supp. 2d 1026 (1998).

Statutory Rape in Wisconsin: History, Rationale, and the Need for Reform. Olszewski. 89 MLR 693 (2005).

948.025 Engaging in repeated acts of sexual assault of the same child. (1) Whoever commits 3 or more violations under s. 948.02 (1) or (2) within a specified period of time involving the same child is guilty of:

(a) A Class A felony if at least 3 of the violations were violations of s. 948.02 (1) (am).

(b) A Class B felony if at least 3 of the violations were violations of s. 948.02 (1) (am), (b), or (c).

(c) A Class B felony if at least 3 of the violations were violations of s. 948.02 (1) (am), (b), (c), or (d).

(d) A Class B felony if at least 3 of the violations were violations of s. 948.02 (1).

(e) A Class C felony if at least 3 of the violations were violations of s. 948.02 (1) or (2).

(2) (a) If an action under sub. (1) (a) is tried to a jury, in order to find the defendant guilty the members of the jury must unanimously agree that at least 3 violations of s. 948.02 (1) (am) occurred within the specified period of time but need not agree on which acts constitute the requisite number.

(b) If an action under sub. (1) (b) is tried to a jury, in order to find the defendant guilty the members of the jury must unanimously agree that at least 3 violations of s. 948.02 (1) (am), (b), or (c) occurred within the specified period of time but need not agree on which acts constitute the requisite number and need not agree on whether a particular violation was a violation of s. 948.02 (1) (am), (b), or (c).

(c) If an action under sub. (1) (c) is tried to a jury, in order to find the defendant guilty the members of the jury must unanimously agree that at least 3 violations of s. 948.02 (1) (am), (b), (c), or (d) occurred within the specified period of time but need not agree on which acts constitute the requisite number and need not agree on whether a particular violation was a violation of s. 948.02 (1) (am), (b), (c), or (d).

(d) If an action under sub. (1) (d) is tried to a jury, in order to find the defendant guilty the members of the jury must unanimously agree that at least 3 violations of s. 948.02 (1) occurred within the specified period of time but need not agree on which acts constitute the requisite number.

(e) If an action under sub. (1) (e) is tried to a jury, in order to find the defendant guilty the members of the jury must unanimously agree that at least 3 violations of s. 948.02 (1) or (2) occurred within the specified period of time but need not agree on which acts constitute the requisite number and need not agree on whether a particular violation was a violation of s. 948.02 (1) or (2).

(3) The state may not charge in the same action a defendant with a violation of this section and with a violation involving the same child under s. 948.02 or 948.10, unless the other violation occurred outside of the time period applicable under sub. (1). This subsection does not prohibit a conviction for an included crime under s. 939.66 when the defendant is charged with a violation of this section.

History: 1993 a. 227; 1995 a. 14; 2001 a. 109; 2005 a. 430, 437; 2007 a. 80.

This section does not violate the right to a unanimous verdict or to due process. State v. Johnson, 2001 WI 52, 243 Wis. 2d 365, 627 N.W.2d 455, 99-2968.

Convicting the defendant on 3 counts of first-degree sexual assault of a child and one count of repeated acts of sexual assault of a child when all 4 charges involved the same child and the same time period violated sub. (3). A court may reverse the conviction on the repeated acts charge under sub. (1) rather than the convictions for specific acts of sexual assault under s. 948.02 (1) when the proscription against multiple charges in sub. (3) is violated even if the repeated acts charge was filed prior to the charges for the specific actions. State v. Cooper, 2003 WI App 227, 267 Wis. 2d 886, 672 N.W.2d 118, 02-2247.

The state may bring multiple prosecutions under sub. (1) when two or more episodes involving "3 or more violations under s. 948.02 (1) or (2) within a specified period of time involving the same child" are discrete as to time and venue. State v. Nommensen, 2007 WI App 224, 305 Wis. 2d 695, 741 N.W.2d 481, 06-2727.

948.03 Physical abuse of a child. (1) DEFINITIONS. In this section, "recklessly" means conduct which creates a situation of unreasonable risk of harm to and demonstrates a conscious disregard for the safety of the child.

(2) INTENTIONAL CAUSATION OF BODILY HARM. (a) Whoever intentionally causes great bodily harm to a child is guilty of a Class C felony.

(b) Whoever intentionally causes bodily harm to a child is guilty of a Class H felony.

(c) Whoever intentionally causes bodily harm to a child by conduct which creates a high probability of great bodily harm is guilty of a Class F felony.

(3) RECKLESS CAUSATION OF BODILY HARM. (a) Whoever recklessly causes great bodily harm to a child is guilty of a Class E felony.

(b) Whoever recklessly causes bodily harm to a child is guilty of a Class I felony.

(c) Whoever recklessly causes bodily harm to a child by conduct which creates a high probability of great bodily harm is guilty of a Class H felony.

(4) FAILING TO ACT TO PREVENT BODILY HARM. (a) A person responsible for the child's welfare is guilty of a Class F felony if that person has knowledge that another person intends to cause, is causing or has intentionally or recklessly caused great bodily harm to the child and is physically and emotionally capable of taking action which will prevent the bodily harm from occurring or being repeated, fails to take that action and the failure to act exposes the child to an unreasonable risk of great bodily harm by the other person or facilitates the great bodily harm to the child that is caused by the other person.

(b) A person responsible for the child's welfare is guilty of a Class H felony if that person has knowledge that another person intends to cause, is causing or has intentionally or recklessly caused bodily harm to the child and is physically and emotionally capable of taking action which will prevent the bodily harm from occurring or being repeated, fails to take that action and the failure to act exposes the child to an unreasonable risk of bodily harm by the other person or facilitates the bodily harm to the child that is caused by the other person.

(6) TREATMENT THROUGH PRAYER. A person is not guilty of an offense under this section solely because he or she provides a child with treatment by spiritual means through prayer alone for healing in accordance with the religious method of healing permitted under s. 48.981 (3) (c) 4. or 448.03 (6) in lieu of medical or surgical treatment.

History: 1987 a. 332; 2001 a. 109; 2007 a. 80; 2009 a. 308.

To obtain a conviction for aiding and abetting a violation of sub. (2) or (3), the state must prove conduct that as a matter of objective fact aids another in executing the crime. State v. Rundle, 176 Wis. 2d 985, 500 N.W.2d 916 (Ct. App. 1993).

A live-in boyfriend can be a person responsible for the welfare of a child under sub. (5) if he was used by the child's legal guardian as a caretaker for the child. State v. Sostre, 198 Wis. 2d 409, 542 N.W.2d 774 (1996).

To overcome the privilege of parental discipline in s. 939.45 (5), the state must prove beyond a reasonable doubt that only one of the following is not met: 1) the use of force must be reasonably necessary; 2) the amount and nature of the force used must be reasonable; and 3) the force used must not be known to cause, or create a substantial risk of, great bodily harm or death. Whether a reasonable person would have believed the amount of force used was necessary and not excessive must be determined from the standpoint of the defendant at the time of the defendant's acts. The standard is what a person of ordinary intelligence and prudence would have believed in the defendant's position under the circumstances that existed at the time of the alleged offense. State v. Kimberly B. 2005 WI App 115, 283 Wis. 2d 731, 699 N.W.2d 641, 04-1424.

The definition of reckless in this section is distinct from the general definition found in s. 939.24 and does not contain a state of mind element. Because the defense of mistake defense applies only to criminal charges with a state of mind element the trial court properly exercised its discretion in refusing to give an instruction on the mistake defense. State v. Hemphill, 2006 WI App 185, 296 Wis. 2d 198, 722 N.W. 2d 393, 05-1350.

Reckless child abuse requires the defendant's actions demonstrate a conscious disregard for the safety of a child, not that the defendant was subjectively aware of that risk. In contrast, criminal recklessness under s. 939.24 (1) is defined as when the actor creates an unreasonable and substantial risk of death or great bodily harm to another human being and the actor is aware of that risk. Thus, recklessly causing harm to a child is distinguished from criminal recklessness, because only the latter includes a subjective component. State v. Williams, 2006 WI App 212, 296 Wis. 2d 834, 723 N.W. 2d 719, 05-2282.

Testimony supporting the defendant father's assertion that he was beaten with a belt as a child was not relevant to whether the amount of force he used in spanking his daughter was objectively reasonable. A parent may not abuse his or her child and claim that conduct is reasonable based on his or her history of being similarly abused. State v. Williams, 2006 WI App 212, 296 Wis. 2d 834, 723 N.W. 2d 719, 05-2282.

948.04 Causing mental harm to a child. (1) Whoever is exercising temporary or permanent control of a child and causes mental harm to that child by conduct which demonstrates substantial disregard for the mental well-being of the child is guilty of a Class F felony.

(2) A person responsible for the child's welfare is guilty of a Class F felony if that person has knowledge that another person has caused, is causing or will cause mental harm to that child, is physically and emotionally capable of taking action which will prevent the harm, fails to take that action and the failure to act exposes the child to an unreasonable risk of mental harm by the other person or facilitates the mental harm to the child that is caused by the other person.

History: 1987 a. 332; 2001 a. 109.

948.05 Sexual exploitation of a child. (1) Whoever does any of the following with knowledge of the character and content of the sexually explicit conduct involving the child may be penalized under sub. (2p):

(a) Employs, uses, persuades, induces, entices, or coerces any child to engage in sexually explicit conduct for the purpose of recording or displaying in any way the conduct.

(b) Records or displays in any way a child engaged in sexually explicit conduct.

(1m) Whoever produces, performs in, profits from, promotes, imports into the state, reproduces, advertises, sells, distributes, or possesses with intent to sell or distribute, any recording of a child engaging in sexually explicit conduct may be penalized under sub. (2p) if the person knows the character and content of the sexually explicit conduct involving the child and if the person knows or reasonably should know that the child engaging in the sexually explicit conduct has not attained the age of 18 years.

(2) A person responsible for a child's welfare who knowingly permits, allows or encourages the child to engage in sexually explicit conduct for a purpose proscribed in sub. (1) (a) or (b) or (1m) may be penalized under sub. (2p).

(2p) (a) Except as provided in par. (b), a person who violates sub. (1), (1m), or (2) is guilty of a Class C felony.

(b) A person who violates sub. (1), (1m), or (2) is guilty of a Class F felony if the person is under 18 years of age when the offense occurs.

(3) It is an affirmative defense to prosecution for violation of sub. (1) (a) or (b) or (2) if the defendant had reasonable cause to believe that the child had attained the age of 18 years. A defendant who raises this affirmative defense has the burden of proving this defense by a preponderance of the evidence.

History: 1987 a. 332; 1999 a. 3; 2001 a. 16, 109; 2005 a. 433.

"Import" under sub. (1) (c) means bringing in from an external source and does not require a commercial element or exempt personal use. State v. Bruckner, 151 Wis. 2d 833, 447 N.W.2d 376 (Ct. App. 1989).

The purposes of ss. 948.05, child exploitation, and 948.07, child enticement, are distinct, and two distinct crimes are envisioned by the statutes. Charging both for the same act was not multiplicitous. State v. DeRango, 2000 WI 89, 236 Wis. 2d 721, 613 N.W.2d 833, 98-0642.

948.051 Trafficking of a child. (1) Whoever knowingly recruits, entices, provides, obtains, or harbors, or knowingly attempts to recruit, entice, provide, obtain, or harbor, any child for the purpose of commercial sex acts, as defined in s. 940.302 (1) (a), or sexually explicit performance is guilty of a Class C felony.

(2) Whoever benefits in any manner from a violation of sub. (1) is guilty of a Class C felony if the person knows that the benefits come from an act described in sub. (1).

(3) Any person who incurs an injury or death as a result of a violation of sub. (1) or (2) may bring a civil action against the person who committed the violation. In addition to actual damages, the court may award punitive damages to the injured party, not to exceed treble the amount of actual damages incurred, and reasonable attorney fees.

History: 2007 a. 116.

948.055 Causing a child to view or listen to sexual activity. (1) Whoever intentionally causes a child who has not attained 18 years of age, or an individual who the actor believes or has reason to believe has not attained 18 years of

age, to view or listen to sexually explicit conduct may be penalized as provided in sub. (2) if the viewing or listening is for the purpose of sexually arousing or gratifying the actor or humiliating or degrading the child or individual.

(2) Whoever violates sub. (1) is guilty of:

(a) A Class F felony if any of the following applies:

1. The child has not attained the age of 13 years.

2. The actor believes or has reason to believe that the child has not attained the age of 13 years.

(b) A Class H felony if any of the following applies:

1. The child has attained the age of 13 years but has not attained the age of 18 years.

2. The actor believes or has reason to believe that the child has attained the age of 13 years but has not attained the age of 18 years.

History: 1987 a. 334; 1989 a. 359; 1993 a. 218 ss. 6, 7; Stats. 1993 s. 948.055; 1995 a. 67; 2001 a. 109; 2011 a. 284.

948.06 Incest with a child. Whoever does any of the following is guilty of a Class C felony:

(1) Marries or has sexual intercourse or sexual contact with a child he or she knows is related, either by blood or adoption, and the child is related in a degree of kinship closer than 2nd cousin.

(1m) Has sexual contact or sexual intercourse with a child if the actor is the child's stepparent.

(2) Is a person responsible for the child's welfare and:

(a) Has knowledge that another person who is related to the child by blood or adoption in a degree of kinship closer than 2nd cousin or who is a child's stepparent has had or intends to have sexual intercourse or sexual contact with the child;

(b) Is physically and emotionally capable of taking action that will prevent the intercourse or contact from occurring or being repeated;

(c) Fails to take that action; and

(d) The failure to act exposes the child to an unreasonable risk that intercourse or contact may occur between the child and the other person or facilitates the intercourse or contact that does occur between the child and the other person.

History: 1987 a. 332; 1995 a. 69; 2001 a. 109; 2005 a. 277.

948.07 Child enticement. Whoever, with intent to commit any of the following acts, causes or attempts to cause any child who has not attained the age of 18 years to go into any vehicle, building, room or secluded place is guilty of a Class D felony:

(1) Having sexual contact or sexual intercourse with the child in violation of s. 948.02, 948.085, or 948.095.

(2) Causing the child to engage in prostitution.

(3) Exposing a sex organ to the child or causing the child to expose a sex organ in violation of s. 948.10.

(4) Recording the child engaging in sexually explicit conduct.

(5) Causing bodily or mental harm to the child.

(6) Giving or selling to the child a controlled substance or controlled substance analog in violation of ch. 961.

History: 1987 a. 332; 1995 a. 67, 69, 448, 456; 2001 a. 16, 109; 2005 a. 277.

The penalty scheme of sub. (3) is not unconstitutionally irrational. That the statute, unlike sub. (1), did not distinguish between victims 16 years old or older and other children victims is a matter for the legislature. State v. Hanson, 182 Wis. 2d 481, 513 N.W.2d 700 (Ct. App. 1994).

This section includes the attempted crime, as well as the completed crime, and cannot be combined with the general attempt statute. State v. DeRango, 229 Wis. 2d 1, 599 N.W.2d 27 (Ct. App. 1999), 98-0642.

The purposes of ss. 948.05, child exploitation, and 948.07, child enticement, are distinct, and two distinct crimes are envisioned by the statutes. Charging both for the same act was not multiplicitous. State v. DeRango, 2000 WI 89, 236 Wis. 2d 721, 613 N.W.2d 833, 98-0642.

This section creates one crime with multiple modes of commission. The alternate modes of commission are not so dissimilar as to implicate fundamental fairness. As such, a defendant is not entitled to a unanimity instruction. State v. DeRango, 2000 WI 89, 236 Wis. 2d 721, 613 N.W.2d 833, 98-0642.

One alternate mode of commission of the crime under this section is attempt to cause a child to go into a vehicle, building, room, or secluded place. The principles of attempt in s. 939.32 apply. That the intended victims were fictitious constituted an extraneous fact beyond the defendant's control that prevented successful enticement while not excusing the attempt to entice. State v. Koenck, 2001 WI App 93, 242 Wis. 2d 693, 626 N.W.2d 359, 00-2684.

Attempted child enticement may be charged when the intervening extraneous factor that makes the offense an attempted rather than completed crime is that unbeknownst to the defendant, the "victim" is an adult government agent posing as a child. The 1st amendment is not implicated by the application of the child enticement statute to child enticements initiated over the internet as the statute regulates conduct, not speech. State v. Robins, 2002 WI 65, 253 Wis. 2d 298, 647 N.W.2d 287, 00-2841.

Acts alleged in furtherance of the criminal objective, such as attempts to have a child get into a vehicle or go into a hotel room or a secluded place are not required to prove attempted child enticement. Going to meet the child at a planned time and place is a sufficient, unequivocal act in furtherance of the criminal objective when earlier conversations provide reasonable inferences of that criminal objective. State v. Grimm, 2002 WI App 242, 258 Wis. 2d 166, 653 N.W.2d 284, 01-0138.

While an attempt cannot lie to an offense that does not carry the element of specific intent and the statutory definition of sexual intercourse does not formally include an intent element, the act of sexual intercourse is necessarily an intentional act. As such, the crime of attempted sexual assault of a child by means of sexual intercourse is a crime. State v. Brienzo, 2003 WI App 203, 267 Wis. 2d 349, 671 N.W.2d 700, 01-1362.

Like the child enticement statute in *Robins*, the child sexual assault statute regulates conduct, not speech. An attempt to have sexual contact or sexual intercourse with a child initiated or carried out in part by means of language does not make an attempted child sexual assault charge susceptible of 1st amendment scrutiny. State v. Brienzo, 2003 WI App 203, 267 Wis. 2d 349, 671 N.W.2d 700.

This section requires only that the defendant cause the child to go into any vehicle, building, room, or secluded place with the intent to engage in illicit conduct, but not that the child necessarily be first separated from the public. State v. Provo, 2004 WI App 97, 272 Wis. 2d 837, 681 N.W.2d 272, 03-1710.

"Secluded" in this section is not a technical term. In the context of child enticement, a secluded place would include any place that provides the enticer an opportunity to remove the child from within the general public's view to a location where any intended sexual conduct is less likely to be detected by the public. A place need not even be screened or hidden or remote if some other aspect of the place lowers the likelihood of detection. All the statute requires is that the place provides a means by which to exclude the child and reduce the risk of detection. State v. Pask, 2010 WI App 53, 324 Wis. 2d 555, 781 N.W.2d 751, 09-0559.

948.075 Use of a computer to facilitate a child sex crime. (1r) Whoever uses a computerized communication system to communicate with an individual who the actor believes or has reason to believe has not attained the age of 16 years with intent to have sexual contact or sexual intercourse with the individual in violation of s. 948.02 (1) or (2) is guilty of a Class C felony.

(2) This section does not apply if, at the time of the communication, the actor reasonably believed that the age of the person to whom the communication was sent was no more than 24 months less than the age of the actor.

(3) Proof that the actor did an act, other than use a computerized communication system to communicate with the individual, to effect the actor's intent under sub. (1r) shall be necessary to prove that intent.

History: 2001 a. 109; 2003 a. 321; 2005 a. 433; 2007 a. 96.

Defendant's admission to driving to the alleged victim's neighborhood for an innocent purpose combined with computer communications, in which the

defendant told the alleged victim that he drove through her neighborhood for the specific purpose of meeting her, and his confession to the police that he went to the area so he could "get her interested in chatting with him again," showed that the non-computer-assisted act of driving through the area was to effect his intent to have sex with the alleged victim and satisfied the requirement in sub. (3). State v. Schulpius, 2006 WI App 263, 298 Wis. 2d 155, 726 N.W.2d 706, 06-0283.

Defendant's use of a webcam to transmit video of himself was, under the circumstances of this case, nothing more than the use of his computer to communicate and thus not an act "other than us[ing] a computerized communication system to communicate" as required under sub. (3). State v. Olson, 2008 WI App 171, 314 Wis. 2d 630, 762 N.W.2d 393, 08-0587.

948.08 Soliciting a child for prostitution. Whoever intentionally solicits or causes any child to engage in an act of prostitution or establishes any child in a place of prostitution is guilty of a Class D felony.

History: 1987 a. 332; 1995 a. 69; 2001 a. 109; 2007 a. 80.

Although colloquially referred to as prohibiting solicitation, this section also specifically, and alternatively, prohibits causing a child to practice prostitution. Cause is a substantial factor that need not be the first or sole cause of a child practicing prostitution. The habitual nature of the defendant's trading cocaine for sex with the child victim satisfied the requisite that the victim did "practice prostitution" with the defendant. State v. Payette, 2008 WI App 106, 313 Wis. 2d 39, 756 N.W.2d 423, 07-1192.

948.085 Sexual assault of a child placed in substitute care. Whoever does any of the following is guilty of a Class C felony:

(1) Has sexual contact or sexual intercourse with a child for whom the actor is a foster parent.

(2) Has sexual contact or sexual intercourse with a child who is placed in any of the following facilities if the actor works or volunteers at the facility or is directly or indirectly responsible for managing it:

(a) A shelter care facility licensed under s. 48.66 (1) (a).

(b) A group home licensed under s. 48.625 or 48.66 (1).

(c) A facility described in s. 940.295 (2) (m).

History: 2005 a. 277; 2007 a. 97; 2009 a. 28.

948.09 Sexual intercourse with a child age 16 or older. Whoever has sexual intercourse with a child who is not the defendant's spouse and who has attained the age of 16 years is guilty of a Class A misdemeanor.

History: 1987 a. 332.

948.095 Sexual assault of a child by a school staff person or a person who works or volunteers with children. (1) In this section:

(a) "School" means a public or private elementary or secondary school, or a tribal school, as defined in s. 115.001 (15m).

(b) "School staff" means any person who provides services to a school or a school board, including an employee of a school or a school board and a person who provides services to a school or a school board under a contract.

(2) Whoever has sexual contact or sexual intercourse with a child who has attained the age of 16 years and who is not the defendant's spouse is guilty of a Class H felony if all of the following apply:

(a) The child is enrolled as a student in a school or a school district.

(b) The defendant is a member of the school staff of the school or school district in which the child is enrolled as a student.

(3) (a) A person who has attained the age of 21 years and who engages in an occupation or participates in a volunteer position that requires him or her to work or interact directly with children may not have sexual contact or sexual intercourse with a child who has attained the age of 16 years, who is not the person's spouse, and with whom the person works or interacts through that occupation or volunteer position.

(b) Whoever violates par. (a) is guilty of a Class H felony.

(c) Paragraph (a) does not apply to an offense to which sub. (2) applies.

(d) Evidence that a person engages in an occupation or participates in a volunteer position relating to any of the following is prima facie evidence that the occupation or position requires him or her to work or interact directly with children:

1. Teaching children.
2. Child care.
3. Youth counseling.
4. Youth organization.
5. Coaching children.
6. Parks or playground recreation.
7. School bus driving.

History: 1995 a. 456; 2001 a. 109; 2005 a. 274; 2007 a. 97; 2009 a. 302.

An "employee" and persons "under contract" are examples of persons included within the group of people that provide services to a school or school board within the definition of school staff under sub. (1) (b). These phrases are illustrative, and do not limit the definition of "a person who provides services." State v. Kaster, 2003 WI App 105, 264 Wis. 2d 751, 663 N.W.2d. 390, 02-2352 and 2006 WI App 72, 292 Wis. 2d 252, 714 N.W.2d 238, 05-1285.

948.10 Exposing genitals or pubic area. (1) Whoever, for purposes of sexual arousal or sexual gratification, causes a child to expose genitals or pubic area or exposes genitals or pubic area to a child is guilty of the following:

(a) Except as provided in par. (b), a Class I felony.

(b) A Class A misdemeanor if any of the following applies:

1. The actor is a child when the violation occurs.

2. At the time of the violation, the actor had not attained the age of 19 years and was not more than 4 years older than the child.

(2) Subsection (1) does not apply under any of the following circumstances:

(a) The child is the defendant's spouse.

(b) A mother's breast-feeding of her child.

History: 1987 a. 332; 1989 a. 31; 1995 a. 165; 2009 a. 202.

948.11 Exposing a child to harmful material or harmful descriptions or narrations. (1) DEFINITIONS. In this section:

(ag) "Harmful description or narrative account" means any explicit and detailed description or narrative account of sexual excitement, sexually explicit conduct, sadomasochistic abuse, physical torture or brutality that, taken as a whole, is harmful to children.

(ar) "Harmful material" means:

1. Any picture, photograph, drawing, sculpture, motion picture film or similar visual representation or image of a person or portion of the human body that depicts nudity, sexually explicit conduct, sadomasochistic abuse, physical torture or brutality and that is harmful to children; or

2. Any book, pamphlet, magazine, printed matter however reproduced or recording that contains any matter enumerated in subd. 1., or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexually explicit conduct,

sadomasochistic abuse, physical torture or brutality and that, taken as a whole, is harmful to children.

(b) "Harmful to children" means that quality of any description, narrative account or representation, in whatever form, of nudity, sexually explicit conduct, sexual excitement, sadomasochistic abuse, physical torture or brutality, when it:

1. Predominantly appeals to the prurient, shameful or morbid interest of children;

2. Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for children; and

3. Lacks serious literary, artistic, political, scientific or educational value for children, when taken as a whole.

(d) "Nudity" means the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state.

(e) "Person" means any individual, partnership, firm, association, corporation or other legal entity.

(f) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(2) CRIMINAL PENALTIES. (a) Whoever, with knowledge of the character and content of the material, sells, rents, exhibits, plays, distributes, or loans to a child any harmful material, with or without monetary consideration, is guilty of a Class I felony if any of the following applies:

1. The person knows or reasonably should know that the child has not attained the age of 18 years.

2. The person has face-to-face contact with the child before or during the sale, rental, exhibit, playing, distribution, or loan.

(am) Any person who has attained the age of 17 and who, with knowledge of the character and content of the description or narrative account, verbally communicates, by any means, a harmful description or narrative account to a child, with or without monetary consideration, is guilty of a Class I felony if any of the following applies:

1. The person knows or reasonably should know that the child has not attained the age of 18 years.

2. The person has face-to-face contact with the child before or during the communication.

(b) Whoever, with knowledge of the character and content of the material, possesses harmful material with the intent to sell, rent, exhibit, play, distribute, or loan the material to a child is guilty of a Class A misdemeanor if any of the following applies:

1. The person knows or reasonably should know that the child has not attained the age of 18 years.

2. The person has face-to-face contact with the child.

(c) It is an affirmative defense to a prosecution for a violation of pars. (a) 2., (am) 2., and (b) 2. if the defendant had reasonable cause to believe that the child had attained the age of 18 years, and the child exhibited to the defendant a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that the child had attained the age of 18 years. A defendant who raises this affirmative defense has the burden of proving this defense by a preponderance of the evidence.

(3) EXTRADITION. If any person is convicted under sub. (2) and cannot be found in this state, the governor or any person performing the functions of governor by authority of the law shall, unless the convicted person has appealed from the judgment of contempt or conviction and the appeal has not been finally determined, demand his or her extradition from the executive authority of the state in which the person is found.

(4) LIBRARIES AND EDUCATIONAL INSTITUTIONS. (a) The legislature finds that the libraries and educational institutions under par. (b) carry out the essential purpose of making available to all citizens a current, balanced collection of books, reference materials, periodicals, sound recordings and audiovisual materials that reflect the cultural diversity and pluralistic nature of American society. The legislature further finds that it is in the interest of the state to protect the financial resources of libraries and educational institutions from being expended in litigation and to permit these resources to be used to the greatest extent possible for fulfilling the essential purpose of libraries and educational institutions.

(b) No person who is an employee, a member of the board of directors or a trustee of any of the following is liable to prosecution for violation of this section for acts or omissions while in his or her capacity as an employee, a member of the board of directors or a trustee:

1. A public elementary or secondary school.

2. A private school, as defined in s. 115.001 (3r), or a tribal school, as defined in s. 115.001 (15m).

3. Any school offering vocational, technical or adult education that:

a. Is a technical college, is a school approved by the educational approval board under s. 38.50, or is a school described in s. 38.50 (1) (e) 6., 7. or 8.; and

b. Is exempt from taxation under section 501 (c) (3) of the internal revenue code, as defined in s. 71.01 (6).

4. Any institution of higher education that is accredited, as described in s. 39.30 (1) (d), and is exempt from taxation under section 501 (c) (3) of the internal revenue code, as defined in s. 71.01 (6).

5. A library that receives funding from any unit of government.

(5) SEVERABILITY. The provisions of this section, including the provisions of sub. (4), are severable, as provided in s. 990.001 (11).

History: 1987 a. 332; 1989 a. 31; 1993 a. 220, 399; 1995 a. 27 s. 9154 (1); 1997 a. 27, 82; 1999 a. 9; 2001 a. 16, 104, 109; 2005 a. 22, 25, 254; 2009 a. 302.

This section is not unconstitutionally overbroad. The exemption from prosecution of libraries, educational institutions, and their employees and directors does not violate equal protection rights. State v. Thiel, 183 Wis. 2d 505, 515 N.W.2d 847 (1994).

The lack of a requirement in sub. (2) (a) that the defendant know the age of the child exposed to the harmful material does not render the statute unconstitutional on its face. State v. Kevin L.C. 216 Wis. 2d 166, 576 N.W.2d 62 (Ct. App. 1997), 97-1087.

An individual violates this section if he or she, aware of the nature of the material, knowingly offers or presents for inspection to a specific minor material defined as harmful to children in sub. (1) (b). The personal contact between the perpetrator and the child-victim is what allows the state to impose on the defendant the risk that the victim is a minor. State v. Trochinski, 2002 WI 56, 253 Wis. 2d 38, 644 N.W.2d 891, 00-2545.

Evidence was not insufficient to sustain the jury's verdict solely because the jury did not view the video alleged to be "harmful material," but instead heard

only the children victim's and a detective's descriptions of what they saw. State v. Booker, 2006 WI 79, 292 Wis. 2d 43, 717 N.W.2d 676, 04-1435.

"Verbally" in sub. (2) (am) is most reasonably read as proscribing communication to children of harmful matter in words, whether oral or written, and to distinguish sub. (2) (am) from sub. (2) (a), which primarily proscribes visual representations. State v. Ebersold, 2007 WI App 232, 306 Wis. 2d 371, 742 N.W.2d 876, 06-0833.

When the jury was instructed that the state had to prove only that the defendant exhibited harmful material to the child and the instruction did not include the word "knowing" or "intentional," in light of the instructions in the case and reviewing the proceedings as a whole, there was a reasonable likelihood that the jury was confused and misled about the need for the state to prove an element of the crime. State v. Gonzalez, 2011 WI 63, 335 Wis. 2d 270, 802 N.W.2d 454, 09-1249.

948.12 Possession of child pornography. (1m) Whoever possesses, or accesses in any way with the intent to view, any undeveloped film, photographic negative, photograph, motion picture, videotape, or other recording of a child engaged in sexually explicit conduct under all of the following circumstances may be penalized under sub. (3):

(a) The person knows that he or she possesses or has accessed the material.

(b) The person knows, or reasonably should know, that the material that is possessed or accessed contains depictions of sexually explicit conduct.

(c) The person knows or reasonably should know that the child depicted in the material who is engaged in sexually explicit conduct has not attained the age of 18 years.

(2m) Whoever exhibits or plays a recording of a child engaged in sexually explicit conduct, if all of the following apply, may be penalized under sub. (3):

(a) The person knows that he or she has exhibited or played the recording.

(b) Before the person exhibited or played the recording, he or she knew the character and content of the sexually explicit conduct.

(c) Before the person exhibited or played the recording, he or she knew or reasonably should have known that the child engaged in sexually explicit conduct had not attained the age of 18 years.

(3) (a) Except as provided in par. (b), a person who violates sub. (1m) or (2m) is guilty of a Class D felony.

(b) A person who violates sub. (1m) or (2m) is guilty of a Class I felony if the person is under 18 years of age when the offense occurs.

History: 1987 a. 332; 1995 a. 67; 2001 a. 16, 109; 2005 a. 433; 2011 a. 271.

A violation of this section must be based on the content of the photograph and how it was produced. Evidence of the location and manner of storing the photo are not properly considered. State v. A. H. 211 Wis. 2d 561, 566 N.W.2d 858 (Ct. App. 1997), 96-2311.

For purposes of multiplicity analysis, each image possessed can be prosecuted separately. Prosecution is not based upon the medium of reproduction. Multiple punishment is appropriate for a defendant who compiled and stored multiple images over time. State v. Multaler, 2002 WI 35, 252 Wis. 2d 54, 643 N.W.2d 437, 00-1846.

Criminalizing child pornography presents the risk of self-censorship of constitutionally protected material. Criminal responsibility may not be imposed without some element of scienter, the degree of knowledge that makes a person legally responsible for the consequences of his or her act or omission. In this section, "reasonably should know" is less than actual knowledge but still requires more than the standard used in civil negligence actions, which is constitutionally sufficient. State v. Schaefer, 2003 WI App 164, 266 Wis. 2d 719, 668 N.W.2d 760, 01-2691.

There was sufficient evidence in the record to demonstrate that the defendant knowingly possessed the child pornography images on his computer because he repeatedly visited child pornography Web sites, clicked on thumbnail images to create larger pictures for viewing, accessed five images twice, and saved at least one image to his personal folder. State v. Lindgren, 2004 WI App 159, 275 Wis. 2d 851, 687 N.W.2d 60, 03-1868.

Sub. (1m) forbids only depictions of real children engaged in sexually explicit activity. Sub. (1m) (c) specifies that to be convicted under the statute, the person possessing the pornography must know or have reason to know that the child engaged in sexually explicit conduct has not attained the age of 18 years. This element does not speak of depictions at all, but rather of a child who has not attained the age of 18 years. State v. Van Buren, 2008 WI App 26, 307 Wis. 2d 447, 746 N.W.2d 545, 06-3025.

Sub. (1m) criminalizes the knowing possession of any photograph of a child engaging in sexually explicit conduct. Expert testimony or other evidence to establish the reality of apparently real photographs is not required. When there has been no evidence adduced that the photographs are anything other than what they appear to be, the photographs themselves are sufficient evidence of the reality of what they depict. State v. Van Buren, 2008 WI App 26, 307 Wis. 2d 447, 746 N.W.2d 545, 06-3025.

Individuals who purposely view digital images of child pornography on the Internet, even though the images are not found in the person's computer hard drive, nonetheless knowingly possess those images in violation of sub. (1m). An individual knowingly possesses child pornography when he or she affirmatively pulls up images of child pornography on the Internet and views those images knowing that they contain child pornography. Whether the proof is hard drive evidence or something else should not matter. State v. Mercer, 2010 WI App 47, 324 Wis. 2d 506, 782 N.W.2d 125, 08-1763.

948.13 Child sex offender working with children. (1) In this section, "serious child sex offense" means any of the following:

(a) A crime under s. 940.22 (2) or 940.225 (2) (c) or (cm), if the victim is under 18 years of age at the time of the offense, a crime under s. 940.302 (2) if s. 940.302 (2) (a) 1. b. applies, or a crime under s. 948.02 (1) or (2), 948.025 (1), 948.05 (1) or (1m), 948.051, 948.06, 948.07 (1), (2), (3), or (4), 948.075, or 948.085.

(b) A crime under federal law or the law of any other state or, prior to May 7, 1996, under the law of this state that is comparable to a crime specified in par. (a).

(2) (a) Except as provided in pars. (b) and (c), whoever has been convicted of a serious child sex offense and subsequently engages in an occupation or participates in a volunteer position that requires him or her to work or interact primarily and directly with children under 16 years of age is guilty of a Class F felony.

(b) If all of the following apply, the prohibition under par. (a) does not apply to a person who has been convicted of a serious child sex offense until 90 days after the date on which the person receives actual written notice from a law enforcement agency, as defined in s. 165.77 (1) (b), of the prohibition under par. (a):

1. The only serious child sex offense for which the person has been convicted is a crime under s. 948.02 (2).

2. The person was convicted of the serious child sex offense before May 7, 2002.

3. The person is eligible to petition for an exemption from the prohibition under sub. (2m) because he or she meets the criteria specified in sub. (2m) (a) 1. and 1m.

(c) The prohibition under par. (a) does not apply to a person who is exempt under a court order issued under sub. (2m).

(2m) (a) A person who has been convicted of a crime under s. 948.02 (2), 948.025 (1), or 948.085 may petition the court in which he or she was convicted to order that the person be exempt from sub. (2) (a) and permitted to engage in an occupation or participate in a volunteer position that requires the person to work or interact primarily and directly with children under 16 years of age. The court may grant a petition

filed under this paragraph if the court finds that all of the following apply:

1. At the time of the commission of the crime under s. 948.02 (2), 948.025 (1), or 948.085 the person had not attained the age of 19 years and was not more than 4 years older or not more than 4 years younger than the child with whom the person had sexual contact or sexual intercourse.

1m. The child with whom the person had sexual contact or sexual intercourse had attained the age of 13 but had not attained the age of 16.

2. It is not necessary, in the interest of public protection, to require the person to comply with sub. (2) (a).

(b) A person filing a petition under par. (a) shall send a copy of the petition to the district attorney who prosecuted the person. The district attorney shall make a reasonable attempt to contact the victim of the crime that is the subject of the person's petition to inform the victim of his or her right to make or provide a statement under par. (d).

(c) A court may hold a hearing on a petition filed under par. (a) and the district attorney who prosecuted the person may appear at the hearing. Any hearing that a court decides to hold under this paragraph shall be held no later than 30 days after the petition is filed if the petition specifies that the person filing the petition is covered under sub. (2) (b), that he or she has received actual written notice from a law enforcement agency of the prohibition under sub. (2) (a), and that he or she is seeking an exemption under this subsection before the expiration of the 90-day period under sub. (2) (b).

(d) Before deciding a petition filed under par. (a), the court shall allow the victim of the crime that is the subject of the petition to make a statement in court at any hearing held on the petition or to submit a written statement to the court. A statement under this paragraph must be relevant to the issues specified in par. (a) 1., 1m. and 2.

(e) 1. Before deciding a petition filed under par. (a), the court may request the person filing the petition to be examined by a physician, psychologist or other expert approved by the court. If the person refuses to undergo an examination requested by the court under this subdivision, the court shall deny the person's petition without prejudice.

2. If a person is examined by a physician, psychologist or other expert under subd. 1., the physician, psychologist or other expert shall file a report of his or her examination with the court, and the court shall provide copies of the report to the person and, if he or she requests a copy, to the district attorney. The contents of the report shall be confidential until the physician, psychologist or other expert has testified at a hearing held under par. (c). The report shall contain an opinion regarding whether it would be in the interest of public protection to require the person to comply with sub. (2) (a) and the basis for that opinion.

3. A person who is examined by a physician, psychologist or other expert under subd. 1. is responsible for paying the cost of the services provided by the physician, psychologist or other expert, except that if the person is indigent the cost of the services provided by the physician, psychologist or other expert shall be paid by the county. If the person claims or appears to be indigent, the court shall refer the person to the authority for indigency determinations under s. 977.07 (1), except that the person shall be considered indigent without another determination under s. 977.07 (1) if the person is represented by the state public defender or by a private attorney appointed under s. 977.08.

(em) A court shall decide a petition no later than 45 days after the petition is filed if the petition specifies that the person filing the petition is covered under sub. (2) (b), that he or she has received actual written notice from a law enforcement agency of the prohibition under sub. (2) (a), and that he or she is seeking an exemption under this subsection before the expiration of the 90-day period under sub. (2) (b).

(f) The person who filed the petition under par. (a) has the burden of proving by clear and convincing evidence that he or she satisfies the criteria specified in par. (a) 1., 1m. and 2. In deciding whether the person has satisfied the criterion specified in par. (a) 2., the court may consider any of the following:

1. The ages, at the time of the violation, of the person who filed the petition and the victim of the crime that is the subject of the petition.

2. The relationship between the person who filed the petition and the victim of the crime that is the subject of the petition.

3. Whether the crime that is the subject of the petition resulted in bodily harm to the victim.

4. Whether the victim of the crime that is the subject of the petition suffered from a mental illness or mental deficiency that rendered him or her temporarily or permanently incapable of understanding or evaluating the consequences of his or her actions.

5. The probability that the person who filed the petition will commit other serious child sex offenses in the future.

6. The report of the examination conducted under par. (e).

7. Any other factor that the court determines may be relevant to the particular case.

(3) Evidence that a person engages in an occupation or participates in a volunteer position relating to any of the following is prima facie evidence that the occupation or position requires him or her to work or interact primarily and directly with children under 16 years of age:

(a) Teaching children.
(b) Child care.
(c) Youth counseling.
(d) Youth organization.
(e) Coaching children.
(f) Parks or playground recreation.
(g) School bus driving.

History: 1995 a. 265; 1997 a. 130, 220; 1999 a. 3; 2001 a. 97, 109; 2003 a. 321; 2005 a. 277; 2007 a. 97, 116.

948.14 Registered sex offender and photographing minors. (1) DEFINITIONS. In this section:

(a) "Captures a representation" has the meaning given in s. 942.09 (1) (a).

(b) "Minor" means an individual who is under 17 years of age.

(c) "Representation" has the meaning giving in s. 942.09 (1) (c).

(d) "Sex offender" means a person who is required to register under s. 301.45.

(2) PROHIBITION. (a) A sex offender may not intentionally capture a representation of any minor without the written

consent of the minor's parent, legal custodian, or guardian. The written consent required under this paragraph shall state that the person seeking the consent is required to register as a sex offender with the department of corrections.

(b) Paragraph (a) does not apply to a sex offender who is capturing a representation of a minor if the sex offender is the minor's parent, legal custodian, or guardian.

(3) PENALTY. Whoever violates sub. (2) is guilty of a Class I felony.

History: 2005 a. 432.

948.20 Abandonment of a child. Whoever, with intent to abandon the child, leaves any child in a place where the child may suffer because of neglect is guilty of a Class G felony.

History: 1977 c. 173; 1987 a. 332 s. 35; Stats. 1987 s. 948.20; 2001 a. 109.

948.21 Neglecting a child. (1) Any person who is responsible for a child's welfare who, through his or her actions or failure to take action, intentionally contributes to the neglect of the child is guilty of one of the following:

(a) A Class A misdemeanor.

(b) A Class H felony if bodily harm is a consequence.

(c) A Class F felony if great bodily harm is a consequence.

(d) A Class D felony if death is a consequence.

(2) Under sub. (1), a person responsible for the child's welfare contributes to the neglect of the child although the child does not actually become neglected if the natural and probable consequences of the person's actions or failure to take action would be to cause the child to become neglected.

History: 1987 a. 332; 2001 a. 109; 2007 a. 80.

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

(a) "Child support" means an amount which a person is ordered to provide for support of a child by a court of competent jurisdiction in this state or in another state, territory or possession of the United States, or, if not ordered, an amount that a person is legally obligated to provide under s. 49.90.

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

(c) "Spousal support" means an amount which a person is ordered to provide for support of a spouse or former spouse by a court of competent jurisdiction in this state or in another state, territory or possession of the United States, or, if not ordered, an amount that a person is legally obligated to provide under s. 49.90.

(2) 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 I felony. A prosecutor may charge a person with multiple counts for a violation under this subsection if each count covers a period of at least 120 consecutive days and there is no overlap between periods.

(3) 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.

(4) Under this section, the following is prima facie evidence of intentional failure to provide child, grandchild or spousal support:

(a) For a person subject to a court order requiring child, grandchild or spousal support payments, when the person knows or reasonably should have known that he or she is required to pay support under an order, failure to pay the child, grandchild or spousal support payment required under the order.

(b) For a person not subject to a court order requiring child, grandchild or spousal support payments, when the person knows or reasonably should have known that he or she has a dependent, failure to provide support equal to at least the amount established by rule by the department of children and families under s. 49.22 (9) or causing a spouse, grandchild or child to become a dependent person, or continue to be a dependent person, as defined in s. 49.01 (2).

(5) Under this section, it is not a defense that child, grandchild or spousal support is provided wholly or partially by any other person or entity.

(6) 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. A person who raises an affirmative defense has the burden of proving the defense by a preponderance of the evidence.

(7) (a) 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 I felony or a Class A misdemeanor, whichever is appropriate, the court shall:

1. 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.

2. If no court order described under subd. 1. exists, enter such an order. For orders for child or spousal support, the court shall determine the amount of support in the manner required under s. 767.511 or 767.89, regardless of the fact that the action is not one for a determination of paternity or an action specified in s. 767.511 (1).

(bm) Upon request, the court may modify the amount of child or spousal support payments determined under par. (b) 2. if, after considering the factors listed in s. 767.511 (1m), regardless of the fact that the action is not one for a determination of paternity or an action specified in s. 767.511 (1), the court finds, by the greater weight of the credible evidence, that the use of the percentage standard is unfair to the child or to either of the child's parents.

(c) An order under par. (a) or (b), other than an order for grandchild support, constitutes an income assignment under s. 767.75 and may be enforced under s. 767.77. Any payment ordered under par. (a) or (b), other than a payment for grandchild support, shall be made in the manner provided under s. 767.57.

History: 1985 a. 29, 56; 1987 a. 332 s. 33; Stats. 1987 s. 948.22; 1989 a. 31, 212; 1993 a. 274, 481; 1995 a. 289; 1997 a. 35, 191, 252; 1999 a. 9; 2001 a. 109; 2003 a. 321; 2005 a. 443 s. 265; 2007 a. 20.

Under s. 940.27 (2) [now 948.22 (2], the state must prove that the defendant had an obligation to provide support and failed to do so for 120 days. The state need not prove that the defendant was required to pay a specific amount. Sub. (6) does

not unconstitutionally shift the burden of proof. State v. Duprey, 149 Wis. 2d 655, 439 N.W.2d 837 (Ct. App. 1989).

Multiple prosecutions for a continuous failure to pay child support are allowed. State v. Grayson, 172 Wis. 2d 156, 493 N.W.2d 23 (1992).

Jurisdiction in a criminal nonsupport action under s. 948.22 does not require that the child to be supported be a resident of Wisconsin during the charged period. State v. Gantt, 201 Wis. 2d 206, 548 N.W.2d 134 (Ct. App. 1996), 95-2469.

Evidence of incarceration to prove inability to pay is not excluded under sub. (6), and there was no basis to find the evidence irrelevant. State v. Stutesman, 221 Wis. 2d 178, 585 N.W.2d 181 (Ct. App. 1998), 97-2991.

This section does not distinguish between support and arrearages. It criminalizes failure to pay arrearages even after the child for whom support is ordered attains majority. Incarceration for violation of this section is not unconstitutional imprisonment for a debt. State v. Lenz, 230 Wis. 2d 529, 602 N.W.2d 172 (Ct. App. 1999), 99-0860.

If nonsupport is charged as a continuing offense, the statute of limitations runs from the last date the defendant intentionally fails to provide support. If charges are brought for each 120 day period that a person does not pay, the statute of limitations bars charging for those 120 periods that are more than 6 years old. The running of the statute of limitations does not prevent inclusion of all unpaid amounts in a later arrearage order. State v. Monarch, 230 Wis. 2d 542, 602 N.W.2d 179 (Ct. App. 1999), 99-1054.

A father, who intentionally refused to pay child support could, as a condition of probation, be required to avoid having another child unless he showed that he could support that child and his current children. In light of the defendant's ongoing victimization of his children and record manifesting his disregard for the law, the condition was not overly broad and was reasonably related to the defendant's rehabilitation. State v. Oakley, 2001 WI 103, 245 Wis. 2d 447, 629 N.W.2d 200, 99-3328.

Whether a court of competent jurisdiction ordered a defendant to pay child support is not an element of failure to pay child support. A question in that regard need not be submitted to the jury. Because the defendant father did not identify a historical fact inconsistent with an incident of the Maine court's jurisdiction, whether a court of competent jurisdiction ordered him to pay child support was a purely legal question for the court to determine. State v. Smith, 2005 WI 104, 283 Wis. 2d 57, 699 N.W.2d 508, 03-1698.

948.23 Concealing or not reporting death of a child; not reporting disappearance of a child. (1) Whoever does any of the following is guilty of a Class I felony:

(a) Conceals the corpse of any issue of a woman's body with intent to prevent a determination of whether it was born dead or alive.

(b) Unless a physician or an authority of a hospital, sanatorium, public or private institution, convalescent home, or any institution of a like nature is required to report the death under s. 979.01 (1) or unless a report conflicts with religious tenets or practices, fails to report to law enforcement the death of a child immediately after discovering the death, or as soon as practically possible if immediate reporting is impossible, if the actor is the parent, stepparent, guardian, or legal custodian of the child and if any of the following applies:

1. The death involves unexplained, unusual, or suspicious circumstances.

2. The death is or appears to be a homicide or a suicide.

3. The death is due to poisoning.

4. The death follows an accident, whether the injury is or is not the primary cause of the death.

(2) Whoever, without authorization under s. 69.18 or other legal authority to move a corpse, hides or buries the corpse of a child is guilty of a Class F felony.

(3) (ag) In this subsection, "missing" means absent without a reasonable explanation if the absence would raise concern in a reasonable person for the child's well-being.

(am) Within the period under par. (b), an individual must report to law enforcement a child as missing if the individual is the parent, stepparent, guardian, or legal custodian of the child.

(b) 1. The report under par. (am) must be made within 24 hours after the child is discovered to be missing if the child is under 13 years of age when the discovery is made.

2. The report under par. (am) must be made within 48 hours after the child is discovered to be missing if the child is at least 13 years of age but under 16 years of age when the discovery is made.

3. The report under par. (am) must be made within 72 hours after the child is discovered to be missing if the child is at least 16 years of age when the discovery is made.

(c) Whoever violates par. (am) is guilty of the following:

1. Except as provided in subds. 2. to 4., a Class A misdemeanor.

2. If the child suffers bodily harm or substantial bodily harm while he or she is missing, a Class H felony.

3. If the child suffers great bodily harm while he or she is missing, a Class F felony.

4. If the child dies while he or she is missing or as a result of an injury he or she suffered while missing, a Class D felony.

History: 1977 c. 173; 1987 a. 332 s. 47; Stats. 1987 s. 948.23; 2001 a. 109; 2011 a. 268; s. 35.17 correction in (3) (c) 4.

948.24 Unauthorized placement for adoption. (1) Whoever does any of the following is guilty of a Class H felony:

(a) Places or agrees to place his or her child for adoption for anything exceeding the actual cost of the items listed in s. 48.913 (1) (a) to (m) and the payments authorized under s. 48.913 (2).

(b) For anything of value, solicits, negotiates or arranges the placement of a child for adoption except under s. 48.833.

(c) In order to receive a child for adoption, gives anything exceeding the actual cost of the legal and other services rendered in connection with the adoption and the items listed in s. 48.913 (1) (a) to (m) and the payments authorized under s. 48.913 (2).

(2) This section does not apply to placements under s. 48.839.

History: 1981 c. 81; 1987 a. 332 s. 50; Stats. 1987 s. 948.24; 1989 a. 161; 1997 a. 104; 2001 a. 109.

948.30 Abduction of another's child; constructive custody. (1) Any person who, for any unlawful purpose, does any of the following is guilty of a Class E felony:

(a) Takes a child who is not his or her own by birth or adoption from the child's home or the custody of his or her parent, guardian or legal custodian.

(b) Detains a child who is not his or her own by birth or adoption when the child is away from home or the custody of his or her parent, guardian or legal custodian.

(2) Any person who, for any unlawful purpose, does any of the following is guilty of a Class C felony:

(a) By force or threat of imminent force, takes a child who is not his or her own by birth or adoption from the child's home or the custody of his or her parent, guardian or legal custodian.

(b) By force or threat of imminent force, detains a child who is not his or her own by birth or adoption when the child is away from home or the custody of his or her parent, guardian or legal custodian.

(3) For purposes of subs. (1) (a) and (2) (a), a child is in the custody of his or her parent, guardian or legal custodian if:

(a) The child is in the actual physical custody of the parent, guardian or legal custodian; or

(b) The child is not in the actual physical custody of his or her parent, guardian or legal custodian, but the parent, guardian or legal custodian continues to have control of the child.

History: 1987 a. 332; 2001 a. 109.

948.31 Interference with custody by parent or others. (1) (a) In this subsection, "legal custodian of a child" means:

1. A parent or other person having legal custody of the child under an order or judgment in an action for divorce, legal separation, annulment, child custody, paternity, guardianship or habeas corpus.

2. The department of children and families or the department of corrections or any person, county department under s. 46.215, 46.22, or 46.23, or licensed child welfare agency, if custody or supervision of the child has been transferred under ch. 48 or 938 to that department, person, or agency.

(b) Except as provided under chs. 48 and 938, whoever intentionally causes a child to leave, takes a child away or withholds a child for more than 12 hours beyond the court-approved period of physical placement or visitation period from a legal custodian with intent to deprive the custodian of his or her custody rights without the consent of the custodian is guilty of a Class F felony. This paragraph is not applicable if the court has entered an order authorizing the person to so take or withhold the child. The fact that joint legal custody has been awarded to both parents by a court does not preclude a court from finding that one parent has committed a violation of this paragraph.

(2) Whoever causes a child to leave, takes a child away or withholds a child for more than 12 hours from the child's parents or, in the case of a nonmarital child whose parents do not subsequently intermarry under s. 767.803, from the child's mother or, if he has been granted legal custody, the child's father, without the consent of the parents, the mother or the father with legal custody, is guilty of a Class I felony. This subsection is not applicable if legal custody has been granted by court order to the person taking or withholding the child.

(3) Any parent, or any person acting pursuant to directions from the parent, who does any of the following is guilty of a Class F felony:

(a) Intentionally conceals a child from the child's other parent.

(b) After being served with process in an action affecting the family but prior to the issuance of a temporary or final order determining child custody rights, takes the child or causes the child to leave with intent to deprive the other parent of physical custody as defined in s. 822.02 (14).

(c) After issuance of a temporary or final order specifying joint legal custody rights and periods of physical placement, takes a child from or causes a child to leave the other parent in violation of the order or withholds a child for more than 12 hours beyond the court-approved period of physical placement or visitation period.

(4) (a) It is an affirmative defense to prosecution for violation of this section if the action:

1. Is taken by a parent or by a person authorized by a parent to protect his or her child in a situation in which the parent or authorized person reasonably believes that there is a threat of physical harm or sexual assault to the child;

2. Is taken by a parent fleeing in a situation in which the parent reasonably believes that there is a threat of physical harm or sexual assault to himself or herself;

3. Is consented to by the other parent or any other person or agency having legal custody of the child; or

4. Is otherwise authorized by law.

(b) A defendant who raises an affirmative defense has the burden of proving the defense by a preponderance of the evidence.

(5) The venue of an action under this section is prescribed in s. 971.19 (8).

(6) In addition to any other penalties provided for violation of this section, a court may order a violator to pay restitution, regardless of whether the violator is placed on probation under s. 973.09, to provide reimbursement for any reasonable expenses incurred by any person or any governmental entity in locating and returning the child. Any such amounts paid by the violator shall be paid to the person or governmental entity which incurred the expense on a prorated basis. Upon the application of any interested party, the court shall hold an evidentiary hearing to determine the amount of reasonable expenses.

History: 1987 a. 332; 1989 a. 31, 56, 107; 1993 a. 302; 1995 a. 27 ss. 7237, 9126 (19); 1995 a. 77; 1997 a. 290; 2001 a. 109; 2005 a. 130; 2005 a. 443 s. 265; 2007 a. 20.

"Imminent physical harm" under sub. (4) is discussed. State v. McCoy, 143 Wis. 2d 274, 421 N.W.2d 107 (1988).

When a mother had agreed to the father's taking their child on a camping trip, but the father actually intended to permanently take, and did abscond to Canada with, the child, the child was taken based on the mother's "mistake of fact," which under s. 939.22 (48) rendered the taking of the child "without consent." State v. Inglin, 224 Wis. 2d 764, 592 N.W.2d 666 (Ct. App. 1999), 97-3091.

In sub. (2), "takes away" a child refers to the defendant removing the child from the parents' possession, which suggests physical manipulation or physical removal. "Causes to leave" in sub. (2) means being responsible for a child abandoning, departing, or leaving the parents, which suggest some sort of mental, rather than physical, manipulation. State v. Samuel, 2001 WI App 25, 240 Wis. 2d 756, 623 N.W.2d 565, 99-2587. Reversed on other grounds, 2002 WI 34, 252 Wis. 2d 26, 643 N.W.2d 423, 99-2587.

The common law affirmative defense of fraud is not applicable to this section. The circuit court properly prevented the defendant from collaterally attacking the underlying custody order despite his allegations that it was obtained by fraud. State v. Campbell, 2006 WI 99, 294 Wis. 2d 100, 718 N.W.2d 649, 04-0803.

For a violation of the "withholds a child for more than 12 hours" provision of sub. (2), the state must prove 3 elements: 1) on the date of the alleged offense, the child was under the age of 18 years; 2) the defendant withheld the child for more than 12 hours from the child's parents; and 3) the child's parents did not consent. There is no requirement that the state prove that the defendant had the parents' initial permission to take the child. State v. Ziegler, 2012 WI 73, 342 Wis. 2d 256, 816 N.W.2d 238, 10-2514.

948.40 Contributing to the delinquency of a child. (1) No person may intentionally encourage or contribute to the delinquency of a child. This subsection includes intentionally encouraging or contributing to an act by a child under the age of 10 which would be a delinquent act if committed by a child 10 years of age or older.

(2) No person responsible for the child's welfare may, by disregard of the welfare of the child, contribute to the delinquency of the child. This subsection includes disregard that contributes to an act by a child under the age of 10 that would be a delinquent act if committed by a child 10 years of age or older.

(3) Under this section, a person encourages or contributes to the delinquency of a child although the child does not actually become delinquent if the natural and probable consequences of the person's actions or failure to take action would be to cause the child to become delinquent.

(4) A person who violates this section is guilty of a Class A misdemeanor, except:

(a) If death is a consequence, the person is guilty of a Class D felony; or

(b) If the child's act which is encouraged or contributed to is a violation of a state or federal criminal law which is punishable as a felony, the person is guilty of a Class H felony.

History: 1987 a. 332; 1989 a. 31; 1995 a. 77; 2001 a. 109.

The punishments for first-degree reckless homicide by delivery of a controlled substance under s. 940.02 (2) (a) and contributing to the delinquency of a child with death as a consequence in violation of s. 948.40 (1) and (4) (a) are not multiplicitous when both convictions arise from the same death. State v. Patterson, 2010 WI 130, 329 Wis. 2d 599, 790 N.W.2d 909, 08-1968.

Sub. (1) proscribes contributing to the delinquency of any child under the age of eighteen. The definition of "child" in s.948.01 (1) excludes those over seventeen only for the "purposes of prosecuting" a person charged with violating s. 948.40 and not that person's victim. State v. Patterson, 2010 WI 130, 329 Wis. 2d 599, 790 N.W.2d 909, 08-1968.

948.45 Contributing to truancy. (1) Except as provided in sub. (2), any person 17 years of age or older who, by any act or omission, knowingly encourages or contributes to the truancy, as defined under s. 118.16 (1) (c), of a person 17 years of age or under is guilty of a Class C misdemeanor.

(2) Subsection (1) does not apply to a person who has under his or her control a child who has been sanctioned under s. 49.26 (1) (h).

(3) An act or omission contributes to the truancy of a child, whether or not the child is adjudged to be in need of protection or services, if the natural and probable consequences of that act or omission would be to cause the child to be truant.

History: 1987 a. 285; 1989 a. 31 s. 2835m; Stats. 1989 s. 948.45; 1995 a. 27.

948.50 Strip search by school employee. (1) The legislature intends, by enacting this section, to protect pupils from being strip searched. By limiting the coverage of this section, the legislature is not condoning the use of strip searches under other circumstances.

(2) In this section:

(a) "School" means a public school, parochial or private school, or tribal school, as defined in s. 115.001 (15m), which provides an educational program for one or more grades between kindergarten and grade 12 and which is commonly known as a kindergarten, elementary school, middle school, junior high school, senior high school, or high school.

(b) "Strip search" means a search in which a person's genitals, pubic area, buttock or anus, or a female person's breast, is uncovered and either is exposed to view or is touched by a person conducting the search.

(3) Any official, employee or agent of any school or school district who conducts a strip search of any pupil is guilty of a Class B misdemeanor.

(4) This section does not apply to a search of any person who:

(a) Is serving a sentence, pursuant to a conviction, in a jail, state prison or house of correction.

(b) Is placed in or transferred to a juvenile correctional facility, as defined in s. 938.02 (10p), or a secured residential care center for children and youth, as defined in s. 938.02 (15g).

(c) Is committed, transferred or admitted under ch. 51, 971 or 975.

(5) This section does not apply to any law enforcement officer conducting a strip search under s. 968.255.

History: 1983 a. 489; 1987 a. 332 s. 38; Stats. 1987 s. 948.50; 1995 a. 77; 2005 a. 344; 2009 a. 302.

948.51 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 H felony if the act results in great bodily harm to another.

(c) A Class G felony if the act results in the death of another.

History: 1983 a. 356; 1987 a. 332 s. 32; Stats. 1987 s. 948.51; 2001 a. 109.

948.53 Child unattended in child care vehicle. (1) DEFINITIONS. In this section:

(a) "Child care provider" means a child care center that is licensed under s. 48.65 (1), a child care provider that is certified under s. 48.651, or a child care program that is established or contracted for under s. 120.13 (14).

(b) "Child care vehicle" means a vehicle that is owned or leased by a child care provider or a contractor of a child care provider and that is used to transport children to and from the child care provider.

(2) NO CHILD LEFT UNATTENDED. (a) No person responsible for a child's welfare while the child is being transported in a child care vehicle may leave the child unattended at any time from the time the child is placed in the care of that person to the time the child is placed in the care of another person responsible for the child's welfare.

(b) Any person who violates par. (a) is guilty of one of the following:

1. A Class A misdemeanor.
2. A Class I felony if bodily harm is a consequence.
3. A Class H felony if great bodily harm is a consequence.
4. A Class G felony if death is a consequence.

History: 2005 a. 184; 2007 a. 80; 2009 a. 185.

948.55 Leaving or storing a loaded firearm within the reach or easy access of a child. (1) In this section, "child" means a person who has not attained the age of 14 years.

(2) Whoever recklessly stores or leaves a loaded firearm within the reach or easy access of a child is guilty of a Class A misdemeanor if all of the following occur:

(a) A child obtains the firearm without the lawful permission of his or her parent or guardian or the person having charge of the child.

(b) The child under par. (a) discharges the firearm and the discharge causes bodily harm or death to himself, herself or another.

(3) Whoever recklessly stores or leaves a loaded firearm within the reach or easy access of a child is guilty of a Class C misdemeanor if all of the following occur:

(a) A child obtains the firearm without the lawful permission of his or her parent or guardian or the person having charge of the child.

(b) The child under par. (a) possesses or exhibits the firearm in a public place or in violation of s. 941.20.

(4) Subsections (2) and (3) do not apply under any of the following circumstances:

(a) The firearm is stored or left in a securely locked box or container or in a location that a reasonable person would believe to be secure.

(b) The firearm is securely locked with a trigger lock.

(c) The firearm is left on the person's body or in such proximity to the person's body that he or she could retrieve it as easily and quickly as if carried on his or her body.

(d) The person is a peace officer or a member of the armed forces or national guard and the child obtains the firearm during or incidental to the performance of the person's duties. Notwithstanding s. 939.22 (22), for purposes of this paragraph, peace officer does not include a commission warden who is not a state-certified commission warden.

(e) The child obtains the firearm as a result of an illegal entry by any person.

(f) The child gains access to a loaded firearm and uses it in the lawful exercise of a privilege under s. 939.48.

(g) The person who stores or leaves a loaded firearm reasonably believes that a child is not likely to be present where the firearm is stored or left.

(h) The firearm is rendered inoperable by the removal of an essential component of the firing mechanism such as the bolt in a breech-loading firearm.

(5) Subsection (2) does not apply if the bodily harm or death resulted from an accident that occurs while the child is using the firearm in accordance with s. 29.304 or 948.60 (3).

History: 1991 a. 139; 1997 a. 248; 2007 a. 27.

948.60 Possession of a dangerous weapon by a person under 18. (1) In this section, "dangerous weapon" means any firearm, loaded or unloaded; any electric weapon, as defined in s. 941.295 (1c) (a); metallic knuckles or knuckles of any substance which could be put to the same use with the same or similar effect as metallic knuckles; a nunchaku or any similar weapon consisting of 2 sticks of wood, plastic or metal connected at one end by a length of rope, chain, wire or leather; a cestus or similar material weighted with metal or other substance and worn on the hand; a shuriken or any similar pointed star-like object intended to injure a person when thrown; or a manrikigusari or similar length of chain having weighted ends.

(2) (a) Any person under 18 years of age who possesses or goes armed with a dangerous weapon is guilty of a Class A misdemeanor.

(b) Except as provided in par. (c), any person who intentionally sells, loans or gives a dangerous weapon to a person under 18 years of age is guilty of a Class I felony.

(c) Whoever violates par. (b) is guilty of a Class H felony if the person under 18 years of age under par. (b) discharges the firearm and the discharge causes death to himself, herself or another.

(d) A person under 17 years of age who has violated this subsection is subject to the provisions of ch. 938 unless jurisdiction is waived under s. 938.18 or the person is subject to the jurisdiction of a court of criminal jurisdiction under s. 938.183.

(3) (a) This section does not apply to a person under 18 years of age who possesses or is armed with a dangerous weapon when the dangerous weapon is being used in target practice under the supervision of an adult or in a course of instruction in the traditional and proper use of the dangerous weapon under the supervision of an adult. This section does not apply to an adult who transfers a dangerous weapon to a person under 18 years of age for use only in target practice under the adult's supervision or in a course of instruction in the traditional and proper use of the dangerous weapon under the adult's supervision.

(b) This section does not apply to a person under 18 years of age who is a member of the armed forces or national guard and who possesses or is armed with a dangerous weapon in the line of duty. This section does not apply to an adult who is a member of the armed forces or national guard and who transfers a dangerous weapon to a person under 18 years of age in the line of duty.

(c) This section applies only to a person under 18 years of age who possesses or is armed with a rifle or a shotgun if the person is in violation of s. 941.28 or is not in compliance with ss. 29.304 and 29.593. This section applies only to an adult who transfers a firearm to a person under 18 years of age if the person under 18 years of age is not in compliance with ss. 29.304 and 29.593 or to an adult who is in violation of s. 941.28.

History: 1987 a. 332; 1991 a. 18, 139; 1993 a. 98; 1995 a. 27, 77; 1997 a. 248; 2001 a. 109; 2005 a. 163; 2011 a. 35.

Sub. (2) (b) does not set a standard for civil liability, and a violation of sub. (2) (b) does not constitute negligence *per se*. Logarto v. Gustafson, 998 F. Supp. 998 (1998).

948.605 Gun-free school zones. (1) DEFINITIONS. In this section:

(a) "Encased" has the meaning given in s. 167.31 (1) (b).

(ac) "Firearm" does not include any beebee or pellet-firing gun that expels a projectile through the force of air pressure or any starter pistol.

(am) "Motor vehicle" has the meaning given in s. 340.01 (35).

(b) "School" has the meaning given in s. 948.61 (1) (b).

(c) "School zone" means any of the following:

1. In or on the grounds of a school.

2. Within 1,000 feet from the grounds of a school.

(2) POSSESSION OF FIREARM IN SCHOOL ZONE. (a) Any individual who knowingly possesses a firearm at a place that the individual knows, or has reasonable cause to believe, is in or on the grounds of a school is guilty of a Class I felony. Any individual who knowingly possesses a firearm at a place that the individual knows, or has reasonable cause to believe, is within 1,000 feet of the grounds of a school is subject to a Class B forfeiture.

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

1m. A person who possesses the firearm in accordance with 18 USC 922 (q) (2) (B) (i), (iv), (v), (vi), or (vii).

1r. Except if the person is in or on the grounds of a school, a licensee, as defined in s. 175.60 (1) (d), or an out-of-state licensee, as defined in s. 175.60 (1) (g).

2m. A state-certified commission warden acting in his or her official capacity.

3. That is not loaded and is:

a. Encased; or

b. In a locked firearms rack that is on a motor vehicle;

3m. A person who is legally hunting in a school forest if the school board has decided that hunting may be allowed in the school forest under s. 120.13 (38).

(3) DISCHARGE OF FIREARM IN A SCHOOL ZONE. (a) Any individual who knowingly, or with reckless disregard for the safety of another, discharges or attempts to discharge a firearm at a place the individual knows is a school zone is guilty of a Class G felony.

(b) Paragraph (a) does not apply to the discharge of, or the attempt to discharge, a firearm:

1. On private property not part of school grounds;

2. As part of a program approved by a school in the school zone, by an individual who is participating in the program;

3. By an individual in accordance with a contract entered into between a school in a school zone and the individual or an employer of the individual; or

4. By a law enforcement officer or state-certified commission warden acting in his or her official capacity.

History: 1991 a. 17; 1993 a. 336; 2001 a. 109; 2005 a. 290; 2007 a. 27; 2011 a. 35.

948.61 Dangerous weapons other than firearms on school premises. (1) In this section:

(a) "Dangerous weapon" has the meaning specified in s. 939.22 (10), except "dangerous weapon" does not include any firearm and does include any beebee or pellet-firing gun that expels a projectile through the force of air pressure or any starter pistol.

(b) "School" means a public school, parochial or private school, or tribal school, as defined in s. 115.001 (15m), which provides an educational program for one or more grades between grades 1 and 12 and which is commonly known as an elementary school, middle school, junior high school, senior high school, or high school.

(c) "School premises" means any school building, grounds, recreation area or athletic field or any other property owned, used or operated for school administration.

(2) Any person who knowingly possesses or goes armed with a dangerous weapon on school premises is guilty of:

(a) A Class A misdemeanor.

(b) A Class I felony, if the violation is the person's 2nd or subsequent violation of this section within a 5-year period, as measured from the dates the violations occurred.

(3) This section does not apply to any person who:

(a) Uses a weapon solely for school-sanctioned purposes.

(b) Engages in military activities, sponsored by the federal or state government, when acting in the discharge of his or her official duties.

(c) Is a law enforcement officer or state-certified commission warden acting in the discharge of his or her official duties.

(d) Participates in a convocation authorized by school authorities in which weapons of collectors or instructors are handled or displayed.

(e) Drives a motor vehicle in which a dangerous weapon is located onto school premises for school-sanctioned purposes or for the purpose of delivering or picking up passengers or property. The weapon may not be removed from the vehicle or be used in any manner.

(f) Possesses or uses a bow and arrow or knife while legally hunting in a school forest if the school board has decided that hunting may be allowed in the school forest under s. 120.13 (38).

(4) A person under 17 years of age who has violated this section is subject to the provisions of ch. 938, unless jurisdiction is waived under s. 938.18 or the person is subject to the jurisdiction of a court of criminal jurisdiction under s. 938.183.

History: 1987 a. 332; 1991 a. 17; 1993 a. 336; 1995 a. 27, 77; 2001 a. 109; 2005 a. 290; 2007 a. 27; 2009 a. 302.

Pellet guns and BB guns are dangerous weapons under this section. Interest of Michelle A.D. 181 Wis. 2d 917, 512 N.W.2d 248 (Ct. App. 1994).

948.62 Receiving stolen property from a child. (1) Whoever intentionally receives stolen property from a child or conceals stolen property received from a child is guilty of:

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

(b) A Class I felony, if the value of the property exceeds $500 but does not exceed $2,500.

(bm) A Class H felony, if the property is a firearm or if the value of the property exceeds $2,500 but does not exceed $5,000.

(c) A Class G felony, if the value of the property exceeds $5,000.

(2) Under this section, proof of all of the following is prima facie evidence that property received from a child was stolen and that the person receiving the property knew it was stolen:

(a) That the value of the property received from the child exceeds $500.

(b) That there was no consent by a person responsible for the child's welfare to the delivery of the property to the person.

History: 1987 a. 332; 2001 a. 109; 2011 a. 99.

948.63 Receiving property from a child. Whoever does either of the following is guilty of a Class A misdemeanor:

(1) As a dealer in secondhand articles or jewelry or junk, purchases any personal property, except old rags and waste

paper, from any child, without the written consent of his or her parent or guardian; or

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

History: 1971 c. 228; 1977 c. 173; 1987 a. 332 s. 40; Stats. 1987 s. 948.63; 1989 a. 257.

948.70 Tattooing of children. (1) In this section:

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

(b) "Tattoo" means to insert pigment under the surface of the skin of a person, by pricking with a needle or otherwise, so as to produce an indelible mark or figure through the skin.

(2) Subject to sub. (3), any person who tattoos or offers to tattoo a child is subject to a Class D forfeiture.

(3) Subsection (2) does not prohibit a physician from tattooing or offering to tattoo a child in the course of his or her professional practice.

History: 1991 a. 106.

CHAPTER 949

AWARDS FOR THE VICTIMS OF CRIMES

SUBCHAPTER I
CRIME VICTIM COMPENSATION

Cross-reference: See definitions in s. 939.22.
Cross-reference: See also ch. Jus 11, Wis. adm. code.

SUBCHAPTER I

CRIME VICTIM COMPENSATION

949.001 Legislative intent. The legislature finds and declares that the state has a moral responsibility to aid innocent victims of violent crime. In order to maintain and to strengthen our democratic system of law and social order, it is essential that the rights of the victim of a crime should be as fully protected as the rights of the criminal offender. Adequate protection and assistance of victims of crime will also encourage greater public cooperation in the successful apprehension and prosecution of criminal offenders. It is the intention of the legislature that the state should provide sufficient assistance to victims of crime and their families in order to ease their financial burden and to maintain their dignity as they go through a difficult and often traumatic period. It is also the intention of the legislature that the department should actively publicize the crime victim compensation program and promote its use.

History: 1979 c. 189.

949.01 Definitions. In this subchapter:

(1) "Crime" means an act committed in this state which would constitute a crime as defined in s. 939.12 if committed by a competent adult who has no legal defense for the act.

(1m) "Department" means the department of justice.

(2) "Dependent" means any spouse, domestic partner under ch. 770, parent, grandparent, stepparent, child, stepchild, adopted child, grandchild, brother, sister, half brother, half sister, or parent of spouse or of domestic partner under ch. 770, of a deceased victim who was wholly or partially dependent upon the victim's income at the time of the victim's death and includes any child of the victim born after the victim's death.

(3) "Law enforcement agency" has the meaning designated under s. 165.83 (1) (b).

(4) "Medical treatment" includes medical, surgical, dental, optometric, chiropractic, podiatric and hospital care; medicines; medical, dental and surgical supplies; crutches; artificial members; appliances and training in the use of artificial members and appliances. "Medical treatment" includes any Christian Science treatment for cure or relief from the effects of injury.

(4m) "Pedestrian" has the meaning given in s. 340.01 (43).

(5) "Personal injury" means actual bodily harm and includes pregnancy and mental or nervous shock.

(6) "Victim" means a person who is injured or killed by an incident specified in s. 949.03 (1) (a), or by any act or omission of any other person that is within the description of any of the offenses listed in s. 949.03 (1) (b) or within the description of the offense listed and the condition provided in s. 949.03 (1) (c). This definition does not apply to s. 949.165.

History: 1975 c. 344, 421; 1977 c. 239; 1979 c. 189; 1981 c. 20; 1983 a. 467; 1985 a. 135 s. 83 (3); 1989 a. 140; 1995 a. 153; 2007 a. 20; 2009 a. 28.

949.02 Administration. The department shall administer this subchapter. The department shall appoint a program director to assist in administering this subchapter. The department shall promulgate rules for the implementation and operation of this subchapter. The rules shall include procedures to ensure that any limitation of an award is calculated in a fair and equitable manner.

History: 1975 c. 344; 1979 c. 189; 1985 a. 242; 2003 a. 33; 2007 a. 20.
Cross-reference: See also ch. Jus 11, Wis. adm. code.

949.03 Compensable acts. (1) The department may order the payment of an award for personal injury or death which results from:

(a) Preventing or attempting to prevent the commission of a crime; apprehending or attempting to apprehend a suspected criminal; aiding or attempting to aid a police officer to apprehend or arrest a suspected criminal; aiding or attempting to aid a victim of a crime specified in par. (b); or aiding or attempting to aid a victim of the crime specified and the condition provided in par. (c).

(b) The commission or the attempt to commit any crime specified in s. 346.62 (4), 346.63 (2) or (6), 940.01, 940.02, 940.03, 940.05, 940.06, 940.07, 940.08, 940.09, 940.10, 940.19, 940.20, 940.201, 940.21, 940.22 (2), 940.225, 940.23, 940.24, 940.25, 940.285, 940.29, 940.30, 940.302 (2), 940.305, 940.31, 940.32, 941.327, 943.02, 943.03, 943.04, 943.10, 943.20, 943.23 (1g), 943.32, 943.81, 943.86, 943.87, 948.02, 948.025,

948.03, 948.04, 948.05, 948.051, 948.06, 948.07, 948.075, 948.08, 948.085, 948.09, 948.095, 948.20, 948.30 or 948.51.

(c) The commission or the attempt to commit the crime specified in s. 346.67 (1) if the victim was a pedestrian.

History: 1975 c. 224 s. 145za; 1975 c. 344; 1977 c. 173, 239; 1979 c. 118; 1983 a. 199, 356, 538; 1985 a. 275; 1985 a. 293 s. 3; 1985 a. 306 s. 5; 1987 a. 90, 332, 380, 399, 403; 1989 a. 105, 140, 359; 1993 a. 92, 227; 1995 a. 153, 374, 456; 1997 a. 35, 143, 258; 2001 a. 109; 2005 a. 212, 277; 2007 a. 97, 116; 2011 a. 271.

949.035 Residents; victims of crime outside the state. (1) If a Wisconsin resident suffers injury or death in a situation described in s. 949.03 except that the act occurred outside this state, the resident has the same rights under this subchapter as if the act had occurred in this state upon a showing that the state, territory, country or political subdivision of a country in which the act occurred does not have a compensation of victims of crimes law which covers the injury or death suffered by the person.

(2) The department shall keep a current record of the laws relating to compensation of victims of crimes in other states and territories of the United States. The department need not keep a current record of laws in other countries. Upon request, the department shall assist Wisconsin residents to determine if they meet the criteria specified in sub. (1).

(3) In this section, "resident" means a person who maintains a place of permanent abode in this state.

History: 1979 c. 34; 1985 a. 242; 2007 a. 20.

949.04 Application for award. (1) ELIGIBILITY. Any person may apply for an award under this subchapter.

(a) Application by a minor may be made on the minor's behalf by his or her parent or guardian.

(b) Application by an individual adjudicated incompetent may be made on the individual's behalf by the guardian or other person authorized to administer the individual's estate.

(2) FORMS. (a) The department shall prescribe application forms for awards under this subchapter. If the application results from the commission of or the attempt to commit a crime specified in s. 940.22 (2), 940.225, 948.02, 948.025, 948.051, 948.085, or 948.095 or a crime or an act compensable under s. 949.03 that was sexually motivated, as defined in s. 980.01 (5), any personally identifiable information, as defined in s. 19.62 (5), provided on the application form is not subject to inspection or copying under s. 19.35 (1).

(b) The department shall furnish law enforcement agencies with the forms under par. (a). The law enforcement agency investigating a crime shall provide forms to each person who may be eligible to file a claim under this subchapter.

(3) MEDICAL AND DENTAL RECORDS. The applicant shall submit to the department reports from all physicians, osteopaths, dentists, optometrists, chiropractors or podiatrists who treated or examined the victim at the time of or subsequent to the victim's injury or death. The department may also order such other examinations and reports of the victim's previous medical and dental history, injury or death as it believes would be of material aid in its determination.

History: 1975 c. 344, 421; 1975 c. 422 s. 163; 1977 c. 239; 1981 c. 20; 2005 a. 387; 2007 a. 20; 2009 a. 138.

949.05 Award; to whom payable. (1) In any case in which a person is injured or killed by an incident specified in s. 949.03 (1) (a), by any act or omission of any other person that is within the description of crimes under s. 949.03 (1) (b) or by any act or omission of any person that is within the description of the crime listed and the condition provided under s. 949.03 (1) (c), the department may order the payment of an award:

(a) To or for the benefit of the injured person;

(b) In the case of personal injury to or death of the victim, to any person responsible for the maintenance of the victim who has suffered pecuniary loss or incurred expenses as a result of the injury to or death; or

(c) Except as provided in s. 949.06 (1m), in the case of death of the victim, to or for the benefit of any one or more of the dependents of the victim. If 2 or more dependents are entitled to an award, the award shall be apportioned by the department among the dependents.

History: 1975 c. 344; 1985 a. 135 s. 83 (3); 1985 a. 242; 1989 a. 140; 1995 a. 153.

949.06 Computation of award. (1) In accordance with this subchapter, the department shall make awards, as appropriate, for any of the following economic losses incurred as a direct result of an injury:

(a) Medical treatment.

(b) Work loss, which shall be determined as follows:

1. If the victim was employed at the time of the injury, loss of actual earnings shall be based upon the victim's net salary at the time of the injury.

2. If the victim was not employed at the time of the injury or, if as a direct result of the injury, the victim suffered a disability causing a loss of potential earnings, the award may be based upon a sufficient showing by the victim that he or she actually incurred loss of earnings. The amount of the award shall be reduced by any income from substitute work actually performed by the victim or by income the victim would have earned in available appropriate substitute work the victim was capable of performing, but unreasonably failed to undertake.

(bm) If the victim is a homemaker, an amount sufficient to ensure that the duties and responsibilities are continued until the victim is able to resume the performance of the duties, or until the cost of services reaches the maximum allowable under sub. (2), whichever is less.

(c) Reasonable replacement value of any clothing and bedding that is held for evidentiary purposes, but not to exceed $300.

(cm) Reasonable replacement value for property, other than clothing and bedding under par. (c), that is held for evidentiary purposes and is rendered unusable as a result of crime laboratory testing, but not to exceed $200.

(d) Reasonable funeral and burial expenses, not to exceed $2,000. The funeral and burial award may not be considered by the department under sub. (2).

(e) Dependent's economic loss, which shall include contributions of things of economic value provided by the victim to dependents but lost as a result of the victim's death. Loss of support shall be determined on the basis of the victim's net salary at the time of death, and shall be calculated as an amount equal to 4 times the victim's average annual earnings.

(f) Reasonable and necessary costs associated with securing and cleaning up a crime scene, not to exceed $1,000.

(1m) (a) In this subsection, "family member" means any spouse, domestic partner under ch. 770, parent, grandparent,

stepparent, child, stepchild, adopted child, grandchild, foster child, brother, sister, half brother, half sister, aunt, uncle, nephew, niece, or parent or sibling of spouse or of a domestic partner under ch. 770.

(b) In accordance with this subchapter, the department shall make awards, as appropriate, to persons who, immediately prior to the crime, lived in the same household with and to family members of a victim of s. 940.01, 940.02, 940.05, 940.06, 940.07, 940.08 or 940.09 for any of the economic losses specified in sub. (1) as a result of the person's or family member's reaction to the death. A dependent may recover both under sub. (1) and this subsection, subject to the limitation under sub. (2).

(2) The department may not make an award of more than $40,000 for any one injury or death.

(3) Any award made under this section shall be reduced by the amount of any payment received, or to be received, as a result of the injury or death:

(a) From, or on behalf of, the person who committed the crime.

(b) From insurance payments or program, including worker's compensation and unemployment insurance.

(c) From public funds.

(d) As an emergency award under s. 949.10.

(e) From one or more 3rd parties held liable for the offender's acts.

(f) From an award under s. 949.26.

(4) (a) An award may be made whether or not any person is prosecuted or convicted of any offense arising out of such act or omission.

(b) The department may suspend proceedings under this subchapter for a period it deems appropriate on the grounds that a prosecution for an offense arising out of the act or omission has been commenced or is imminent.

History: 1975 c. 344, 421; 1977 c. 239; 1979 c. 198; 1981 c. 20, 314; 1985 a. 242; 1987 a. 27; 1993 a. 16, 446; 1997 a. 27, 39; 2003 a. 33; 2007 a. 20; 2009 a. 28, 276.

Cross-reference: See also ch. Jus 11, Wis. adm. code.

949.07 Manner of payment. The award, combining both the compensation award and the funeral and burial award, if applicable, shall be paid in a lump sum, except that in the case of death or protracted disability the award may provide for periodic payments. The department may pay any portion of an award directly to the provider of any service which is the basis for that portion of the award. No award may be subject to execution, attachment, garnishment or other process, except that an award for allowable expense is not exempt from a claim of a creditor to the extent that the creditor provided products, services or accommodations the costs of which are included in the award.

History: 1975 c. 344; 1979 c. 189; 1981 c. 20.

949.08 Limitations on awards. (1) No order for the payment of an award may be made unless the application was made within 1 year after the date of the personal injury or death, and the personal injury or death was the result of an incident or offense which had been reported to the police within 5 days of its occurrence or, if the incident or offense could not reasonably have been reported within such period, within 5 days of the time when a report could reasonably have been made. The department may waive the one-year requirement under this subsection in the interest of justice.

(2) No award may be ordered if the victim:

(a) Engaged in conduct which substantially contributed to the infliction of the victim's injury or death or in which the victim could have reasonably foreseen could lead to the injury or death. This does not apply to awards to victims under s. 949.03 (1) (a).

(b) Committed a crime which caused or contributed to the victim's injury or death.

(d) Has not cooperated with appropriate law enforcement agencies.

(e) Is an adult passenger in the offender's vehicle, the crime involved is specified in s. 346.63 (2) or 940.25, and the passenger knew the offender was committing that offense. This paragraph does not apply if the victim is also a victim of a crime specified in s. 940.30, 940.305, 940.31 or 948.30.

(em) Is an adult passenger in the offender's commercial motor vehicle, the crime involved is specified in s. 346.63 (6) or 940.25, and the passenger knew the offender was committing that offense. This paragraph does not apply if the victim is also a victim of a crime specified in s. 940.30, 940.305, 940.31, or 948.30.

(f) Has not cooperated with the department in the administration of the program.

(g) Is included on the statewide support lien docket under s. 49.854 (2) (b), unless the victim provides to the department a payment agreement that has been approved by the county child support agency under s. 59.53 (5) and that is consistent with rules promulgated under s. 49.858 (2) (a).

(2m) If a claimant other than a victim has not cooperated with the department in the administration of the program, no award may be ordered for the claimant.

(3) No award may be made to any claimant if the award would unjustly benefit the offender or accomplice.

History: 1975 c. 344, 421; 1979 c. 189; 1981 c. 20; 1983 a. 199; 1985 a. 242, 337; 1987 a. 27; 1987 a. 332 s. 64; 1989 a. 105, 140; 1991 a. 277; 1995 a. 404, 448; 1999 a. 9; 2003 a. 30, 97, 326.

949.09 Effect of conviction. If any person has been convicted of any offense with respect to an act or omission on which a claim under this subchapter is based, proof of that conviction shall be taken as conclusive evidence that the offense has been committed, unless an appeal or any proceeding with regard thereto is pending.

History: 1975 c. 344; 2007 a. 20.

949.10 Emergency awards. (1) Notwithstanding s. 949.06, if the department determines that an award will probably be made and that undue hardship will result to the claimant if immediate payment is not made, the department may order emergency awards as follows:

(a) An emergency compensation award may not exceed $500.

(b) An emergency award for funeral and burial expenses may not exceed $2,000.

(2) Any award under sub. (1) shall be deducted from the final award made to the claimant. The excess of the amount of such emergency award over the amount of the final award, or the full amount of the emergency award if no final award is made, shall be repaid by the claimant to the department.

History: 1975 c. 344; 1981 c. 20.

949.11 Hearings. (1) The procedure of ch. 227 for contested cases applies to hearings under this subchapter except as otherwise provided in this section and ss. 949.12 and 949.14.

(2) The division of hearings and appeals in the department of administration shall appoint hearing examiners to make findings and orders under s. 227.46 and this subchapter.

(3) All hearings shall be open to the public unless in a particular case the examiner determines that the hearing, or a portion thereof, shall be held in private having regard to the fact that the offender has not been convicted or to the interest of the victim of an alleged sexual offense.

History: 1975 c. 344; 1977 c. 239; 1979 c. 189; 1985 a. 182 s. 57; 1985 a. 242, 332; 2007 a. 20.

949.115 Subpoenas. The department or any of its authorized agents may issue subpoenas for persons or records for any investigation or hearing conducted under this subchapter and may enforce compliance with such subpoenas as provided in s. 885.12.

History: 1981 c. 20; 2007 a. 20.

949.12 Condition of claimant. There is no privilege, except privileges arising from the attorney-client relationship, as to communications or records relevant to an issue of the physical, mental or emotional condition of the claimant or victim in a proceeding under this subchapter in which that condition is an element.

History: 1979 c. 189; 1981 c. 20; 2007 a. 20.

949.13 Agency cooperation. Upon request by the department, any state or local agency, including a district attorney or law enforcement agency, shall make available all reports, files and other appropriate information which the department requests in order to make a determination that a person is eligible for an award under this subchapter.

History: 1981 c. 20; 1985 a. 242; 2007 a. 20.

949.14 Attorney fees. (1) The department may determine and allow reasonable attorney fees to be paid out of, but not in addition to, the amount of the award granted to a claimant. No attorney may ask for, contract for or receive any larger sum than the amount so allowed. Attorney fees shall not exceed 10% of the amount the attorney assisted the victim in obtaining.

(2) The department shall provide for payment of such fee directly to the person entitled thereto.

(3) Whoever charges a fee in violation of sub. (1) shall forfeit double the amount retained by the attorney. This forfeiture shall be collected by this state in an action in debt, upon complaint of the department. Out of the sum recovered, the court shall direct payment to a claimant in the amount of the overcharge.

History: 1975 c. 344, 421; 1977 c. 239; 1979 c. 189; 1985 a. 242; 1993 a. 490.

949.15 Department subrogation rights. (1) Whenever the department orders the payment of an award under this subchapter as a result of the occurrence of an event that creates a cause of action on the part of a claimant against any person, the department is subrogated to the rights of the claimant and may bring an action against the person for the amount of the damages sustained by the claimant. If an amount greater than that paid under the award order is recovered and collected in any such action, the department shall pay the balance to the claimant. If the person responsible for the injury or death has previously made restitution payments to the general fund under s. 973.20, any judgment obtained by the department under this section shall be reduced by the amount of the restitution payments to the general fund.

(2) In addition to the authority of the department to bring an action under sub. (1), the claimant may bring an action to recover damages. In any such action, the department has subrogation rights under sub. (1) and the claimant shall join the department as a party under s. 803.03 (2) (a). After joinder, the department has the options specified in s. 803.03 (2) (b).

(3) If a judgment or verdict in an action under sub. (1) or (2) indicates separately economic loss and noneconomic detriment, payments on the judgment shall be allocated between them in proportion to the amounts indicated. In such an action, the judge, on timely motion, shall direct the jury to return a special verdict, indicating separately the awards for noneconomic detriment, punitive damages and economic loss.

History: 1975 c. 344; 1979 c. 189; 1981 c. 20; 1985 a. 242; 1987 a. 398; 1993 a. 157; 2007 a. 20.

Election of remedies, retroactivity, joinder, statute of limitations, and subrogation are discussed. Bruner v. Kops, 105 Wis. 2d 614, 314 N.W.2d 892 (Ct. App. 1981).

Although a county was vicariously liable for damages due to injury, it was not a "person responsible for the injury." As such, no subrogation was required. Hamed v. Milwaukee County, 108 Wis. 2d 257, 321 N.W.2d 199 (1982).

The Department of Justice, Crime Victim Compensation Program is not an entity that is separate and distinct from the state. The program is an arm of the state and is considered stateless for diversity purposes under federal law. Bosse v. Pitts, 455 F. Supp. 868 (2006).

949.16 Confidentiality of records. The record of a proceeding before an examiner or the department under this subchapter is a public record. Any record or report obtained by an examiner or the department, the confidentiality of which is protected by any other law or rule, shall remain confidential.

History: 1975 c. 344; 1977 c. 29; 1979 c. 189; 2007 a. 20.

949.165 Escrow accounts; moneys received as a result of the commission of a serious crime. (1) DEFINITIONS. In this section:

(a) "Serious crime" has the meaning designated in s. 969.08 (10) (b) and includes solicitation, conspiracy or attempt to commit a serious crime.

(b) "Victim" has the meaning specified in s. 950.02 (4).

(2) PAYMENT TO AND ESTABLISHMENT OF ESCROW ACCOUNTS. Every person or other legal entity contracting with any person, or the representative or assignee of any person, accused or convicted of a serious crime in this state, with respect to the reenactment of the serious crime, by a movie, book, magazine article, tape recording, phonograph record, radio or television presentation or live entertainment of any kind, or from the expression of the accused or convicted person's thoughts, feelings, opinions or emotions regarding the serious crime, shall submit a copy of the contract to the department and pay over to the department any moneys which would otherwise, by terms of the contract, be owing to the person so accused or convicted or his or her representatives. This subsection applies only if the reenactment of the serious crime constitutes a substantial portion of the movie, book, article, recording, record, presentation, entertainment or expression. The department shall deposit the moneys in an interest-bearing escrow account

for the payment of money judgments to any victim or the legal representative of any victim of serious crimes committed by:

(a) The convicted person; or

(b) The accused person, but only if the accused person is eventually convicted of the serious crime charged.

(3) NOTICE TO POTENTIAL CLAIMANTS. The department, at least once every 6 months for 3 years from the date it receives the moneys, shall cause to have published a legal notice in newspapers of general circulation in the county in which the serious crime was committed advising the victims that the escrow moneys are available to satisfy money judgments under this section. The department may provide for additional notice. When the department is reasonably satisfied that all victims have received actual notice, the department may cease to provide the notice required under this subsection.

(4) PRIORITY OF PAYMENTS. (a) Claims on moneys in an escrow account have the following priority:

1. First priority for legal representation payments under sub. (5).

2. Second priority for payments to satisfy money judgments under sub. (6).

3. Third priority for reimbursement, recoupment and restitution payments under sub. (7).

(b) The department shall make payments from escrow accounts in accordance with the priority schedule under par. (a). The department may make payments at any time from an escrow account, except that no payment may be made for a claim if there is another existing or pending claim entitled to a higher priority.

(c) If the amount of claims for the same priority exceeds the amount of moneys available in an escrow account, the department may prorate the payments.

(5) FIRST PRIORITY PAYMENTS; LEGAL REPRESENTATION. The department shall make payments from an escrow account to a person charged with a serious crime upon the order of a court of competent jurisdiction after a showing by the person that the moneys shall be used for the exclusive purpose of his or her legal representation in a criminal action or in the defense of a civil action.

(6) SECOND PRIORITY PAYMENTS; SATISFACTION OF MONEY JUDGMENTS. (a) The department shall make payments to victims or legal representatives of victims of serious crimes who have obtained money judgments against the accused or convicted person. The victim or legal representative of the victim shall bring a civil action and obtain a money judgment. The victim shall then file a claim with the department for payment.

(b) In the case of death of the victim, one or more dependents may obtain a payment under this section in the same manner as a victim. If 2 or more dependents are entitled to payments under this subsection, the department shall apportion the payments among the dependents.

(c) If the state is subrogated to a cause of action under s. 949.15, the state may seek reimbursement under this subsection. If the judgment is apportioned under s. 949.15 (3), the payments under this subsection shall be prorated accordingly.

(d) The victim or the legal representative of a victim shall notify the department when he or she brings the action described in par. (a), but failure to notify under this paragraph does not bar any payment from an escrow account.

(7) THIRD PRIORITY PAYMENTS; LEGAL FEES AND RESTITUTION. The department shall make payments from an escrow account for any governmental entity for the reimbursement for or recoupment of the costs of legal representation of the person charged with the serious crime or for any unpaid restitution under s. 973.20. The governmental entity shall file a claim for the applicable amount with the department.

(8) PAYMENT TO ACCUSED OR CONVICTED PERSON. If either of the following conditions occur, the department shall pay all of the remaining moneys in an escrow account to the accused or convicted person:

(a) The charges against the person are dismissed with prejudice or the person is found not guilty of the serious crime charged.

(b) Three years have elapsed from the date of the establishment of the escrow account and no civil actions seeking money judgments, unsatisfied money judgments or claims under this section are pending against the defendant in this state.

(9) INTERPLEADER. If a court determines that a person accused of a serious crime is incompetent to proceed under s. 971.14 or if the charges are dismissed without prejudice, the department shall bring an action of interpleader to determine the disposition of the escrow account.

(10) STATUTE OF LIMITATIONS. If an escrow account is established under this section, no otherwise applicable statute of limitations on the time within which a civil action may be brought bars an action by a victim of a serious crime committed by a person accused or convicted of the serious crime as to a claim resulting from the serious crime until 3 years have elapsed from the time the escrow account was established.

(11) ACT TO DEFEAT PURPOSE; VOID. Any act by any person accused or convicted of a serious crime, whether by execution of a power of attorney, creation of corporate entities or otherwise, to defeat the purpose of this section shall be void as against the public policy of this state.

(12) PAYMENT IS NOT AN AWARD. Any payment from an escrow account under this section shall not be considered as an award by the department under this subchapter.

(13) APPLICABILITY. This section applies only to contracts which are entered into on or after May 18, 1985.

(14) PENALTY. Any person who violates sub. (2) shall be fined not more than $500 or imprisoned not more than 30 days or both.

History: 1983 a. 467; 1987 a. 398; 2007 a. 20.

949.17 Offenses. (1) PROHIBITION. In connection with the crime victim compensation program, no person may:

(a) Submit a fraudulent application or claim for an award;

(b) Intentionally make or cause to be made any false statement or representation of a material fact; or

(c) Intentionally conceal or fail to disclose information affecting the amount of or the initial or continued right to any such award when reasonably requested to provide such information by the department.

(2) PENALTIES. Any person who violates this section shall be fined not more than $500 or imprisoned not more than 6 months or both. The person shall further forfeit any benefit

received and shall reimburse the state for payments received or paid to or on behalf of the person.

(3) DAMAGES. The state has a civil cause of action for relief against any person who violates this section for the amount of damages which the state sustained by reason of the violation and, in addition, for punitive damages not more than double the amount of damages which the state may have sustained, together with interest, and the cost of the suit.

(4) ACTION. The attorney general may bring any action and has such powers as may be necessary to enforce this section.

History: 1975 c. 344, 421; 1981 c. 20.

CHAPTER 950

RIGHTS OF VICTIMS AND WITNESSES OF CRIME

Cross-reference: See definitions in s. 939.22.
Cross-reference: See also ch. Jus 12, Wis. adm. code.

950.01 Legislative intent. In recognition of the civic and moral duty of victims and witnesses of crime to fully and voluntarily cooperate with law enforcement and prosecutorial agencies, and in further recognition of the continuing importance of such citizen cooperation to state and local law enforcement efforts and the general effectiveness and well-being of the criminal justice system of this state, the legislature declares its intent, in this chapter, to ensure that all victims and witnesses of crime are treated with dignity, respect, courtesy and sensitivity; and that the rights extended in this chapter to victims and witnesses of crime are honored and protected by law enforcement agencies, prosecutors and judges in a manner no less vigorous than the protections afforded criminal defendants. Nothing in this chapter shall be construed to impair the exercise of prosecutorial discretion.

History: 1979 c. 219; 2011 a. 283.

950.02 Definitions. In this chapter:

(1) Except in sub. (3), "child" means a person who is less than 18 years of age.

(1m) "Crime" means an act committed in this state which, if committed by a competent adult, would constitute a crime, as defined in s. 939.12.

(1t) "Custodial agency" means any person authorized to arrest or take into actual physical custody an individual who is alleged to have committed a crime. "Custodial agency" includes a law enforcement agency, a sheriff, superintendent or other keeper of a jail and a person authorized to take custody of a juvenile under s. 938.19 or 938.20 (4).

(2) "Department" means the department of justice.

(2m) "District attorney" means any of the following:

(a) The district attorney or other person authorized to prosecute a criminal case or a delinquency proceeding under ch. 938.

(b) A person designated by a person specified in par. (a) to perform the district attorney's duties under this chapter.

(3) "Family member" means spouse, minor child, adult child, sibling, parent, or legal guardian.

(3m) "Law enforcement agency" has the meaning given in s. 165.83 (1) (b).

(4) (a) "Victim" means any of the following:

1. A person against whom a crime has been committed.

2. If the person specified in subd. 1. is a child, a parent, guardian or legal custodian of the child.

3. If a person specified in subd. 1. is physically or emotionally unable to exercise the rights granted under s. 950.04 or article I, section 9m, of the Wisconsin constitution, a person designated by the person specified in subd. 1. or a family member of the person specified in subd. 1.

4. If a person specified in subd. 1. is deceased, any of the following:

a. A family member of the person who is deceased.

b. A person who resided with the person who is deceased.

5. If a person specified in subd. 1. has been adjudicated incompetent in this state, the guardian of the person appointed for him or her.

(b) "Victim" does not include the person charged with or alleged to have committed the crime.

(4m) "Victim and witness office" means an organization or program that provides services for which the county receives reimbursement under this chapter.

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

History: 1979 c. 219; 1983 a. 197; 1985 a. 311; 1995 a. 77, 310; 1997 a. 35, 181; 1999 a. 32; 2005 a. 387, 419.

950.03 Eligibility of victims. A victim has the rights and is eligible for the services under this chapter only if the crime has been reported to law enforcement authorities.

History: 1979 c. 219; 1991 a. 159.

950.04 Basic bill of rights for victims and witnesses.

(1v) RIGHTS OF VICTIMS. Victims of crimes have the following rights:

(ag) To be treated with fairness, dignity, and respect for his or her privacy by public officials, employees, or agencies. This paragraph does not impair the right or duty of a public official or employee to conduct his or her official duties reasonably and in good faith.

(ar) To have his or her interest considered when the court is deciding whether to grant a continuance in the case, as provided under ss. 938.315 (2) and 971.10 (3) (b) 3.

(b) To attend court proceedings in the case, subject to ss. 906.15 and 938.299 (1). The court may require the victim to exercise his or her right under this paragraph using telephone or live audiovisual means, if available, if the victim is under arrest, incarcerated, imprisoned or otherwise detained by any law enforcement agency or is admitted or committed on an inpatient

basis to a treatment facility under ch. 51, 971 or 980, and the victim does not have a person specified in s. 950.02 (4) (a) 3. to exercise the victim's right under this paragraph.

(bm) To be provided with appropriate intercession services to ensure that employers of victims will cooperate with the criminal justice process and the juvenile justice process in order to minimize an employee's loss of pay and other benefits resulting from court appearances.

(c) To be accompanied by a service representative, as provided under s. 895.45.

(d) To request an order for, and to be given the results of, testing to determine the presence of a communicable disease, as provided under ss. 938.296 or 968.38.

(dL) To not be the subject of a law enforcement officer's or district attorney's order, request, or suggestion that he or she submit to a test using a lie detector, as defined in s. 111.37 (1) (b), if he or she claims to have been the victim of a sexual assault under s. 940.22 (2), 940.225, 948.02 (1) or (2), or 948.085, except as permitted under s. 968.265.

(dr) To not have his or her personal identifiers, as defined in s. 85.103 (1) and including an electronic mail address, used or disclosed by a public official, employee, or agency for a purpose that is unrelated to the official responsibilities of the official, employee, or agency.

(e) To be provided a waiting area under ss. 938.2965 and 967.10.

(em) To have his or her interests considered by the court in determining whether to exclude persons from a preliminary hearing, as provided under s. 970.03 (4).

(er) To not be compelled to submit to a pretrial interview or deposition by a defendant or his or her attorney as provided under s. 971.23 (6c).

(f) To have the parole commission make a reasonable attempt to notify the victim of applications for parole, as provided under s. 304.06 (1).

(g) To have reasonable attempts made to notify the victim of hearings or court proceedings, as provided under ss. 302.113 (9g) (g) 2., 302.114 (6), 938.27 (4m) and (6), 938.273 (2), 971.095 (3) and 972.14 (3) (b).

(gm) To have reasonable attempts made to notify the victim of petitions for sentence adjustment as provided under s. 973.09 (3m), 973.195 (1r) (d), or 973.198.

(i) To have, at his or her request, the opportunity to consult with intake workers, district attorneys and corporation counsel in cases under ch. 938, as provided under ss. 938.245 (1m), 938.265 and 938.32 (1) (am).

(j) To have, at his or her request, the opportunity to consult with the prosecution in a case brought in a court of criminal jurisdiction, as provided under s. 971.095 (2).

(k) To a speedy disposition of the case in which they are involved as a victim in order to minimize the length of time they must endure the stress of their responsibilities in connection with the matter.

(L) To have the district attorney or corporation counsel, whichever is applicable, make a reasonable attempt to contact the victim concerning the victim's right to make a statement, as provided under ss. 938.32 (1) (b) 2., 938.335 (3m) (b) and 972.14 (3) (b).

(m) To provide statements concerning sentencing, disposition, or parole, as provided under ss. 304.06 (1) (e), 938.32 (1) (b) 1g., 938.335 (3m) (ag), and 972.14 (3) (a).

(n) To have direct input in the parole decision-making process, as provided by the rules promulgated under s. 304.06 (1) (em).

(nn) To attend parole interviews or hearings and make statements as provided under s. 304.06 (1) (eg).

(nt) To attend a hearing on a petition for modification of a bifurcated sentence and provide a statement concerning modification of the bifurcated sentence, as provided under s. 302.113 (9g) (d).

(nx) To attend a hearing on a petition for modification of a term of probation under s. 973.09 (3) (d) and provide a statement to the court concerning modification of the term of probation as provided under s. 973.09 (3m).

(o) To have information concerning the impact of a delinquent act on the victim included in a court report under s. 938.33 and to have the person preparing the court report attempt to contact the victim, as provided under s. 938.331.

(p) To have the person preparing a presentence investigation under s. 972.15 make a reasonable attempt to contact the victim, as provided in s. 972.15 (2m).

(pm) To have the court provided with information pertaining to the economic, physical and psychological effect of the crime upon the victim and have the information considered by the court.

(q) To restitution, as provided under ss. 938.245 (2) (a) 5., 938.32 (1t), 938.34 (5), 938.345, 943.212, 943.23 (6), 943.245, 943.51 and 973.20.

(qm) To recompense as provided under s. 969.13 (5) (a).

(r) To a judgment for unpaid restitution, as provided under ss. 895.035 (2m) and 973.09 (3) (b).

(rm) To compensation, as provided under subch. I of ch. 949.

(s) To have any stolen or other personal property expeditiously returned by law enforcement agencies when no longer needed as evidence, subject to s. 968.205. If feasible, all such property, except weapons, currency, contraband, property subject to evidentiary analysis, property subject to preservation under s. 968.205, and property the ownership of which is disputed, shall be returned to the person within 10 days of being taken.

(t) To receive information from law enforcement agencies, as provided under s. 950.08 (2g).

(u) To receive information from district attorneys, as provided under s. 950.08 (2r).

(um) To have district attorneys make a reasonable attempt to notify the victim under s. 971.17 (4m) regarding conditional releases under s. 971.17.

(v) To have the department of corrections make a reasonable attempt to notify the victim under s. 301.046 (4) regarding community residential confinements, under s. 301.048 (4m) regarding participation in the intensive sanctions program, under s. 301.38 regarding escapes from a Type 1 prison, under s. 301.46 (3) regarding persons registered under s. 301.45, under s. 302.105 regarding release upon expiration of certain sentences, under s. 304.063 regarding extended

supervision and parole releases, and under s. 938.51 regarding release or escape of a juvenile from correctional custody.

(vm) To have the appropriate clerk of court send the victim a copy of an inmate's petition for extended supervision and notification of the hearing on that petition under s. 302.114 (6).

(w) To have the department of corrections make a reasonable attempt to notify the victim under s. 303.068 (4m) regarding leave granted to qualified inmates under s. 303.068.

(x) To have the department of health services make a reasonable attempt to notify the victim under s. 971.17 (6m) regarding termination or discharge under s. 971.17 and under s. 51.37 (10) regarding home visits under s. 51.37 (10).

(xm) To have the department of health services make a reasonable attempt to notify the victim under s. 980.11 regarding supervised release under s. 980.08 and discharge under s. 980.09 (4).

(y) To have reasonable attempts made to notify the victim concerning actions taken in a juvenile proceeding, as provided under ss. 938.24 (5m), 938.25 (2m), 938.312 and 938.346.

(yd) To have the appropriate clerk of court make a reasonable attempt to send the victim a copy of a motion made under s. 974.07 (2) for postconviction deoxyribonucleic acid testing of certain evidence and notification of any hearing on that motion, as provided under s. 974.07 (4).

(ym) To have the governor make a reasonable attempt to notify the victim of a pardon application, as provided under s. 304.09 (2) and (3).

(z) To make a written statement concerning pardon applications, as provided under s. 304.10 (2).

(zm) To request information from a district attorney concerning the disposition of a case involving a crime of which he or she was a victim, as provided under s. 971.095 (6).

(zx) To complain to the department of justice concerning the treatment of crime victims, as provided under s. 950.08 (3), and to request review by the crime victims rights board of the complaint, as provided under s. 950.09 (2).

(2w) RIGHTS OF WITNESSES. Witnesses of crimes have the following rights:

(a) To request information from the district attorney about the final disposition of the case.

(b) To be notified that a court proceeding to which they have been subpoenaed will not go on as scheduled, in order to save the person an unnecessary trip to court.

(c) To receive protection from harm and threats of harm arising out of their cooperation with law enforcement and prosecution efforts, and to be provided with information as to the level of protection available.

(d) To be informed of financial assistance and other social services available as a result of being a witness of a crime, including information on how to apply for the assistance and services.

(dm) To not have his or her personal identifiers, as defined in s. 85.103 (1) and including an electronic mail address, used or disclosed by a public official, employee, or agency for a purpose that is unrelated to the official responsibilities of the official, employee, or agency.

(e) To be informed of the procedure to be followed in order to apply for and receive any witness fee to which they are entitled.

(f) To be provided a waiting area under ss. 938.2965 and 967.10.

(fm) To have any stolen or other personal property expeditiously returned by law enforcement agencies when no longer needed as evidence. If feasible, all such property, except weapons, currency, contraband, property subject to evidentiary analysis and property the ownership of which is disputed, shall be returned to the person within 10 days of being taken.

(g) To be provided with appropriate intercession services to ensure that employers of witnesses will cooperate with the criminal justice process and the juvenile justice process in order to minimize an employee's loss of pay and other benefits resulting from court appearances.

(h) To be entitled to a speedy disposition of the case in which they are involved as a witness in order to minimize the length of time they must endure the stress of their responsibilities in connection with the matter.

History: 1979 c. 219; 1983 a. 102, 364; 1985 a. 311; 1987 a. 332 s. 64; 1989 a. 31; 1997 a. 181, 237, 283; 1999 a. 9, 32, 188; 2001 a. 16, 109; 2003 a. 224; 2005 a. 155, 277, 434, 447; 2007 a. 20 ss. 3863, 9121 (6) (a); 2007 a. 97; 2009 a. 28, 138; 2011 a. 38, 283.

A sentencing court does not abuse its discretion by considering a victim's statements and recommendations. State v. Johnson, 158 Wis. 2d 458, 463 N.W.2d 352 (Ct. App. 1990).

950.055 Child victims and witnesses; rights and services. (1) LEGISLATIVE INTENT. The legislature finds that it is necessary to provide child victims and witnesses with additional consideration and different treatment than that usually afforded to adults. The legislature intends, in this section, to provide these children with additional rights and protections during their involvement with the criminal justice or juvenile justice system. The legislature urges the news media to use restraint in revealing the identity of child victims or witnesses, especially in sensitive cases.

(2) ADDITIONAL SERVICES. In addition to all rights afforded to victims and witnesses under s. 950.04 and services provided under s. 950.06 (1m), counties are encouraged to provide the following additional services on behalf of children who are involved in criminal or delinquency proceedings as victims or witnesses:

(a) Explanations, in language understood by the child, of all legal proceedings in which the child will be involved.

(b) Advice to the judge, when appropriate and as a friend of the court, regarding the child's ability to understand proceedings and questions. The services may include providing assistance in determinations concerning the taking of depositions by audiovisual means under s. 908.08 or 967.04 (7) and (8) and the duty to expedite proceedings under s. 971.105.

(c) Advice to the district attorney concerning the ability of a child witness to cooperate with the prosecution and the potential effects of the proceedings on the child.

(d) Information about and referrals to appropriate social services programs to assist the child and the child's family in coping with the emotional impact of the crime and the subsequent proceedings in which the child is involved.

(3) PROGRAM RESPONSIBILITY. In each county, the county board is responsible for the provision of services under this section. A county may seek reimbursement for services provided under this section as part of its program plan submitted to the department under s. 950.06. To the extent

possible, counties shall utilize volunteers and existing public resources for the provision of these services.

History: 1983 a. 197; 1985 a. 262 s. 8; 1985 a. 311; 1997 a. 181; 2005 a. 42.
Cross-reference: See also ch. Jus 12, Wis. adm. code.

950.06 Reimbursement for services. (1m) To be eligible for reimbursement under this section for the provision of services to victims and witnesses, a county shall provide all of the following services to victims and witnesses:

(a) Court appearance notification services, including cancellation of appearances.

(b) Victim compensation and social services referrals, including witness fee collection, case-by-case referrals and public information.

(c) Escort and other transportation services related to the investigation or prosecution of the case, if necessary or advisable.

(d) Case progress notification services which may be combined with services under par. (a).

(dm) Assistance in providing the court with information pertaining to the economic, physical and psychological effect of the crime upon the victim of a felony.

(e) Employer intercession services.

(f) Expedited return of property services.

(g) Protection services.

(h) Family support services, including child and other dependent care services.

(i) Waiting facilities.

(2) The costs of providing services under sub. (1m) shall be paid for by the county, but the county is eligible to receive reimbursement from the state for not more than 90% of the costs incurred in providing those services. The department shall determine the level of services for which a county may be reimbursed. The county board shall file a claim for reimbursement with the department. The department shall reimburse counties under this subsection from the appropriation under s. 20.455 (5) (k), (kk) and (kp) and, on a semiannual basis, from the appropriations under s. 20.455 (5) (c) and (g).

(3) The county board shall provide for the implementation of the county's plan under sub. (4). Two or more counties may submit a joint plan under sub. (4).

(4) If the county seeks reimbursement under sub. (2), the county board shall submit a program plan to the department for its approval. The county is eligible for reimbursement under sub. (2) only if the department has approved the plan. The program plan shall describe the level of services to victims and witnesses that the county intends to provide; the personnel or agencies responsible for related administrative programs and individual services; proposed staffing for the program; proposed education, training and experience requirements for program staff and the staff of agencies providing related administrative programs and individual services; the county's budget for implementing the program and other information the department determines to be necessary for its review. The plan shall provide that the district attorney, local law enforcement agencies and the courts shall make available to the person or agency responsible for administering the program all reports or files, except reports or files which are required by statute to be kept confidential, if the reports or files are required by the person or agency to carry out program responsibilities. Each year, the county board shall submit a report to the department on the operation of the plan, including the provision of services under sub. (1m).

(5) The department shall review and approve the implementation and operation of programs and the annual reports under this section. The department may suspend or terminate reimbursement under sub. (2) if the county fails to comply with its duties under this section. The department shall promulgate rules under ch. 227 for implementing and administering county programs approved under this section.

History: 1979 c. 219; 1981 c. 20; 1983 a. 27, 364; 1987 a. 244; 1991 a. 159; 1997 a. 181, 237; 1999 a. 9.
Cross-reference: See also ch. Jus 12, Wis. adm. code.

950.07 Intergovernmental cooperation. The county board, district attorney, local law enforcement agencies, local social service agencies, victim and witness offices and courts shall all cooperate with each other to ensure that victims and witnesses of crimes receive the rights and services to which they are entitled under this chapter.

History: 1979 c. 219; 1995 a. 310.

950.08 Information and mediation services. (1) DUTIES OF DEPARTMENT; TOLL-FREE TELEPHONE NUMBER. The department shall maintain a toll-free telephone number to provide crime victims and witnesses with all of the following services:

(a) Information and referral to available services.

(b) Crisis counseling and emotional support.

(c) Assistance in securing resources and protection.

(2) DUTIES OF DEPARTMENT; GENERAL INFORMATIONAL PROGRAM. The department shall provide an informational program to inform crime victims, the general public, criminal justice officials and related professionals about crime victim rights and services.

(2g) INFORMATION TO BE PROVIDED BY LAW ENFORCEMENT AGENCIES. No later than 24 hours after a law enforcement agency has initial contact with a victim of a crime that the law enforcement agency is responsible for investigating, the law enforcement agency shall make a reasonable attempt to provide to the victim written information on all of the following:

(a) A list of the rights of victims under s. 950.04 (1v).

(b) The availability of compensation under subch. I of ch. 949 and the address and telephone number at which to contact the department for information concerning compensation under subch. I of ch. 949.

(c) The address and telephone number of the intake worker, corporation counsel or district attorney whom the victim may contact to obtain information concerning the rights of victims and to request notice of court proceedings under ss. 938.27 (4m) and (6), 938.273 (2), 938.299 (1) (am) and 938.335 (3m) (b) or ss. 971.095 (3) and 972.14 (3) (b), whichever is applicable, and to request the opportunity to confer under ss. 938.245 (1m), 938.265 or 938.32 (1) (am) or s. 971.095 (2), whichever is applicable.

(d) The address and telephone number of the custodial agency that the victim may contact to obtain information concerning the taking into custody or arrest of a suspect in connection with the crime of which he or she is a victim.

(e) The address and telephone number of the custodial agency that the victim may contact for information concerning release under s. 938.20 or 938.21 or ch. 969, whichever is

appropriate, of a person arrested or taken into custody for the crime of which he or she is a victim.

(f) Suggested procedures for the victim to follow if he or she is subject to threats or intimidation arising out of his or her cooperation with law enforcement and prosecution efforts relating to a crime of which he or she is a victim.

(g) The address and telephone number at which the victim may contact the department or any local agency that provides victim assistance in order to obtain further information about services available for victims, including medical services.

(2r) INFORMATION TO BE PROVIDED BY A DISTRICT ATTORNEY IN CRIMINAL CASES. As soon as practicable, but in no event later than 10 days after the initial appearance under s. 970.01 or 24 hours before a preliminary examination under s. 970.03, whichever is earlier, of a person charged with a crime in a court of criminal jurisdiction, a district attorney shall make a reasonable attempt to provide to each victim of the crime written information on all of the following:

(a) A brief statement of the procedure for prosecuting a crime.

(b) A list of the rights of victims under s. 950.04 (1v) and information about how to exercise those rights.

(c) The person or agency to notify if the victim changes his or her address and wants to continue to receive notices and services under s. 950.04 or 971.095 (3).

(d) The availability of compensation under subch. I of ch. 949, including information concerning eligibility for compensation and the procedure for applying for compensation.

(e) The person to contact for further information about a case involving the prosecution of a crime of which he or she is a victim.

(2s) INFORMATION CONCERNING JUVENILE CASES. Notification of a victim of an act committed by a juvenile concerning the rights of victims under ch. 938 shall be provided as specified in s. 938.346.

(2w) INFORMATION TO BE PROVIDED BY DISTRICT ATTORNEYS TO SCHOOLS IN CRIMINAL CASES. If a criminal complaint is issued under s. 968.02 or if a petition for waiver is granted pursuant to s. 938.18, and the district attorney reasonably believes the person charged is a pupil enrolled in a school district, a private school, or a charter school established pursuant to 118.40 (2r), the district attorney shall make a reasonable attempt to notify the school board, private school governing body, or charter school governing body of the charges pending against the pupil. The district attorney shall also notify the school board, private school governing body, or charter school governing body of the final disposition of the charges.

(3) DUTIES OF DEPARTMENT; MEDIATION. The department may receive complaints, seek to mediate complaints and, with the consent of the involved parties, actually mediate complaints regarding the treatment of crime victims and witnesses by public officials, employees or agencies or under crime victim and witness assistance programs. The department may act as a liaison between crime victims or witnesses and others when seeking to mediate these complaints and may request a written response regarding the complaint from the subject of a complaint. If asked by the department to provide a written response regarding a complaint, the subject of a complaint shall respond to the department's request within a reasonable time.

History: 1991 a. 39; 1997 a. 181; 2007 a. 20; 2009 a. 309.

950.09 Crime victims rights board. (1) In this section, "board" means the crime victims rights board.

(2) At the request of one of the involved parties, the board may review a complaint made to the department under s. 950.08 (3) regarding a violation of the rights of a crime victim. A party may not request the board to review a complaint under this subsection until the department has completed its action on the complaint under s. 950.08 (3). In reviewing a complaint under this subsection, the board may not begin any investigation or take any action specified in pars. (a) to (d) until the board first determines that there is probable cause to believe that the subject of the complaint violated the rights of a crime victim. Based on its review of a complaint under this subsection, the board may do any of the following:

(a) Issue private and public reprimands of public officials, employees or agencies that violate the rights of crime victims provided under this chapter, ch. 938 and article I, section 9m, of the Wisconsin constitution.

(b) Refer to the judicial commission a violation or alleged violation by a judge of the rights of crime victims provided under this chapter, ch. 938 and article I, section 9m, of the Wisconsin constitution.

(c) Seek appropriate equitable relief on behalf of a victim if such relief is necessary to protect the rights of the victim. The board may not seek to appeal, reverse or modify a judgment of conviction or a sentence in a criminal case.

(d) Bring civil actions to assess a forfeiture under s. 950.11. Notwithstanding s. 778.06, an action or proposed action authorized under this paragraph may be settled for such sum as may be agreed upon between the parties. In settling actions or proposed actions, the board shall treat comparable situations in a comparable manner and shall assure that any settlement bears a reasonable relationship to the severity of the offense or alleged offense. Forfeiture actions brought by the board shall be brought in the circuit court for the county in which the violation is alleged to have occurred.

(3) In addition to its powers under sub. (2), the board may issue reports and recommendations concerning the securing and provision of crime victims rights and services.

(4) Actions of the board are not subject to approval or review by the attorney general.

(5) The board shall promulgate rules establishing procedures for the exercise of its powers under this section.

History: 1997 a. 181.
Cross-reference: See also s. CVRB 1.01, Wis. adm. code.

950.095 Confidentiality of complaints. (1) (a) The records of the department relating to a complaint made under s. 950.08 (3) are confidential unless the subject of the complaint waives the right to confidentiality in writing to the department.

(am) Before a finding of probable cause under s. 950.09 (2), a complaint referred to the crime victims rights board under s. 950.09 (2) is confidential unless the subject of the complaint waives the right to confidentiality in writing to the crime victims rights board.

(b) If a complaint becomes known to the public before the completion of action by the department under s. 950.08 (3) or a finding of probable cause by the crime victims rights board under s. 950.09 (2), the department or the crime victims rights

board, whichever is applicable, may issue statements in order to confirm that a complaint has been made or is being reviewed, to clarify the procedural aspects of actions taken under ss. 950.08 (3) and 950.09 (2), to explain the right of the subject of the complaint to respond to the complaint, to state that the subject of the complaint denies the allegations, if applicable, to state that action under ss. 950.08 (3) and 950.09 (2) has been completed and no basis for the complaint was found or to correct public misinformation.

(1m) In investigating a complaint made under s. 950.08 (3) or being reviewed under s. 950.09 (2), the department or the crime victims rights board, whichever is applicable, shall do all of the following:

(a) Act to avoid unnecessary embarrassment to and publicity for the subject of the complaint.

(b) Request any person contacted for information not to disclose that an investigation is being conducted or the nature of any inquiries made by the department or the crime victims rights board.

(2) This section does not preclude the department or the crime victims rights board from doing any of the following:

(a) Informing the person who made the complaint of the outcome of any action by the department or review by the crime victims rights board.

(b) Referring to the judicial commission information relating to alleged misconduct by or an alleged disability of a judge or court commissioner.

(c) Referring to an appropriate law enforcement authority information relating to possible criminal conduct or otherwise cooperating with a law enforcement authority in matters of mutual interest.

(d) Referring to an attorney disciplinary agency information relating to the possible misconduct or incapacity of an attorney or otherwise cooperating with an attorney disciplinary agency in matters of mutual interest.

(e) Disclosing to the chief justice or director of state courts information relating to matters affecting the administration of the courts.

History: 1997 a. 181.

Cross-reference: See also s. CVRB 1.01, Wis. adm. code.

950.10 Limitation on liability; grounds for appeal. **(1)** No cause of action for money damages may arise against the state, any political subdivision of the state or any employee or agent of the state or a political subdivision of the state for any act or omission in the performance of any power or duty under this chapter or under article I, section 9m, of the Wisconsin constitution or for any act or omission in the performance of any power or duty under ch. 938 relating to the rights of, services for or notices to victims.

(2) A failure to provide a right, service or notice to a victim under this chapter or ch. 938 or under article I, section 9m, of the Wisconsin constitution is not a ground for an appeal of a judgment of conviction or sentence and is not grounds for any court to reverse or modify a judgment of conviction or sentence.

History: 1997 a. 181.

950.105 Standing. A crime victim has a right to assert, in a court in the county in which the alleged violation occurred, his or her rights as a crime victim under the statutes or under article I, section 9m, of the Wisconsin Constitution. This section does not preclude a district attorney from asserting a victim's statutory or constitutional crime victim's rights in a criminal case or in a proceeding or motion brought under this section.

History: 2011 a. 283.

950.11 Penalties. A public official, employee or agency that intentionally fails to provide a right specified under s. 950.04 (1v) to a victim of a crime may be subject to a forfeiture of not more than $1,000.

History: 1997 a. 181.

CHAPTER 951

CRIMES AGAINST ANIMALS

Cross-reference: See definitions in s. 939.22.

951.01 Definitions. In this chapter:

(1) "Animal" includes every living:

(a) Warm-blooded creature, except a human being;

(b) Reptile; or

(c) Amphibian.

(1m) "Conservation warden" means a warden appointed under s. 23.10.

(2) "Cruel" means causing unnecessary and excessive pain or suffering or unjustifiable injury or death.

(3) "Farm animal" means any warm-blooded animal normally raised on farms in the United States and used or intended for use as food or fiber.

(3e) "Humane officer" means an officer appointed under s. 173.03.

(3f) "Fire department" includes a volunteer fire department and a department under s. 60.553, 61.66, or 62.13 (2e).

(3m) "Law enforcement agency" has the meaning given in s. 165.83 (1) (b).

(4) "Law enforcement officer" has the meaning assigned under s. 967.02 (5) but does not include a conservation warden appointed under s. 23.10.

(5) "Service dog" means a dog that is trained for the purpose of assisting a person with a sensory, mental, or physical disability or accommodating such a disability.

History: 1973 c. 314; 1983 a. 189; 1987 a. 248; 1987 a. 332 s. 54; Stats. 1987 s. 951.01; 1989 a. 223; 1997 a. 27, 192; 1999 a. 83; 2001 a. 56; 2005 a. 353; 2011 a. 32.

Legislative Council Note, 1973: The definition of "animal" is based on s. 346.20, Minn. Stats. Anno. (1971). The term includes not only animals strictly so-called but birds and other living warmblooded creatures except people. [Bill 16-S]

951.015 Construction and application. (1) This chapter may not be interpreted as controverting any law regulating wild animals that are subject to regulation under ch. 169, the taking of wild animals, as defined in s. 29.001 (90), or the slaughter of animals by persons acting under state or federal law.

(2) For purposes of enforcing this chapter as to wild animals subject to regulation under ch. 169, a conservation warden has the same powers and duties that a law enforcement officer has under this chapter.

(3) This chapter does not apply to:

(a) Teaching, research, or experimentation conducted pursuant to a protocol or procedure approved by an educational or research institution, and related incidental animal care activities, at facilities that are regulated under 7 USC 2131 to 2159 or 42 USC 289d.

(b) Bona fide scientific research involving species unregulated by federal law.

History: 1973 c. 314; 1983 a. 27 s. 2202 (38); 1987 a. 332 s. 54; Stats. 1987 s. 951.015; 1997 a. 248; 2001 a. 56; 2011 a. 32.

Rather than exclude all non-captive wild animals from coverage of ch. 951, the legislature instead prohibits enforcement that controverts ch. 29 and regulations governing "the taking of wild animals." By prohibiting a subset of takings — those that controvert ch. 29 — the legislature necessarily conveys its belief that there are takings that do not controvert ch. 29. State v. Kuenzi, 2011 WI App 30, 332 Wis. 2d 297, 796 N.W.2d 222, 09-1827.

Enhancing Animal Welfare Laws. Goode & Aizenberg. Wis. Law. Dec. 2011.

951.02 Mistreating animals. No person may treat any animal, whether belonging to the person or another, in a cruel manner. This section does not prohibit normal and accepted veterinary practices.

History: 1973 c. 314; 1987 a. 332 s. 54; Stats. 1987 s. 951.02; 1993 a. 486; 2011 a. 32.

Conviction under this section does not require proof of intent or negligence. State v. Stanfield, 105 Wis. 2d 553, 314 N.W.2d 339 (1982).

"Animal" in this section includes non-captive wild animals, such as the deer in this case. State v. Kuenzi, 2011 WI App 30, 332 Wis. 2d 297, 796 N.W.2d 222, 09-1827.

951.025 Decompression prohibited. No person may kill an animal by means of decompression.

History: 1985 a. 48; 1987 a. 332 s. 54; Stats. 1987 s. 951.025.

951.03 Dognapping and catnapping. No person may take the dog or cat of another from one place to another without the owner's consent or cause such a dog or cat to be confined or carried out of this state or held for any purpose without the owner's consent. This section does not apply to law enforcement officers or humane officers engaged in the exercise of their official duties.

History: 1973 c. 314 s. 4; Stats. 1973 s. 948.03; 1987 a. 332 s. 54; Stats. 1987 s. 951.03; 1997 a. 192.

951.04 Leading animal from motor vehicle. No person shall lead any animal upon a highway from a motor vehicle or from a trailer or semitrailer drawn by a motor vehicle.

History: 1973 c. 314; 1987 a. 332 s. 54; Stats. 1987 s. 951.04.

951.05 Transportation of animals. No person may transport any animal in or upon any vehicle in a cruel manner.

History: 1973 c. 314; 1987 a. 332 s. 54; Stats. 1987 s. 951.05.

951.06 Use of poisonous and controlled substances. No person may expose any domestic animal owned by another to any known poisonous substance, any controlled substance included in schedule I, II, III, IV or V of ch. 961, or any controlled substance analog of a controlled substance included in schedule I or II of ch. 961, whether mixed with meat or other food or not, so that the substance is liable to be eaten by the animal and for the purpose of harming the animal. This section shall not apply to poison used on one's own premises and designed for the purpose of rodent or pest extermination nor to the use of a controlled substance in accepted veterinary practices.

History: 1973 c. 314; 1987 a. 332 s. 54; Stats. 1987 s. 951.06; 1995 a. 448; 2011 a. 32; s. 35.17 correction.

951.07 Use of certain devices prohibited. No person may directly or indirectly, or by aiding, abetting or permitting the doing thereof, either put, place, fasten, use or fix upon or to any animal used or readied for use for a work purpose or for use in an exhibition, competition, rodeo, circus or other performance, any of the following devices: a bristle bur, tack bur or like device; or a poling device used to train a horse to jump which is charged with electricity or to which have been affixed nails, tacks or other sharp points.

History: 1973 c. 314; 1987 a. 332 s. 54; Stats. 1987 s. 951.07.

951.08 Instigating fights between animals. (1) No person may intentionally instigate, promote, aid or abet as a principal, agent or employee, or participate in the earnings from, or intentionally maintain or allow any place to be used for a cockfight, dog fight, bullfight or other fight between the same or different kinds of animals or between an animal and a person. This section does not prohibit events or exhibitions commonly featured at rodeos or bloodless bullfights.

(2) No person may own, possess, keep or train any animal with the intent that the animal be engaged in an exhibition of fighting.

(2m) If a person has been convicted under sub. (1) or (2), the person may not own, possess, keep or train any animal for a period of 5 years after the conviction. In computing the 5-year period, time which the person spent in actual confinement serving a criminal sentence shall be excluded. The person may move the sentencing court to have this requirement waived. The court may waive the requirement except that the waiver may not authorize the person to own, possess, keep or train animals of the species involved in the offense under sub. (1) or (2).

(3) No person may intentionally be a spectator at a cockfight, dog fight, bullfight or other fight between the same or different kinds of animals or between an animal and a person.

History: 1973 c. 314; 1981 c. 160; 1983 a. 95; 1987 a. 332 s. 54; Stats. 1987 s. 951.08.

951.09 Shooting at caged or staked animals. (1) No person may shoot, kill, or wound with a firearm, or with any deadly weapon, any animal that is tied, staked out, caged or otherwise intentionally confined in an artificial enclosure, regardless of size.

(2) (a) Whoever is concerned in the commission of a violation of this section is a principal and may be charged with and convicted of the violation although he or she did not directly commit it and although the person who directly committed it has not been convicted of the violation.

(b) A person is concerned in the commission of a violation of this section under par. (a) if the person does any of the following:

1. Instigates, promotes, aids, or abets the violation as a principal, agent, employee, participant, or spectator.

2. Participates in any earnings from the commission of the violation.

3. Intentionally maintains or allows any place to be used for the commission of the violation.

(3) This section does not apply to any of the following animals:

(b) A captive wild bird that is shot, killed, or wounded on a bird hunting preserve licensed under s. 169.19.

(c) Farm-raised deer, as defined in s. 95.001 (1) (ag).

(d) Animals that are treated in accordance with normally acceptable husbandry practices.

History: 1973 c. 314; 1987 a. 332 s. 54; Stats. 1987 s. 951.09; 2001 a. 56.

951.095 Harassment of police and fire animals. (1) No person may do any of the following to any animal that is used by a law enforcement agency or fire department to perform agency or department functions or duties:

(a) Frighten, intimidate, threaten, abuse or harass the animal.

(b) Strike, shove, kick or otherwise subject the animal to physical contact.

(c) Strike the animal by using a dangerous weapon.

(2) Subsection (1) does not apply to any of the following:

(a) Any act that is performed by or with the authorization of the animal's handler or rider.

(b) Any act that is necessary for the training of an animal to perform functions or duties for a law enforcement agency.

History: 1993 a. 192; 1997 a. 27.

951.097 Harassment of service dogs. (1) (a) Any person may provide notice to another person in any manner that the latter person's behavior is interfering with the use of a service dog and may request that the latter person stop engaging in that behavior.

(b) No person, after receiving a notice and request under par. (a) regarding a service dog, may do any of the following:

1. Recklessly interfere with the use of the service dog by obstructing or intimidating it or otherwise jeopardizing its safety or the safety of its user.

2. Intentionally interfere with the use of the service dog by obstructing or intimidating it or otherwise jeopardizing its safety or the safety of its user.

(2) (a) No person may recklessly allow his or her dog to interfere with the use of a service dog by obstructing or intimidating it or otherwise jeopardizing its safety or the safety of its user.

(b) No person may intentionally allow his or her dog to interfere with the use of a service dog by obstructing or intimidating it or otherwise jeopardizing its safety or the safety of its user.

(3) (a) No person may recklessly injure a service dog or recklessly allow his or her dog to injure a service dog.

(b) No person may intentionally injure a service dog or intentionally allow his or her dog to injure a service dog.

(4) (a) No person may recklessly cause the death of a service dog.

(b) No person may intentionally cause the death of a service dog.

(5) No person may take possession of or exert control over a service dog without the consent of its owner or user and with the intent to deprive another of the use of the service dog.

History: 2005 a. 353.

951.10 Sale of baby rabbits, chicks and other fowl. **(1)** No person may sell, offer for sale, barter or give away living chicks, ducklings or other fowl unless the person provides proper brooder facilities for the care of such chicks, ducklings or other fowl during the time they are in the person's possession.

(2) No retailer, as defined in s. 100.30 (2) (e), may sell, offer for sale, barter or give away living baby rabbits, baby chicks, ducklings or other fowl under 2 months of age in any quantity less than 6 unless in the business of selling these animals for agricultural, wildlife or scientific purposes.

History: 1973 c. 314; 1979 c. 34 s. 2102 (3) (a); 1979 c. 176; 1983 a. 189 s. 329 (20); 1987 a. 332 s. 54; Stats. 1987 s. 951.10; 1993 a. 486.

951.11 Artificially colored animals; sale. No person may sell, offer for sale, raffle, give as a prize or premium, use as an advertising device or display living chicks, ducklings, other fowl or rabbits that have been dyed or otherwise colored artificially.

History: 1973 c. 314; 1987 a. 332 s. 54; Stats. 1987 s. 951.11.

951.13 Providing proper food and drink to confined animals. No person owning or responsible for confining or impounding any animal may fail to supply the animal with a sufficient supply of food and water as prescribed in this section.

(1) FOOD. The food shall be sufficient to maintain all animals in good health.

(2) WATER. If potable water is not accessible to the animals at all times, it shall be provided daily and in sufficient quantity for the health of the animal.

History: 1973 c. 314; 1983 a. 95; 1987 a. 332 s. 54; Stats. 1987 s. 951.13.

951.14 Providing proper shelter. No person owning or responsible for confining or impounding any animal may fail to provide the animal with proper shelter as prescribed in this section. In the case of farm animals, nothing in this section shall be construed as imposing shelter requirements or standards more stringent than normally accepted husbandry practices in the particular county where the animal or shelter is located.

(1) INDOOR STANDARDS. Minimum indoor standards of shelter shall include:

(a) *Ambient temperatures.* The ambient temperature shall be compatible with the health of the animal.

(b) *Ventilation.* Indoor housing facilities shall be adequately ventilated by natural or mechanical means to provide for the health of the animals at all times.

(2) OUTDOOR STANDARDS. Minimum outdoor standards of shelter shall include:

(a) *Shelter from sunlight.* When sunlight is likely to cause heat exhaustion of an animal tied or caged outside, sufficient shade by natural or artificial means shall be provided to protect the animal from direct sunlight. As used in this paragraph, "caged" does not include farm fencing used to confine farm animals.

(b) *Shelter from inclement weather.* 1. 'Animals generally.' Natural or artificial shelter appropriate to the local climatic conditions for the species concerned shall be provided as necessary for the health of the animal.

2. 'Dogs.' If a dog is tied or confined unattended outdoors under weather conditions which adversely affect the health of the dog, a shelter of suitable size to accommodate the dog shall be provided.

(3) SPACE STANDARDS. Minimum space requirements for both indoor and outdoor enclosures shall include:

(a) *Structural strength.* The housing facilities shall be structurally sound and maintained in good repair to protect the animals from injury and to contain the animals.

(b) *Space requirements.* Enclosures shall be constructed and maintained so as to provide sufficient space to allow each animal adequate freedom of movement. Inadequate space may be indicated by evidence of debility, stress or abnormal behavior patterns.

(4) SANITATION STANDARDS. Minimum standards of sanitation for both indoor and outdoor enclosures shall include periodic cleaning to remove excreta and other waste materials, dirt and trash so as to minimize health hazards.

History: 1973 c. 314; 1987 a. 332 s. 54; Stats. 1987 s. 951.14.

951.15 Abandoning animals. No person may abandon any animal.

History: 1973 c. 314 ss. 1, 6; 1977 c. 173; 1987 a. 332 s. 54; Stats. 1987 s. 951.15; 1993 a. 486; 1997 a. 192.

951.18 Penalties. **(1)** Any person violating s. 951.02, 951.025, 951.03, 951.04, 951.05, 951.06, 951.07, 951.09, 951.10, 951.11, 951.13, 951.14 or 951.15 is subject to a Class C forfeiture. Any person who violates any of these provisions within 3 years after a humane officer issues an abatement order under s. 173.11 prohibiting the violation of that provision is subject to a Class A forfeiture. Any person who intentionally or negligently violates any of those sections is guilty of a Class A misdemeanor. Any person who intentionally violates s. 951.02, resulting in the mutilation, disfigurement or death of an animal, is guilty of a Class I felony. Any person who intentionally violates s. 951.02 or 951.06, knowing that the animal that is the victim is used by a law enforcement agency to perform agency functions or duties and causing injury to the animal, is guilty of a Class I felony.

(2) Any person who violates s. 951.08 (2m) or (3) is guilty of a Class A misdemeanor. Any person who violates s. 951.08 (1) or (2) is guilty of a Class I felony for the first violation and is guilty of a Class H felony for the 2nd or subsequent violation.

(2m) Any person who violates s. 951.095 is subject to a Class B forfeiture. Any person who intentionally or negligently violates s. 951.095, knowing that the animal that is the victim is used by a law enforcement agency or fire department to perform agency or department functions or duties, is guilty of a Class A misdemeanor. Any person who intentionally violates s. 951.095, knowing that the animal that is the victim is used by a law enforcement agency or fire department to perform agency or department functions or duties and causing injury to the animal, is guilty of a Class I felony. Any person who intentionally violates s. 951.095, knowing that the animal that is the victim is used by a law enforcement

agency or fire department to perform agency or department functions or duties and causing death to the animal, is guilty of a Class H felony.

(2s) Any person who violates s. 951.097 (1) (b) 1. or (2) (a), knowing that the dog that is the victim is a service dog, is guilty of a Class B misdemeanor. Any person who violates s. 951.097 (1) (b) 2., (2) (b), or (3) (a), knowing that the dog that is the victim is a service dog, is guilty of a Class A misdemeanor. Any person who violates s. 951.097 (3) (b) or (4) (a), knowing that the dog that is the victim is a service dog, is guilty of a Class I felony. Any person who violates s. 951.097 (4) (b) or (5), knowing that the dog that is the victim is a service dog, is guilty of a Class H felony.

(3) In addition to penalties applicable to this chapter under this section, a district attorney may apply to any court of competent jurisdiction for a temporary or permanent injunction restraining any person from violating this chapter.

(4) In addition to penalties applicable to this chapter under this section:

(a) 1. In this paragraph, "pecuniary loss" means any of the following:

a. All special damages, but not general damages, including the money equivalent of loss resulting from property taken, destroyed, broken, or otherwise harmed and out-of-pocket losses, such as medical expenses.

b. Reasonable out-of-pocket expenses incurred by the victim resulting from the filing of charges or cooperating in the investigation and prosecution of an offense under this chapter.

c. Expenses in keeping any animal that is involved in the crime.

d. In a case under s. 951.095 or 951.097, the value of a replacement animal, if the affected animal is incapacitated or dead; the cost of training a replacement animal; or the cost of retraining the affected animal. The court shall base any determination of the value of a replacement service dog on the value of the service dog to the user and not on its cost or fair market value.

e. In a case under s. 951.095 or 951.097, all related veterinary and care expenses.

f. In a case under s. 951.095 or 951.097, the medical expenses of the animal's user, the cost of training the animal's user, and compensation for income lost by the animal's user.

2. A sentencing court shall require a criminal violator to pay restitution to a person, including any local humane officer or society or county or municipal pound or a law enforcement officer or conservation warden, for any pecuniary loss suffered by the person as a result of the crime. This requirement applies regardless of whether the criminal 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 criminal violator to pay and shall determine the method of payment. Upon the application of any interested party, the court shall schedule and hold an evidentiary hearing to determine the value of any pecuniary loss under this paragraph.

(b) 1. A sentencing court may order that an animal be delivered to the local humane officer or society or the county or municipal pound or to a law enforcement officer if a person commits a crime under this chapter, the person is the owner of the animal that is involved in the crime and the court considers the order to be reasonable and appropriate. A sentencing court may order that an animal be delivered to the department of natural resources, if the animal is a wild animal that is subject to regulation under ch. 169 and the court considers the order to be reasonable and appropriate. The society, pound, officer or department of natural resources shall release the animal to a person other than the owner or dispose of the animal in a proper and humane manner. If the animal is a dog, the release or disposal shall be in accordance with s. 173.23 (1m), except that the fees under s. 173.23 (1m) (a) 4. do not apply if the expenses are covered under s. 173.24. If the animal is not a dog, the society, pound or officer may charge a fee for the release of the animal.

2. If the court is sentencing a person covered under s. 173.12 (3) (a) and an animal has been seized under s. 173.12, the court shall act in accordance with s. 173.12 (3).

(c) Except as provided in s. 951.08 (2m), a sentencing court may order that the criminal violator may not own, possess or train any animal or type or species of animal for a period specified by the court, but not to exceed 5 years. In computing the time period, time which the person spent in actual confinement serving a sentence shall be excluded.

History: 1973 c. 314; 1977 c. 173; 1981 c. 160; 1983 a. 95; 1985 a. 48 s. 2; 1985 a. 263; 1987 a. 248; 1987 a. 332 ss. 54, 64; Stats. 1987 s. 951.18; 1987 a. 403 s. 256; 1989 a. 56 s. 259; 1989 a. 223; 1993 a. 192; 1997 a. 27, 192; 2001 a. 56, 109; 2005 a. 353.

The first and second clauses of sub. (1) are distinct and separated by a comma. Under the plain language, "intentionally" modifies only the first clause, "violates s. 951.02." Applying the s. 939.23 (3) definition of "intentionally" to the first clause of sub. (1), the state must prove the actor had the purpose to do or cause "unnecessary and excessive pain or suffering or unjustifiable injury or death" to an animal. The second clause, "resulting in the mutilation, disfigurement or death of an animal," bears no direct relationship to the actor, but looks to the final outcome of the intentional cruel treatment by the actor and increases the penalty exposure if the result is severe enough to amount to mutilation, disfigurement, or death of an animal. State v. Klingelhoets, 2012 WI App 55, 341 Wis. 2d 432, 814 N.W.2d 885, 11-0507.

CHAPTER 961

UNIFORM CONTROLLED SUBSTANCES ACT

NOTE: See Chapter 161, 1993-94 Stats., for detailed notes on actions by the Controlled Substances Board. (Chapter 961 was renumbered from ch. 161 by 1995 Wis. Act 448.)

961.001 Declaration of intent. The legislature finds that the abuse of controlled substances constitutes a serious problem for society. As a partial solution, these laws regulating controlled substances have been enacted with penalties. The legislature, recognizing a need for differentiation among those who would violate these laws makes this declaration of legislative intent:

(1g) Many of the controlled substances included in this chapter have useful and legitimate medical and scientific purposes and are necessary to maintain the health and general welfare of the people of this state.

(1m) The manufacture, distribution, delivery, possession and use of controlled substances for other than legitimate purposes have a substantial and detrimental effect on the health and general welfare of the people of this state.

(1r) Persons who illicitly traffic commercially in controlled substances constitute a substantial menace to the public health and safety. The possibility of lengthy terms of imprisonment must exist as a deterrent to trafficking by such persons. Upon conviction for trafficking, such persons should be sentenced in a manner which will deter further trafficking by them, protect the public from their pernicious activities, and restore them to legitimate and socially useful endeavors.

(2) Persons who habitually or professionally engage in commercial trafficking in controlled substances and prescription drugs should, upon conviction, be sentenced to substantial terms of imprisonment to shield the public from their predatory acts. However, persons addicted to or dependent on controlled

substances should, upon conviction, be sentenced in a manner most likely to produce rehabilitation.

(3) Upon conviction, persons who casually use or experiment with controlled substances should receive special treatment geared toward rehabilitation. The sentencing of casual users and experimenters should be such as will best induce them to shun further contact with controlled substances and to develop acceptable alternatives to drug abuse.

History: 1971 c. 219; 1995 a. 448 ss. 107 to 110, 462, 463; Stats. 1995 s. 961.001.

961.003 Uniformity of interpretation. This chapter shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among those states which enact it.

History: 1971 c. 219; 1995 a. 448 s. 322; Stats. 1995 s. 961.61; 2005 a. 14 s. 39; Stats. 2005 s. 961.003.

961.005 Short title. This chapter may be cited as the "Uniform Controlled Substances Act".

History: 1971 c. 219; 1995 a. 448 s. 323; Stats. 1995 s. 961.62; 2005 a. 14 s. 40; Stats. 2005 s. 961.005.

SUBCHAPTER I

DEFINITIONS

961.01 Definitions. As used in this chapter:

(1g) "1,4-butanediol" means 1,4-butanediol as packaged, marketed, manufactured, or promoted for human consumption, but does not include 1,4-butanediol intended for use or consumption in or for mechanical, industrial, manufacturing, or scientific applications or purposes.

(1r) "Administer", unless the context otherwise requires, means to apply a controlled substance, whether by injection, inhalation, ingestion or any other means, to the body of a patient or research subject by:

(a) A practitioner or, in the practitioner's presence, by the practitioner's authorized agent; or

(b) The patient or research subject at the direction and in the presence of the practitioner.

(2) "Agent", unless the context otherwise requires, means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor or dispenser. "Agent" does not include a common or contract carrier, public warehouse keeper or employee of the carrier or warehouse keeper while acting in the usual and lawful course of the carrier's or warehouse keeper's business.

(2m) (a) "Anabolic steroid" means any drug or hormonal substance, chemically or pharmacologically related to testosterone, except estrogens, progestin, and corticosteroids, that promotes muscle growth. The term includes all of the substances included in s. 961.18 (7), and any of their esters, isomers, esters of isomers, salts and salts of esters, isomers and esters of isomers, that are theoretically possible within the specific chemical designation, and if such esters, isomers, esters of isomers, salts and salts of esters, isomers and esters of isomers promote muscle growth.

(b) Except as provided in par. (c), the term does not include an anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the United States Secretary of Health and Human Services for such administration.

(c) If a person prescribes, dispenses or distributes such steroid for human use, such person shall be considered to have prescribed, dispensed or distributed an anabolic steroid within the meaning of par. (a).

(4) "Controlled substance" means a drug, substance or immediate precursor included in schedules I to V of subch. II.

(4m) (a) "Controlled substance analog" means a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance included in schedule I or II and:

1. Which has a stimulant, depressant, narcotic or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, narcotic or hallucinogenic effect on the central nervous system of a controlled substance included in schedule I or II; or

2. With respect to a particular individual, which the individual represents or intends to have a stimulant, depressant, narcotic or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, narcotic or hallucinogenic effect on the central nervous system of a controlled substance included in schedule I or II.

(b) "Controlled substance analog" does not include:

1. A controlled substance;

2. A substance for which there is an approved new drug application;

3. A substance with respect to which an exemption is in effect for investigational use by a particular person under 21 USC 355 to the extent that conduct with respect to the substance is permitted by the exemption; or

4. Any substance to the extent not intended for human consumption before an exemption takes effect with respect to the substance.

(5) "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor or dispenser other than the person who in fact manufactured, distributed or dispensed the substance.

(6) "Deliver" or "delivery", unless the context otherwise requires, means the actual, constructive or attempted transfer from one person to another of a controlled substance or controlled substance analog, whether or not there is any agency relationship.

(7) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling or compounding necessary to prepare the substance for that delivery.

(8) "Dispenser" means a practitioner who dispenses.

(9) "Distribute" means to deliver other than by administering or dispensing a controlled substance or controlled substance analog.

(10) "Distributor" means a person who distributes.

(10m) "Diversion" means the transfer of any controlled substance from a licit to an illicit channel of distribution or use.

(11) (a) "Drug" means any of the following:

1. A substance recognized as a drug in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States or official National Formulary or any supplement to any of them.

2. A substance intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans or animals.

3. A substance, other than food, intended to affect the structure or any function of the body of humans or animals.

4. A substance intended for use as a component of any article specified in subd. 1., 2. or 3.

(b) "Drug" does not include devices or their components, parts or accessories.

(11m) "Drug enforcement administration" means the drug enforcement administration of the U.S. department of justice or its successor agency.

(11s) "Gamma-butyrolactone" means gamma-butyrolactone as packaged, marketed, manufactured, or promoted for human consumption, but does not include gamma-butyrolactone intended for use or consumption in or for mechanical, industrial, manufacturing, or scientific applications or purposes.

(11t) "Ephedrine product" means any material, compound, mixture, or preparation that contains any quantity of ephedrine or any of its salts, isomers, and salts of isomers.

(12) "Immediate precursor" means a substance which the controlled substances board has found to be and by rule designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail or limit manufacture.

(12g) "Isomer" means an optical isomer, but in ss. 961.14 (2) (er) and (qs) and 961.16 (2) (b) 1. "isomer" includes any geometric isomer; in ss. 961.14 (2) (cg), (tg) and (xm) and 961.20 (4) (am) "isomer" includes any positional isomer; and in ss. 961.14 (2) (rj) and (4) and 961.18 (2m) "isomer" includes any positional or geometric isomer.

(12m) "Jail or correctional facility" means any of the following:

(a) A Type 1 prison, as defined in s. 301.01 (5).

(b) A jail, as defined in s. 302.30.

(c) A house of correction.

(d) A Huber facility under s. 303.09.

(e) A lockup facility, as defined in s. 302.30.

(f) A work camp under s. 303.10.

(12t) "Liquid-filled pseudoephedrine gelcap" means a soft, liquid-filled gelatin capsule that is intended to be sold at retail and that contains pseudoephedrine or any of its salts, isomers, or salts of isomers.

(13) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of, or to produce, prepare, propagate, compound, convert or process, a controlled substance or controlled substance analog, directly or indirectly, by extraction from substances of natural origin, chemical synthesis or a combination of extraction and chemical synthesis, including to package or repackage or the packaging or repackaging of the substance, or to label or to relabel or the labeling or relabeling of its container. "Manufacture" does not mean to prepare, compound, package, repackage, label or relabel or the preparation, compounding, packaging, repackaging, labeling or relabeling of a controlled substance:

(a) By a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or

(b) By a practitioner, or by the practitioner's authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching or chemical analysis and not for sale.

(14) "Marijuana" means all parts of the plants of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin, including tetrahydrocannabinols. "Marijuana" does include the mature stalks if mixed with other parts of the plant, but does not include fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake or the sterilized seed of the plant which is incapable of germination.

(14m) "Multiunit public housing project" means a public housing project that includes 4 or more dwelling units in a single parcel or in contiguous parcels.

(15) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(a) Opium and substances derived from opium, and any compound, derivative or preparation of opium or substances derived from opium, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation. The term does not include the isoquinoline alkaloids of opium.

(bm) Synthetic opiate, and any derivative of synthetic opiate, including any of their isomers, esters, ethers, esters and ethers of isomers, salts and salts of isomers, esters, ethers and esters and ethers of isomers that are theoretically possible within the specific chemical designation.

(c) Opium poppy, poppy straw and concentrate of poppy straw.

(d) Any compound, mixture or preparation containing any quantity of any substance included in pars. (a) to (c).

(16) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. "Opiate" includes opium, substances derived from opium and synthetic opiates. "Opiate" does not include, unless specifically scheduled as a controlled substance under s. 961.11, the dextrorotatory isomer of 3-methoxy-N-methylmorphinan and its salts (dextromethorphan). "Opiate" does include the racemic and levorotatory forms of dextromethorphan.

(17) "Opium poppy" means any plant of the species Papaver somniferum L., except its seeds.

(18) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(19) "Practitioner" means:

(a) A physician, advanced practice nurse, dentist, veterinarian, podiatrist, optometrist, scientific investigator or, subject to s. 448.21 (3), a physician assistant, or other person licensed, registered, certified or otherwise permitted to distribute, dispense, conduct research with respect to, administer or use in teaching or chemical analysis a controlled substance in the course of professional practice or research in this state.

(b) A pharmacy, hospital or other institution licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or administer a controlled substance in the course of professional practice or research in this state.

(20) "Production", unless the context otherwise requires, includes the manufacturing of a controlled substance or controlled substance analog and the planting, cultivating, growing or harvesting of a plant from which a controlled substance or controlled substance analog is derived.

(20c) "Pseudoephedrine product" means a material, compound, mixture, or preparation containing any quantity of pseudoephedrine or any of its salts, isomers, or salts of isomers but does not include such a product if any of the following applies:

(a) The product is a pseudoephedrine liquid or a liquid-filled pseudoephedrine gelcap. This paragraph does not apply if the controlled substances board has determined, by rule, that the product can be readily used in the manufacture of methamphetamine.

(b) The controlled substances board has determined, by rule, that the product cannot be readily used in the manufacture of methamphetamine.

(20e) "Pseudoephedrine liquid" means a product that is intended to be sold at retail, that is a liquid at room temperature, and that contains pseudoephedrine or any of its salts, isomers, or salts of isomers.

(20g) "Public housing project" means any housing project or development administered by a housing authority, as defined in s. 16.301 (2).

(20h) "Public transit vehicle" means any vehicle used for providing transportation service to the general public.

(20i) "Scattered-site public housing project" means a public housing project that does not include 4 or more dwelling units in a single parcel or in contiguous parcels.

(21) "Ultimate user" means an individual who lawfully possesses a controlled substance for that individual's own use or for the use of a member of that individual's household or for administering to an animal owned by that individual or by a member of that individual's household.

(21m) "Vehicle" has the meaning given in s. 939.22 (44).

(22) "Youth center" means any center that provides, on a regular basis, recreational, vocational, academic or social services activities for persons younger than 21 years old or for those persons and their families.

History: 1971 c. 219; 1979 c. 89; 1981 c. 200, 206; 1983 a. 500 s. 43; 1989 a. 31; CSB 2.21; 1993 a. 87, 129, 138, 184, 281, 482; 1995 a. 281 s. 2; 1995 a. 448 ss. 112 to 143, 247, 248, 464 to 468; Stats. 1995 s. 961.01; 1997 a. 35 s. 338; 1997 a. 67; 1999 a. 85; 2003 a. 33; 2005 a. 14, 52; 2011 a. 32.

A constructive delivery under sub. (6) may be found if a single actor leaves a substance somewhere for later retrieval by another. State v. Wilson, 180 Wis. 2d 414, 509 N.W.2d 128 (Ct. App. 1993).

Day care centers are a subset of "youth centers" as defined in s. 961.01(22) and come within the definition of places listed in s. 961.49 (2). State v. Van Riper, 222 Wis. 2d 197, 586 N.W.2d 198 (Ct. App. 1998), 97-3367.

SUBCHAPTER II

STANDARDS AND SCHEDULES

961.11 Authority to control. **(1)** The controlled substances board shall administer this subchapter and may add substances to or delete or reschedule all substances listed in the schedules in ss. 961.14, 961.16, 961.18, 961.20 and 961.22 pursuant to the rule-making procedures of ch. 227.

(1m) In making a determination regarding a substance, the board shall consider the following:

(a) The actual or relative potential for abuse;

(b) The scientific evidence of its pharmacological effect, if known;

(c) The state of current scientific knowledge regarding the substance;

(d) The history and current pattern of abuse;

(e) The scope, duration and significance of abuse;

(f) The risk to the public health;

(g) The potential of the substance to produce psychological or physical dependence liability; and

(h) Whether the substance is an immediate precursor of a substance already controlled under this chapter.

(1r) The controlled substances board may consider findings of the federal food and drug administration or the drug enforcement administration as prima facie evidence relating to one or more of the determinative factors.

(2) After considering the factors enumerated in sub. (1m), the controlled substances board shall make findings with respect to them and promulgate a rule controlling the substance upon finding that the substance has a potential for abuse.

(3) The controlled substances board, without regard to the findings required by sub. (2) or ss. 961.13, 961.15, 961.17, 961.19 and 961.21 or the procedures prescribed by subs. (1), (1m), (1r) and (2), may add an immediate precursor to the same schedule in which the controlled substance of which it is an immediate precursor is included or to any other schedule. If the board designates a substance as an immediate precursor, substances which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

(4) If a substance is designated, rescheduled or deleted as a controlled substance under federal law and notice thereof is given to the controlled substances board, the board by affirmative action shall similarly treat the substance under this chapter after the expiration of 30 days from the date of publication in the federal register of a final order designating the substance as a controlled substance or rescheduling or deleting the substance or from the date of issuance of an order of temporary scheduling under 21 USC 811 (h), unless within that 30-day period, the board or an interested party objects to the treatment of the substance. If no objection is made, the board shall promulgate, without making the determinations or findings required by subs. (1), (1m), (1r) and (2) or s. 961.13, 961.15, 961.17, 961.19 or 961.21, a final rule, for which notice of proposed rule making is omitted, designating, rescheduling,

temporarily scheduling or deleting the substance. If an objection is made the board shall publish notice of receipt of the objection and the reasons for objection and afford all interested parties an opportunity to be heard. At the conclusion of the hearing, the board shall make a determination with respect to the treatment of the substance as provided in subs. (1), (1m), (1r) and (2) and shall publish its decision, which shall be final unless altered by statute. Upon publication of an objection to the treatment by the board, action by the board under this chapter is stayed until the board promulgates a rule under sub. (2).

(4m) The controlled substances board, by rule and without regard to the requirements of sub. (1m), may schedule a controlled substance analog as a substance in schedule I regardless of whether the substance is substantially similar to a controlled substance in schedule I or II, if the board finds that scheduling of the substance on an emergency basis is necessary to avoid an imminent hazard to the public safety and the substance is not included in any other schedule or no exemption or approval is in effect for the substance under 21 USC 355. Upon receipt of notice under s. 961.25, the board shall initiate scheduling of the controlled substance analog on an emergency basis under this subsection. The scheduling of a controlled substance analog under this subsection expires one year after the adoption of the scheduling rule. With respect to the finding of an imminent hazard to the public safety, the board shall consider whether the substance has been scheduled on a temporary basis under federal law or factors under sub. (1m) (d), (e) and (f), and may also consider clandestine importation, manufacture or distribution, and, if available, information concerning the other factors under sub. (1m). The board may not promulgate a rule under this subsection until it initiates a rule-making proceeding under subs. (1), (1m), (1r) and (2) with respect to the controlled substance analog. A rule promulgated under this subsection lapses upon the conclusion of the rule-making proceeding initiated under subs. (1), (1m), (1r) and (2) with respect to the substance.

(5) The authority of the controlled substances board to control under this section does not extend to intoxicating liquors, as defined in s. 139.01 (3), to fermented malt beverages as defined in s. 125.02, or to tobacco.

(6) (a) The controlled substances board shall not have authority to control a nonnarcotic substance if the substance may, under the federal food, drug and cosmetic act and the laws of this state, be lawfully sold over the counter without a prescription. This paragraph does not apply to the promulgation of rules by the controlled substances board under s. 961.01 (20c).

(b) If the board finds that any nonnarcotic substance barred from control under this chapter by par. (a) is dangerous to or is being so used as to endanger the public health and welfare, it may request the department of justice in the name of the state to seek a temporary restraining order or temporary injunction under ch. 813 to either ban or regulate the sale and possession of the substance. The order or injunction shall continue until the adjournment of the legislature convened next following its issuance. In making its findings as to nonnarcotic substances under this paragraph, the board shall consider the items specified in sub. (1m).

History: 1971 c. 219, 307; Sup. Ct. Order, 67 Wis. 2d 585, 774 (1975); 1981 c. 79 s. 18; 1983 a. 189 s. 329 (13); 1995 a. 448 ss. 145 to 152, 469, 470; Stats. 1995 s. 961.11; 2005 a. 14.

Cross-reference: See also CSB, Wis. adm. code.

961.115 Native American Church exemption. This chapter does not apply to the nondrug use of peyote and mescaline in the bona fide religious ceremonies of the Native American Church.

History: 1971 c. 219; 1995 a. 448 s. 153; Stats. 1995 s. 961.115.

Because the exemption is based upon the unique cultural heritage of Native Americans, it is not an unconstitutional classification. State v. Peck, 143 Wis. 2d 624, 422 N.W.2d 160 (Ct. App. 1988).

961.12 Nomenclature. The controlled substances listed in or added to the schedules in ss. 961.14, 961.16, 961.18, 961.20 and 961.22 may be listed or added by any official, common, usual, chemical or trade name used for the substance.

History: 1971 c. 219; 1995 a. 448 s. 154; Stats. 1995 s. 961.12.

961.13 Schedule I tests. (1m) The controlled substances board shall add a substance to schedule I upon finding that the substance:

(a) Has high potential for abuse;

(b) Has no currently accepted medical use in treatment in the United States; and

(c) Lacks accepted safety for use in treatment under medical supervision.

(2m) The controlled substances board may add a substance to schedule I without making the findings required under sub. (1m) if the substance is controlled under schedule I of 21 USC 812 (c) by a federal agency as the result of an international treaty, convention or protocol.

History: 1971 c. 219; 1995 a. 448 ss. 155, 156, 471; Stats. 1995 s. 961.13.

961.14 Schedule I. Unless specifically excepted by state or federal law or regulation or more specifically included in another schedule, the following controlled substances are listed in schedule I:

(2) SYNTHETIC OPIATES. Any material, compound, mixture or preparation which contains any quantity of any of the following synthetic opiates, including any of their isomers, esters, ethers, esters and ethers of isomers, salts and salts of isomers, esters, ethers and esters and ethers of isomers that are theoretically possible within the specific chemical designation:

(a) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenylethyl)-4-piperidinyl]-N-phenylacetamide);

(ag) Acetylmethadol;

(am) Allylprodine;

(b) Alphacetylmethadol (except levo-alphacetylmethadol (LAAM));

(bm) Alphameprodine;

(c) Alphamethadol;

(cd) Alpha-methylfentanyl (N-[1-(1-methyl-2-phenylethyl)-4-piperidinyl]-N-phenylpropanamide);

(cg) Alpha-methylthiofentanyl (N-{1-[1-methyl-2-(2-thienyl)ethyl]-4-piperidinyl}-N-phenylpropanamide);

(cm) Benzethidine;

(d) Betacetylmethadol;

(dg) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenylethyl)-4-piperidinyl]-N-phenylpropanamide);

(dm) Betameprodine;

(e) Betamethadol;

(em) Betaprodine;

(er) Beta-hydroxy-3-methylfentanyl (N-[1-(2-hydroxy-2-phenylethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide);

(f) Clonitazene;

(fm) Dextromoramide;

(gm) Diampromide;

(h) Diethylthiambutene;

(hg) Difenoxin;

(hm) Dimenoxadol;

(j) Dimepheptanol;

(jm) Dimethylthiambutene;

(k) Dioxaphetyl butyrate;

(km) Dipipanone;

(m) Ethylmethylthiambutene;

(mm) Etonitazene;

(n) Etoxeridine;

(nm) Furethidine;

(p) Hydroxypethidine;

(pm) Ketobemidone;

(q) Levomoramide;

(qm) Levophenacylmorphan;

(qs) 3-methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidinyl]-N-phenylpropanamide);

(r) Morpheridine;

(rg) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);

(rj) 3-methylthiofentanyl (N-{3-methyl-1-[2-(2-thienyl)ethyl]-4-piperidinyl}-N-phenylpropanamide);

(rm) Noracymethadol;

(s) Norlevorphanol;

(sm) Normethadone;

(t) Norpipanone;

(tg) Para-fluorofentanyl (N-[1-(2-phenylethyl)-4-piperidinyl]-N-(4-fluorophenyl)propanamide);

(tm) Phenadoxone;

(u) Phenampromide;

(um) Phenomorphan;

(v) Phenoperidine;

(vg) PEPAP (1-(2-phenylethyl)-4-phenyl-4-acetoxypiperidine);

(vm) Piritramide;

(w) Proheptazine;

(wm) Properidine;

(wn) Propiram;

(x) Racemoramide;

(xm) Thiofentanyl (N-{1-[2-(2-thienyl)ethyl]-4-piperidinyl}-N-phenylpropanamide);

(xr) Tilidine;

(y) Trimeperidine.

(3) SUBSTANCES DERIVED FROM OPIUM. Any material, compound, mixture or preparation which contains any quantity of any of the following substances derived from opium, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

(a) Acetorphine;

(b) Acetyldihydrocodeine;

(c) Benzylmorphine;

(d) Codeine methylbromide;

(e) Codeine-N-oxide;

(f) Cyprenorphine;

(g) Desomorphine;

(h) Dihydromorphine;

(hm) Drotebanol;

(j) Etorphine, except its hydrochloride salts;

(k) Heroin;

(m) Hydromorphinol;

(n) Methyldesorphine;

(p) Methyldihydromorphine;

(q) Morphine methylbromide;

(r) Morphine methylsulfonate;

(s) Morphine-N-oxide;

(t) Myrophine;

(u) Nicocodeine;

(v) Nicomorphine;

(w) Normorphine;

(x) Pholcodine;

(y) Thebacon.

(4) HALLUCINOGENIC SUBSTANCES. Any material, compound, mixture or preparation which contains any quantity of any of the following hallucinogenic substances, including any of their salts, isomers, precursors, analogs, esters, ethers, and salts of isomers, esters, or ethers that are theoretically possible within the specific chemical designation, in any form contained in a plant, obtained from a plant, or chemically synthesized:

(a) 3,4-methylenedioxyamphetamine, commonly known as "MDA";

(ag) 3,4-methylenedioxyethylamphetamine, commonly known as "MDE";

(am) 3,4-methylenedioxymethamphetamine, commonly known as "MDMA";

(ar) N-hydroxy-3,4-methylenedioxyamphetamine;

(b) 5-methoxy-3,4-methylenedioxyamphetamine;

(bm) 4-ethyl-2,5-dimethoxyamphetamine, commonly known as "DOET";

(c) 3,4,5-trimethoxyamphetamine;

(cm) Alpha-ethyltryptamine;

(d) Bufotenine;

(e) Diethyltryptamine;

(f) Dimethyltryptamine;

(g) 4-methyl-2,5-dimethoxyamphetamine, commonly known as "STP";

(h) Ibogaine;

(j) Lysergic acid diethylamide, commonly known as "LSD";

(m) Mescaline, in any form, including mescaline contained in peyote, obtained from peyote or chemically synthesized;

(mn) Parahexyl (3-hexyl-1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl-6H-dibenzo(b, d)pyran);

(n) Phencyclidine, commonly known as "PCP";

(p) N-ethyl-3-piperidyl benzilate;

(q) N-methyl-3-piperidyl benzilate;

(r) Psilocybin;

(s) Psilocin;

(t) Tetrahydrocannabinols, commonly known as "THC", in any form including tetrahydrocannabinols contained in marijuana, obtained from marijuana or chemically synthesized;

(tb) Cannabicyclohexonal: 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methylnonan-2-yl)phenol.

(te) CP47,497 and homologues: 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol.

(th) HU-210: [(6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10, 10a-tetrahydrobenzo[c]chromen-1-o1)], also known as (6aR,10aR)-3-(1,1-dimethylheptyl)-6a,7,10,10a-tetrahydro-1-hydroxy-6,6-dimethyl-6H-dibenzo[b,d]pyran-9-methanol.

(tL) JWH-018: 1-pentyl-3-(1-naphthoyl)indole, also known as Naphthalen-1-yl-(1-pentylindol-3-yl)methanone.

(tp) JWH-073): 1-butyl-3-(1-naphthoyl)indole, also known as Naphthalen-1-yl-(1-butylindol-3-yl)methanone.

(tr) JWH-081: 1-pentyl-3-(4-methoxy-1-naphthoyl)indole, also known as 4-methoxynaphthalen-1-yl-(1-pentylindol-3-yl)methanone.

(tu) JWH-200: 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole.

(ty) JWH-250: 1-pentyl-3-(2-methoxyphenylacetyl)indole, also known as 2-(2-methoxyphenyl)-1-(1-pentylindol-3-yl) ethanone.

(u) 1-[1-(2-thienyl)cyclohexyl]piperidine, which is the thiophene analog of phencyclidine;

(ud) 1-[1-(2-thienyl)cyclohexyl]pyrrolidine, which is the thiophene pyrrolidine analog of phencyclidine;

(ug) N-ethyl-1-phenylcyclohexylamine, which is the ethylamine analog of phencyclidine;

(ur) 1-(1-phenylcyclohexyl)pyrrolidine, which is the pyrrolidine analog of phencyclidine;

(v) 2,5-dimethoxyamphetamine;

(w) 4-bromo-2,5-dimethoxyamphetamine, commonly known as "DOB";

(wg) 4-bromo-2,5-dimethoxy-beta-phenylethylamine, commonly known as "2C-B" or "Nexus";

(wgm) 4-iodo-2,5-dimethoxy-beta-phenylethylamine, commonly known as "2C-I".

(wh) 2,5 dimethoxy-4-(n)-propylthiophenethylamine, commonly known as "2C-T-7";

(wi) Alpha-methyltryptamine, commonly known as "AMT";

(wj) 5-methoxy-N, N-diisopropyltryptamine, commonly known as "5-MeO-DIPT";

(x) 4-methoxyamphetamine, commonly known as "PMA."

(5) DEPRESSANTS. Any material, compound, mixture or preparation which contains any quantity of any of the following substances having a depressant effect on the central nervous system, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

(ag) Gamma-hydroxybutyric acid (commonly known as gamma hydroxybutyrate or "GHB"), gamma-butyrolactone, and 1,4-butanediol.

(am) Mecloqualone.

(b) Methaqualone.

(6) IMMEDIATE PRECURSORS. Any material, compound, mixture or preparation which contains any quantity of any of the following substances or their salts:

(a) Immediate precursors to phencyclidine:

1. 1-phenylcyclohexylamine.
2. 1-piperidinocyclohexanecarbonitrile.

(7) STIMULANTS. Any material, compound, mixture or preparation which contains any quantity of any of the following substances having a stimulant effect on the central nervous system, including any of their precursors, analogs, salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

(ag) Cathinone.

(am) Aminorex.

(b) Fenethylline.

(c) N-ethylamphetamine.

(d) 4-methylaminorex.

(e) N,N-dimethylamphetamine.

(L) Methcathinone.

(m) Methylenedioxypyrovalerone, commonly known as "MDPV."

(n) 4-methylmethcathinone, commonly known as "mephedrone" or "4-MMC."

(p) 4-methylthioamphetamine, commonly known as "4-MTA."

(q) N- benzylpiperazine, commonly known as "BZP."

History: 1971 c. 219; 1981 c. 206; CSB 2.16, 2.15, 2.17, 2.18, 2.19, 2.20; 1989 a. 121; CSB 2.21; 1993 a. 98, 118; CSB 2.22; 1995 a. 225; 1995 a. 448 ss. 157 to 165; Stats. 1995 s. 961.14; 1997 a. 220; 1999 a. 21; 2001 a. 16; 2005 a. 52; CSB 2.31, 2.32, 2.33, 2.34; 2011 a. 31; s. 35.17 correction in (4) (wgm).

NOTE: See 1979-80 Statutes and 1993-94 Statutes for notes on actions by controlled substances board under s. 161.11 (1), 1993 Stats.

A chemical test need not be specifically for marijuana in order to be probative beyond a reasonable doubt. State v. Wind, 60 Wis. 2d 267, 208 N.W.2d 357 (1973).

THC is properly classified as Schedule I substance. State v. Olson, 127 Wis. 2d 412, 380 N.W.2d 375 (Ct. App. 1985).

Stems and branches supporting marijuana leaves or buds are not "mature stalks" under sub. (14). State v. Martinez, 210 Wis. 2d 396, 563 N.W.2d 922 (Ct. App. 1997), 96-1899.

961.15 Schedule II tests. (1m) The controlled substances board shall add a substance to schedule II upon finding that:

(a) The substance has high potential for abuse;

(b) The substance has currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions; and

(c) The abuse of the substance may lead to severe psychological or physical dependence.

(2m) The controlled substances board may add a substance to schedule II without making the findings required under sub. (1m) if the substance is controlled under schedule II of 21 USC 812 (c) by a federal agency as the result of an international treaty, convention or protocol.

History: 1971 c. 219; 1995 a. 448 ss. 166, 167, 472; Stats. 1995 s. 961.15.

961.16 Schedule II. Unless specifically excepted by state or federal law or regulation or more specifically included in another schedule, the following controlled substances are listed in schedule II:

(2) SUBSTANCES OF PLANT ORIGIN. Any material, compound, mixture or preparation which contains any quantity of any of the following substances in any form, including a substance contained in a plant, obtained from a plant, chemically synthesized or obtained by a combination of extraction from a plant and chemical synthesis:

(a) Opium and substances derived from opium, and any salt, compound, derivative or preparation of opium or substances derived from opium. Apomorphine, dextrorphan, nalbuphine, butorphanol, nalmefene, naloxone and naltrexone and their respective salts and the isoquinoline alkaloids of opium and their respective salts are excluded from this paragraph. The following substances, and any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation, are included in this paragraph:

1. Opium, including raw opium, opium extracts, opium fluid extracts, powdered opium, granulated opium and tincture of opium.

2. Opium poppy and poppy straw.

3. Concentrate of poppy straw, which is the crude extract of poppy straw in either liquid, solid or powder form containing the phenanthrene alkaloids of the opium poppy.

4. Codeine.

4m. Dihydrocodeine.

4r. Dihydroetorphine.

5. Ethylmorphine.

6. Etorphine hydrochloride.

7. Hydrocodone, also known as dihydrocodeinone.

8. Hydromorphone, also known as dihydromorphinone.

9. Metopon.

10. Morphine.

11. Oxycodone.

12. Oxymorphone.

13. Thebaine.

(b) Coca leaves and any salt, compound, derivative or preparation of coca leaves. Decocainized coca leaves or extractions which do not contain cocaine or ecgonine are excluded from this paragraph. The following substances and any of their salts, esters, isomers and salts of esters and isomers that are theoretically possible within the specific chemical designation, are included in this paragraph:

1. Cocaine.

2. Ecgonine.

(3) SYNTHETIC OPIATES. Any material, compound, mixture or preparation which contains any quantity of any of the following synthetic opiates, including any of their isomers, esters, ethers, esters and ethers of isomers, salts and salts of isomers, esters, ethers and esters and ethers of isomers that are theoretically possible within the specific chemical designation:

(a) Alfentanil;

(am) Alphaprodine;

(b) Anileridine;

(c) Bezitramide;

(cm) Carfentanil;

(e) Diphenoxylate;

(f) Fentanyl;

(g) Isomethadone;

(gm) Levo-alphacetylmethadol (LAAM);

(h) Levomethorphan;

(j) Levorphanol;

(k) Meperidine, also known as pethidine;

(m) Meperidine — Intermediate — A, 4-cyano-1-methyl-4-phenylpiperidine;

(n) Meperidine — Intermediate — B, ethyl-4-phenylpiperidine- 4-carboxylate;

(p) Meperidine — Intermediate — C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;

(q) Metazocine;

(r) Methadone;

(s) Methadone — Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenylbutane;

(t) Moramide — Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropanecarboxylic acid;

(u) Phenazocine;

(v) Piminodine;

(w) Racemethorphan;

(x) Racemorphan;

(xm) Remifentanil;

(y) Sufentanil.

(5) STIMULANTS. Any material, compound, mixture, or preparation which contains any quantity of any of the following substances having a stimulant effect on the central nervous system, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

(a) Amphetamine.

(b) Methamphetamine.

(c) Phenmetrazine.

(d) Methylphenidate.

(e) Lisdexamfetamine.

(7) DEPRESSANTS. Any material, compound, mixture, or preparation which contains any quantity of any of the following substances having a depressant effect on the central nervous system, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

(a) Amobarbital;

(am) Glutethimide;

(b) Pentobarbital;

(c) Secobarbital.

(8) IMMEDIATE PRECURSORS. Any material, compound, mixture or preparation which contains any quantity of the following substances:

(a) An immediate precursor to amphetamine or methamphetamine:

1. Phenylacetone, commonly known as "P2P".

(10) HALLUCINOGENIC SUBSTANCES. (b) Nabilone (another name for nabilone is (+)-trans-3-(1,1-dimethylheptyl)-6, 6a, 7, 8, 10, 10a-hexahydro-1-hydroxy-6, 6-dimethyl-9H-dibenzo[b,d]pyran-9-one).

History: 1971 c. 219; 1981 c. 6, 206; CSB 2.16, 2.17, 2.19; 1989 a. 121; CSB 2.21; 1993 a. 98; CSB 2.22; 1995 a. 448 ss. 168 to 178, 473; Stats. 1995 s. 961.16; CSB 2.25; CSB 2.26; CSB 2.35.

NOTE: See 1979-80 Statutes and 1993-94 Statutes for notes on actions by controlled substances board under s. 161.11 (1), 1993 Stats.

At a preliminary hearing, the state must show that a substance was probably l-cocaine rather than d-cocaine. State v. Russo, 101 Wis. 2d 206, 303 N.W.2d 846 (Ct. App. 1981).

961.17 Schedule III tests. (1m) The controlled substances board shall add a substance to schedule III upon finding that:

(a) The substance has a potential for abuse less than the substances included in schedules I and II;

(b) The substance has currently accepted medical use in treatment in the United States; and

(c) Abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

(2m) The controlled substances board may add a substance to schedule III without making the findings required under sub. (1m) if the substance is controlled under schedule III of 21 USC 812 (c) by a federal agency as the result of an international treaty, convention or protocol.

History: 1971 c. 219; 1995 a. 448 ss. 179, 180, 474; Stats. 1995 s. 961.17.

961.18 Schedule III. Unless specifically excepted by state or federal law or regulation or more specifically included in another schedule, the following controlled substances are listed in schedule III:

(2m) STIMULANTS. Any material, compound, mixture, or preparation which contains any quantity of any of the following substances having a stimulant effect on the central nervous system, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

(a) Benzphetamine;

(b) Chlorphentermine;

(c) Clortermine;

(e) Phendimetrazine.

(3) DEPRESSANTS. Any material, compound, mixture or preparation which contains any quantity of any of the following substances having a depressant effect on the central nervous system, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

(a) Any substance which contains a derivative of barbituric acid;

(b) Chlorhexadol;

(d) Lysergic acid;

(e) Lysergic acid amide;

(f) Methyprylon;

(h) Sulfondiethylmethane;

(j) Sulfonethylmethane;

(k) Sulfonmethane;

(km) Tiletamine and Zolazepam in combination;

(m) Any compound, mixture, or preparation containing any of the following drugs and one or more other active medicinal ingredients not included in any schedule:

1. Amobarbital.
2. Secobarbital.
3. Pentobarbital.

(n) Any of the following drugs in suppository dosage form approved by the federal food and drug administration for marketing only as a suppository:

1. Amobarbital.
2. Secobarbital.
3. Pentobarbital.

(o) Any drug product containing gamma-hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under section 505 of the federal food, drug and cosmetic act:

1. Gamma-hydroxybutyric acid.

(4) OTHER SUBSTANCES. Any material, compound, mixture or preparation which contains any quantity of any of the following substances, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

(ak) Ketamine.

(an) Nalorphine.

(4m) HALLUCINOGENIC SUBSTANCES. Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U.S. food and drug administration approved drug product. (Other names for dronabinol are (6aR-trans)-6a, 7, 8, 10a-tetrahydro-6, 6, 9-trimethyl-3-pentyl-6H-dibenzo(b,d)pyran-1-ol, and (-)-delta-9-(trans)-tetrahydrocannabinol.)

(5) NARCOTIC DRUGS. Any material, compound, mixture or preparation containing any of the following narcotic drugs or their salts, isomers or salts of isomers, calculated as the free anhydrous base or alkaloid, in limited quantities as follows:

(a) Not more than 1.8 grams of codeine per 100 milliliters or per 100 grams or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.

(b) Not more than 1.8 grams of codeine per 100 milliliters or per 100 grams or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(c) Not more than 300 milligrams of hydrocodone per 100 milliliters or per 100 grams or not more than 15 milligrams per dosage unit, with a four-fold or greater quantity of an isoquinoline alkaloid of opium.

(d) Not more than 300 milligrams of hydrocodone per 100 milliliters or per 100 grams or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(e) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or per 100 grams or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(f) Not more than 300 milligrams of ethylmorphine per 100 milliliters or per 100 grams or not more than 15 milligrams per

dosage unit, with one or more ingredients in recognized therapeutic amounts.

(g) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(h) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(5m) NARCOTIC DRUGS NOT LIMITED BY QUANTITY. Any material, compound, mixture, or preparation containing any of the following narcotic drugs, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

(a) Buprenorphine

(6) EXCEPTIONS. The controlled substances board may except by rule any compound, mixture or preparation containing any stimulant or depressant substance included in sub. (2m) or (3) from the application of all or any part of this chapter if the compound, mixture or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

(7) ANABOLIC STEROIDS. Any material, compound, mixture, or preparation containing any quantity of any of the following anabolic steroids, including any of their esters, isomers, esters of isomers, salts and salts of esters, isomers and esters of isomers that are theoretically possible within the specific chemical designation:

(a) Boldenone;
(b) 4-chlorotestosterone, which is also called clostebol;
(c) Dehydrochloromethyltestosterone;
(d) 4-dihydrotestosterone, which is also called stanolone;
(e) Drostanolone;
(f) Ethylestrenol;
(g) Fluoxymesterone;
(h) Formebulone, which is also called fromebolone;
(i) Mesterolone;
(j) Methandienone, which is also called methandrostenolone;
(k) Methandriol;
(L) Methenolone;
(m) Methyltestosterone;
(n) Mibolerone;
(o) Nandrolone;
(p) Norethandrolone;
(q) Oxandrolone;
(r) Oxymesterone;
(s) Oxymetholone;
(t) Stanozolol;
(u) Testolactone;
(v) Testosterone;
(w) Trenbolone.

History: 1971 c. 219; 1981 c. 6; 1981 c. 206 ss. 32 to 40, 57; CSB 2.19, 2.21; 1995 a. 448 ss. 181 to 200, 475, 476; Stats. 1995 s. 961.18; 1997 a. 220; CSB 2.25; CSB 2.29; CSB 2.30; 2009 a. 180.

NOTE: See 1993-94 Statutes for notes on actions by controlled substances board under s. 161.11 (1), 1993 Stats.

961.19 Schedule IV tests. (1m) The controlled substances board shall add a substance to schedule IV upon finding that:

(a) The substance has a low potential for abuse relative to substances included in schedule III;

(b) The substance has currently accepted medical use in treatment in the United States; and

(c) Abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances included in schedule III.

(2m) The controlled substances board may add a substance to schedule IV without making the findings required under sub. (1m) if the substance is controlled under schedule IV of 21 USC 812 (c) by a federal agency as the result of an international treaty, convention or protocol.

History: 1971 c. 219; 1995 a. 448 ss. 201, 202, 477; Stats. 1995 s. 961.19.

961.20 Schedule IV. Unless specifically excepted by state or federal law or regulation or more specifically included in another schedule, the following controlled substances are listed in schedule IV:

(2) DEPRESSANTS. Any material, compound, mixture or preparation which contains any quantity of any of the following substances having a depressant effect on the central nervous system, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

(a) Alprazolam;
(am) Barbital;
(ar) Bromazepam;
(av) Camazepam;
(b) Chloral betaine;
(c) Chloral hydrate;
(cd) Clobazam;
(cg) Clotiazepam;
(cm) Chlordiazepoxide;
(cn) Clonazepam;
(co) Cloxazolam;
(cp) Clorazepate;
(cq) Delorazepam;
(cr) Diazepam;
(cs) Dichloralphenazone;
(cu) Estazolam;
(d) Ethchlorvynol;
(e) Ethinamate;
(ed) Ethyl loflazepate;
(eg) Fludiazepam;
(ej) Flunitrazepam;
(em) Flurazepam;
(eo) Halazepam;
(ep) Haloxazolam;
(eq) Ketazolam;
(er) Lorazepam;
(es) Loprazolam;
(eu) Lormetazepam;
(ew) Mebutamate;

(ey) Medazepam;
(f) Methohexital;
(g) Meprobamate;
(h) Methylphenobarbital, which is also called mephobarbital;
(hg) Midazolam;
(hh) Nimetazepam;
(hj) Nitrazepam;
(hk) Nordiazepam;
(hm) Oxazepam;
(hr) Oxazolam;
(j) Paraldehyde;
(k) Petrichloral;
(m) Phenobarbital;
(md) Pinazepam;
(mg) Prazepam;
(mm) Quazepam;
(n) Temazepam;
(ng) Tetrazepam;
(nm) Triazolam;
(o) Zaleplon;
(p) Zolpidem.

(2m) STIMULANTS. Any material, compound, mixture, or preparation which contains any quantity of any of the following substances having a stimulant effect on the central nervous system, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

(a) Diethylpropion.
(ad) Cathine.
(ag) N,N-dimethyl-1,2-diphenylethylamine, commonly known as "SPA".
(ak) Ephedrine, if ephedrine is the only active medicinal ingredient or if there are only therapeutically insignificant quantities of another active medicinal ingredient.
(ar) Fencamfamine.
(at) Fenproporex.
(bm) Mazindol.
(br) Mefenorex.
(bu) Modafinil.
(c) Pemoline, including its organometallic complexes and chelates.
(d) Phentermine.
(e) Pipradrol.
(f) Sibutramine.

(3) NARCOTIC DRUGS CONTAINING NONNARCOTIC ACTIVE MEDICINAL INGREDIENTS. Any compound, mixture or preparation containing any of the following narcotic drugs or their salts, isomers or salts of isomers, in limited quantities as set forth below, calculated as the free anhydrous base or alkaloid, which also contains one or more nonnarcotic, active medicinal ingredients in sufficient proportion to confer upon the compound, mixture or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(a) Not more than 1.0 milligrams of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(4) OTHER SUBSTANCES. Any material, compound, mixture or preparation which contains any quantity of any of the following substances or their salts:

(a) Dextropropoxyphene (Alpha-(+)-4-dimethylamino-1, 2-diphenyl-3-methyl-2-propionoxybutane).
(am) Fenfluramine, including any of its isomers and salts of isomers.
(b) Pentazocine, including any of its isomers and salts of isomers.
(c) Butorphanol, including any of its isomers and salts of isomers.

(5) EXCEPTIONS. The controlled substances board may except by rule any compound, mixture or preparation containing any depressant substance included in sub. (2) from the application of all or any part of this chapter if the compound, mixture or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are in combinations, quantity, proportion or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

History: 1971 c. 219; 1979 c. 32; 1981 c. 206 ss. 34m, 41 to 52; CSB 2.15, 2.19, 2.21; 1993 a. 468; 1995 a. 448 ss. 203 to 220, 478, 479; Stats. 1995 s. 961.20; CSB 2.24, 2.25, 2.28.

NOTE: See 1979-80 Statutes and 1993-94 Statutes for notes on actions by controlled substances board under s. 161.11 (1), 1993 Stats.

961.21 Schedule V tests. (1m) The controlled substances board shall add a substance to schedule V upon finding that:

(a) The substance has low potential for abuse relative to the controlled substances included in schedule IV;
(b) The substance has currently accepted medical use in treatment in the United States; and
(c) The substance has limited physical dependence or psychological dependence liability relative to the controlled substances included in schedule IV.

(2m) The controlled substances board may add a substance to schedule V without making the findings required by sub. (1m) if the substance is controlled under schedule V of 21 USC 811 (c) by a federal agency as the result of an international treaty, convention or protocol.

History: 1971 c. 219; 1995 a. 448 ss. 221, 222, 480; Stats. 1995 s. 961.21.

961.22 Schedule V. Unless specifically excepted by state or federal law or regulation or more specifically included in another schedule, the following controlled substances are listed in schedule V:

(2) NARCOTIC DRUGS CONTAINING NONNARCOTIC ACTIVE MEDICINAL INGREDIENTS. Any compound, mixture or preparation containing any of the following narcotic drugs or their salts, isomers or salts of isomers, in limited quantities as set forth below, calculated as the free anhydrous base or alkaloid, which also contains one or more nonnarcotic, active medicinal ingredients in sufficient proportion to confer upon the compound, mixture or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

(a) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams.
(b) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.

(c) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.

(d) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.

(e) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

(f) Not more than 0.5 milligrams of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(2m) PSEUDOEPHEDRINE. Pseudoephedrine or any of its salts, isomers, or salts of isomers.

(3) OTHER STIMULANTS. Any material, compound, mixture or preparation which contains any quantity of any of the following substances having a stimulant effect on the central nervous system, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

(a) Pyrovalerone.

History: 1971 c. 219; 1981 c. 206; CSB 2.15; 1985 a. 135; CSB 2.17; 1995 a. 448 ss. 223 to 227, 481; Stats. 1995 s. 961.22; CSB 2.17 (1); 2005 a. 14, 262.

961.23 Dispensing of schedule V substances. The dispensing of schedule V substances is subject to the following conditions:

(1) They may be dispensed and sold only in good faith as a medicine and not for the purpose of evading this chapter.

(2) They may be sold at retail only by a registered pharmacist or, if the substance is a pseudoephedrine product, by a person who is working under the direction of a registered pharmacist when sold in a retail establishment.

(3) When sold in a retail establishment, they shall bear the name and address of the establishment on the immediate container of said preparation.

(4) Any person purchasing such a substance shall, at the time of purchase, present to the seller that person's correct name, address, and, if the person is purchasing a pseudoephedrine product, an identification card containing the person's photograph. The seller shall record the name and address and the name and quantity of the product sold. The purchaser and either the seller or, if the substance is a pseudoephedrine product and is being sold by a person who is not a registered pharmacist, the pharmacist supervising the seller shall sign the record of this transaction. The giving of a false name or false address by the purchaser shall be prima facie evidence of a violation of s. 961.43 (1) (a).

(5) No person may purchase more than 227 grams of a product containing opium or more than 113 grams of a product containing any other schedule V substance within a 48-hour period without the authorization of a physician, dentist, or veterinarian. This subsection does not apply to a pseudoephedrine product unless it contains another schedule V substance.

(6) No person other than a physician, dentist, veterinarian, or pharmacist may purchase more than 7.5 grams of pseudoephedrine contained in a pseudoephedrine product within a 30-day period without the authorization of a physician, dentist, or veterinarian.

(7) No person other than a physician, dentist, veterinarian, or pharmacist may possess more than 227 grams of a product containing opium or more than 113 grams of a product containing any other schedule V substance at any time without the authorization of a physician, dentist, or veterinarian. This subsection does not apply to a pseudoephedrine product unless it contains another schedule V substance.

(8) No person may sell a pseudoephedrine product to a person under 18 years of age, and no person under 18 years of age may purchase a pseudoephedrine product.

History: 1971 c. 219; 1973 c. 12 s. 37; 1981 c. 206; 1993 a. 482; 1995 a. 448 s. 228; Stats. 1995 s. 961.23; 2005 a. 14, 262; 2011 a. 146.

961.235 Records relating to sales of pseudoephedrine products. (1) In this section, "records of pseudoephedrine sales" means records required under s. 961.23 (4) with respect to the sale of a pseudoephedrine product.

(2) Records of pseudoephedrine sales may be kept in either a paper or electronic format and shall be maintained by the pharmacy for at least 2 years. Except as provided in sub. (3), only a pharmacist may have access to records of pseudoephedrine sales and information contained in those records.

(3) A pharmacist shall make records required under s. 961.23 (4) available to a law enforcement officer who requests them. Law enforcement officers may make those records available to other persons or redisclose information from those records to other persons only in connection with a criminal investigation or prosecution under this chapter.

History: 2005 a. 14, 262.

961.24 Publishing of updated schedules. The controlled substances board shall publish updated schedules annually. The failure of the controlled substances board to publish an updated schedule under this section is not a defense in any administrative or judicial proceeding under this chapter.

History: 1971 c. 219; 1993 a. 213; 1995 a. 448 s. 229; Stats. 1995 s. 961.24.

961.25 Controlled substance analog treated as a schedule I substance. A controlled substance analog, to the extent it is intended for human consumption, shall be treated, for the purposes of this chapter, as a substance included in schedule I, unless a different treatment is specifically provided. No later than 60 days after the commencement of a prosecution concerning a controlled substance analog, the district attorney shall provide the controlled substances board with information relevant to emergency scheduling under s. 961.11 (4m). After a final determination by the controlled substances board that the controlled substance analog should not be scheduled, no prosecution relating to that substance as a controlled substance analog may be commenced or continued.

History: 1995 a. 448.

SUBCHAPTER III

REGULATION OF MANUFACTURE, DISTRIBUTION AND DISPENSING OF CONTROLLED SUBSTANCES

961.31 Rules. The pharmacy examining board may promulgate rules relating to the manufacture, distribution and dispensing of controlled substances within this state.

History: 1971 c. 219; 1995 a. 448 s. 231; Stats. 1995 s. 961.31.
Cross-reference: See also ch. Phar 8, Wis. adm. code.

961.32 Possession authorization. **(1)** Persons registered under federal law to manufacture, distribute, dispense or conduct research with controlled substances may possess, manufacture, distribute, dispense or conduct research with those substances in this state to the extent authorized by their federal registration and in conformity with the other provisions of this chapter.

(2) The following persons need not be registered under federal law to lawfully possess controlled substances in this state:

(a) An agent or employee of any registered manufacturer, distributor or dispenser of any controlled substance if the agent or employee is acting in the usual course of the agent's or employee's business or employment;

(b) A common or contract carrier or warehouse keeper, or an employee thereof, whose possession of any controlled substance is in the usual course of business or employment;

(c) An ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner or in lawful possession of a schedule V substance.

(d) Any person exempted under federal law, or for whom federal registration requirements have been waived.

History: 1971 c. 219, 336; 1983 a. 500 s. 43; 1993 a. 482; 1995 a. 448 s. 232; Stats. 1995 s. 961.32.

A doctor or dentist who dispenses drugs to a patient within the course of professional practice is not subject to criminal liability. State v. Townsend, 107 Wis. 2d 24, 318 N.W.2d 361 (1982).

961.335 Special use authorization. **(1)** Upon application the controlled substances board may issue a permit authorizing a person to manufacture, obtain, possess, use, administer or dispense a controlled substance for purposes of scientific research, instructional activities, chemical analysis or other special uses, without restriction because of enumeration. No person shall engage in any such activity without a permit issued under this section, except that an individual may be designated and authorized to receive the permit for a college or university department, research unit or similar administrative organizational unit and students, laboratory technicians, research specialists or chemical analysts under his or her supervision may be permitted possession and use of controlled substances for these purposes without obtaining an individual permit.

(2) A permit issued under this section shall be valid for one year from the date of issue.

(3) The fee for a permit under this section shall be an amount determined by the controlled substances board but shall not exceed $25. No fee may be charged for permits issued to employees of state agencies or institutions.

(4) Permits issued under this section shall be effective only for and shall specify:

(a) The name and address of the permittee.

(b) The nature of the project authorized by the permit.

(c) The controlled substances to be used in the project, by name if included in schedule I, and by name or schedule if included in any other schedule.

(d) Whether dispensing to human subjects is authorized.

(5) A permit shall be effective only for the person, substances and project specified on its face and for additional projects which derive directly from the stated project. Upon application, a valid permit may be amended to add a further activity or to add further substances or schedules to the project permitted thereunder. The fee for such amendment shall be determined by the controlled substances board but shall not exceed $5.

(6) Persons who possess a valid permit issued under this section are exempt from state prosecution for possession and distribution of controlled substances to the extent of the authorization.

(7) The controlled substances board may authorize persons engaged in research on the use and effects of controlled substances to withhold the names and other identifying characteristics of individuals who are the subjects of research. Persons who obtain this authorization are not compelled in any civil, criminal, administrative, legislative or other proceeding to identify or to identify to the board the individuals who are the subjects of research for which the authorization was obtained.

(8) The controlled substances board may promulgate rules relating to the granting of special use permits including, but not limited to, requirements for the keeping and disclosure of records other than those that may be withheld under sub. (7), submissions of protocols, filing of applications and suspension or revocation of permits.

Cross-reference: See also ch. CSB 3, Wis. adm. code.

(9) The controlled substances board may suspend or revoke a permit upon a finding that there is a violation of the rules of the board.

History: 1971 c. 219; 1975 c. 110, 199; 1977 c. 26; 1995 a. 448 s. 233; Stats. 1995 s. 961.335.

961.34 Controlled substances therapeutic research. Upon the request of any practitioner, the controlled substances board shall aid the practitioner in applying for and processing an investigational drug permit for marijuana under 21 USC 355 (i). If the federal food and drug administration issues an investigational drug permit, the controlled substances board shall approve which pharmacies can distribute the marijuana to patients upon written prescription. Only pharmacies located within hospitals are eligible to receive the marijuana for distribution. The controlled substances board shall also approve which practitioners can write prescriptions for the marijuana.

History: 1981 c. 193; 1983 a. 189 s. 329 (18); 1985 a. 146 s. 8; 1995 a. 448 ss. 16 to 19; Stats. 1995 s. 961.34.

961.36 Controlled substances board duties relating to diversion control and prevention, compliance with controlled substances law and advice and assistance. **(1)** The controlled substances board shall regularly prepare and make available to state regulatory, licensing and law enforcement agencies descriptive and analytic reports on the potential for diversion and actual patterns and trends of distribution, diversion and abuse within the state of certain controlled substances the board selects that are listed in s. 961.16, 961.18, 961.20 or 961.22.

(1m) At the request of the department of safety and professional services or a board, examining board or affiliated credentialing board in the department of safety and professional services, the controlled substances board shall provide advice and assistance in matters related to the controlled substances law to the department or to the board, examining board or

affiliated credentialing board in the department making the request for advice or assistance.

(2) The controlled substances board shall enter into written agreements with local, state and federal agencies to improve the identification of sources of diversion and to improve enforcement of and compliance with this chapter and other laws and regulations pertaining to unlawful conduct involving controlled substances. An agreement must specify the roles and responsibilities of each agency that has information or authority to identify, prevent or control drug diversion and drug abuse. The board shall convene periodic meetings to coordinate a state diversion prevention and control program. The board shall assist and promote cooperation and exchange of information among agencies and with other states and the federal government.

(3) The controlled substances board shall evaluate the outcome of its program under this section and shall annually submit a report to the chief clerk of each house of the legislature, for distribution to the legislature under s. 13.172 (3), on its findings with respect to its effect on distribution and abuse of controlled substances, including recommendations for improving control and prevention of the diversion of controlled substances.

History: 1981 c. 200; 1987 a. 186; 1995 a. 305 ss. 2, 3; 1995 a. 448 s. 234; Stats. 1995 s. 961.36; 1997 a. 35 s. 339; 2011 a. 32.

961.38 Prescriptions. (1g) In this section, "medical treatment" includes dispensing or administering a narcotic drug for pain, including intractable pain.

(1r) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance included in schedule II may be dispensed without the written hard copy or electronic prescription of a practitioner.

(2) In emergency situations, as defined by rule of the pharmacy examining board, schedule II drugs may be dispensed upon an oral prescription of a practitioner, reduced promptly to a written hard copy or electronic record and filed by the pharmacy. Prescriptions shall be retained in conformity with rules of the pharmacy examining board promulgated under s. 961.31. No prescription for a schedule II substance may be refilled.

(3) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in schedule III or IV, which is a prescription drug, shall not be dispensed without a written, oral or electronic prescription of a practitioner. The prescription shall not be filled or refilled except as designated on the prescription and in any case not more than 6 months after the date thereof, nor may it be refilled more than 5 times, unless renewed by the practitioner.

(4) A substance included in schedule V may be distributed or dispensed only for a medical purpose, including medical treatment or authorized research.

(4g) A practitioner may dispense or deliver a controlled substance to or for an individual or animal only for medical treatment or authorized research in the ordinary course of that practitioner's profession.

(4r) A pharmacist is immune from any civil or criminal liability and from discipline under s. 450.10 for any act taken by the pharmacist in reliance on a reasonable belief that an order purporting to be a prescription was issued by a practitioner in the usual course of professional treatment or in authorized research.

(5) No practitioner shall prescribe, orally, electronically or in writing, or take without a prescription a controlled substance included in schedule I, II, III or IV for the practitioner's own personal use.

History: 1971 c. 219; 1975 c. 190, 421; 1977 c. 203; 1995 a. 448 ss. 235 to 240, 483 to 485; Stats. 1995 s. 961.38; 1997 a. 27; 2011 a. 159.

961.39 Limitations on optometrists. An optometrist who is allowed under s. 449.18 (1) to use therapeutic pharmaceutical agents and under s. 449.18 (6) (am) 2. b. to dispense a contact lens that delivers a therapeutic pharmaceutical agent:

(1) May not prescribe, dispense, or administer a controlled substance included in schedule I or II.

(2) May prescribe, dispense, or administer only those controlled substances included in schedules III, IV, and V that are permitted for prescription or administration under the rules promulgated under s. 449.18 (6) (cm).

(3) Shall include with each prescription order all of the following:

(a) A statement that he or she is allowed under s. 449.18 (1) to use therapeutic pharmaceutical agents.

(b) The indicated use of the controlled substance included in schedule III, IV or V so prescribed.

(4) May not dispense other than as provided under s. 449.18 (6) (am) 2.

History: 1989 a. 31; 1995 a. 448 s. 241; Stats. 1995 s. 961.39; 2005 a. 297; 2009 a. 168.

961.395 Limitation on advanced practice nurses. (1) An advanced practice nurse who is certified under s. 441.16 may prescribe controlled substances only as permitted by the rules promulgated under s. 441.16 (3).

(2) An advanced practice nurse certified under s. 441.16 shall include with each prescription order the advanced practice nurse prescriber certification number issued to him or her by the board of nursing.

(3) An advanced practice nurse certified under s. 441.16 may dispense a controlled substance only by prescribing or administering the controlled substance or as otherwise permitted by the rules promulgated under s. 441.16 (3).

History: 1995 a. 448.

SUBCHAPTER IV

OFFENSES AND PENALTIES

961.41 Prohibited acts A — penalties. (1) MANUFACTURE, DISTRIBUTION OR DELIVERY. Except as authorized by this chapter, it is unlawful for any person to manufacture, distribute or deliver a controlled substance or controlled substance analog. Any person who violates this subsection is subject to the following penalties:

(a) *Schedule I and II narcotic drugs generally.* Except as provided in par. (d), if a person violates this subsection with respect to a controlled substance included in schedule I or II which is a narcotic drug, or a controlled substance analog of a

controlled substance included in schedule I or II which is a narcotic drug, the person is guilty of a Class E felony.

(b) *Schedule I, II, and III nonnarcotic drugs generally.* Except as provided in pars. (cm) and (e) to (hm), if a person violates this subsection with respect to any other controlled substance included in schedule I, II, or III, or a controlled substance analog of any other controlled substance included in schedule I or II, the person is guilty of a Class H felony.

(cm) *Cocaine and cocaine base.* If the person violates this subsection with respect to cocaine or cocaine base, or a controlled substance analog of cocaine or cocaine base, and the amount manufactured, distributed, or delivered is:

1g. One gram or less, the person is guilty of a Class G felony.

1r. More than one gram but not more than 5 grams, the person is guilty of a Class F felony.

2. More than 5 grams but not more than 15 grams, the person is guilty of a Class E felony.

3. More than 15 grams but not more than 40 grams, the person is guilty of a Class D felony.

4. More than 40 grams, the person is guilty of a Class C felony.

(d) *Heroin.* If the person violates this subsection with respect to heroin or a controlled substance analog of heroin and the amount manufactured, distributed or delivered is:

1. Three grams or less, the person is guilty of a Class F felony.

2. More than 3 grams but not more than 10 grams, the person is guilty of a Class E felony.

3. More than 10 grams but not more than 50 grams, the person is guilty of a Class D felony.

4. More than 50 grams, the person is guilty of a Class C felony.

(e) *Phencyclidine, amphetamine, methamphetamine, methcathinone, methylenedioxypyrovalerone, and 4-methylmethcathinone.* If the person violates this subsection with respect to phencyclidine, amphetamine, methamphetamine, methcathinone, methylenedioxypyrovalerone, or 4-methylmethcathinone, or a controlled substance analog of phencyclidine, amphetamine, methamphetamine, methcathinone, methylenedioxypyrovalerone, or 4-methylmethcathinone, and the amount manufactured, distributed, or delivered is:

1. Three grams or less, the person is guilty of a Class F felony.

2. More than 3 grams but not more than 10 grams, the person is guilty of a Class E felony.

3. More than 10 grams but not more than 50 grams, the person is guilty of a Class D felony.

4. More than 50 grams, the person is guilty of a Class C felony.

(f) *Lysergic acid diethylamide.* If the person violates this subsection with respect to lysergic acid diethylamide or a controlled substance analog of lysergic acid diethylamide and the amount manufactured, distributed, or delivered is:

1. One gram or less, the person is guilty of a Class G felony.

2. More than one gram but not more than 5 grams, the person is guilty of a Class F felony.

3. More than 5 grams, the person is guilty of a Class E felony.

(g) *Psilocin and psilocybin.* If the person violates this subsection with respect to psilocin or psilocybin, or a controlled substance analog of psilocin or psilocybin, and the amount manufactured, distributed or delivered is:

1. One hundred grams or less, the person is guilty of a Class G felony.

2. More than 100 grams but not more than 500 grams, the person is guilty of a Class F felony.

3. More than 500 grams, the person is guilty of a Class E felony.

(h) *Tetrahydrocannabinols.* If the person violates this subsection with respect to tetrahydrocannabinols, included under s. 961.14 (4) (t), or a controlled substance analog of tetrahydrocannabinols, and the amount manufactured, distributed or delivered is:

1. Two hundred grams or less, or 4 or fewer plants containing tetrahydrocannabinols, the person is guilty of a Class I felony.

2. More than 200 grams but not more than 1,000 grams, or more than 4 plants containing tetrahydrocannabinols but not more than 20 plants containing tetrahydrocannabinols, the person is guilty of a Class H felony.

3. More than 1,000 grams but not more than 2,500 grams, or more than 20 plants containing tetrahydrocannabinols but not more than 50 plants containing tetrahydrocannabinols, the person is guilty of a Class G felony.

4. More than 2,500 grams but not more than 10,000 grams, or more than 50 plants containing tetrahydrocannabinols but not more than 200 plants containing tetrahydrocannabinols, the person is guilty of a Class F felony.

5. More than 10,000 grams, or more than 200 plants containing tetrahydrocannabinols, the person is guilty of a Class E felony.

(hm) *Certain other schedule I controlled substances and ketamine.* If the person violates this subsection with respect to gamma-hydroxybutyric acid, gamma-butyrolactone, 1,4-butanediol, 3,4-methylenedioxymethamphetamine, 4-bromo-2,5-dimethoxy-beta-phenylethylamine, 4-methylthioamphetamine, ketamine, or a controlled substance analog of gamma-hydroxybutyric acid, gamma-butyrolactone, 1,4-butanediol, 3,4-methylenedioxymethamphetamine, 4-bromo-2,5-dimethoxy-beta-phenylethylamine, or 4-methylthioamphetamine and the amount manufactured, distributed, or delivered is:

1. Three grams or less, the person is guilty of a Class F felony.

2. More than 3 grams but not more than 10 grams, the person is guilty of a Class E felony.

3. More than 10 grams but not more than 50 grams, the person is guilty of a Class D felony.

4. More than 50 grams, the person is guilty of a Class C felony.

(i) *Schedule IV drugs generally.* Except as provided in par. (im), if a person violates this subsection with respect to a substance included in schedule IV, the person is guilty of a Class H felony.

(im) *Flunitrazepam.* If a person violates this subsection with respect to flunitrazepam and the amount manufactured, distributed, or delivered is:

1. Three grams or less, the person is guilty of a Class F felony.

2. More than 3 grams but not more than 10 grams, the person is guilty of a Class E felony.

3. More than 10 grams but not more than 50 grams, the person is guilty of a Class D felony.

4. More than 50 grams, the person is guilty of a Class C felony.

(j) *Schedule V drugs.* If a person violates this subsection with respect to a substance included in schedule V, the person is guilty of a Class I felony.

(1m) POSSESSION WITH INTENT TO MANUFACTURE, DISTRIBUTE OR DELIVER. Except as authorized by this chapter, it is unlawful for any person to possess, with intent to manufacture, distribute or deliver, a controlled substance or a controlled substance analog. Intent under this subsection may be demonstrated by, without limitation because of enumeration, evidence of the quantity and monetary value of the substances possessed, the possession of manufacturing implements or paraphernalia, and the activities or statements of the person in possession of the controlled substance or a controlled substance analog prior to and after the alleged violation. Any person who violates this subsection is subject to the following penalties:

(a) *Schedule I and II narcotic drugs generally.* Except as provided in par. (d), if a person violates this subsection with respect to a controlled substance included in schedule I or II which is a narcotic drug or a controlled substance analog of a controlled substance included in schedule I or II which is a narcotic drug, the person is guilty of a Class E felony.

(b) *Schedule I, II, and III nonnarcotic drugs generally.* Except as provided in pars. (cm) and (e) to (hm), if a person violates this subsection with respect to any other controlled substance included in schedule I, II, or III, or a controlled substance analog of any other controlled substance included in schedule I or II, the person is guilty of a Class H felony.

(cm) *Cocaine and cocaine base.* If a person violates this subsection with respect to cocaine or cocaine base, or a controlled substance analog of cocaine or cocaine base, and the amount possessed, with intent to manufacture, distribute or deliver, is:

1g. One gram or less, the person is guilty of a Class G felony.

1r. More than one gram but not more than 5 grams, the person is guilty of a Class F felony.

2. More than 5 grams but not more than 15 grams, the person is guilty of a Class E felony.

3. More than 15 grams but not more than 40 grams, the person is guilty of a Class D felony.

4. More than 40 grams, the person is guilty of a Class C felony.

(d) *Heroin.* If a person violates this subsection with respect to heroin or a controlled substance analog of heroin and the amount possessed, with intent to manufacture, distribute or deliver, is:

1. Three grams or less, the person is guilty of a Class F felony.

2. More than 3 grams but not more than 10 grams, the person is guilty of a Class E felony.

3. More than 10 grams but not more than 50 grams, the person is guilty of a Class D felony.

4. More than 50 grams, the person is guilty of a Class C felony.

(e) *Phencyclidine, amphetamine, methamphetamine, methcathinone, methylenedioxypyrovalerone, and 4-methylmethcathinone.* If a person violates this subsection with respect to phencyclidine, amphetamine, methamphetamine, methcathinone, methylenedioxypyrovalerone, or 4-methylmethcathinone, or a controlled substance analog of phencyclidine, amphetamine, methamphetamine, methcathinone, methylenedioxypyrovalerone, or 4-methylmethcathinone, and the amount possessed, with intent to manufacture, distribute, or deliver, is:

1. Three grams or less, the person is guilty of a Class F felony.

2. More than 3 grams but not more than 10 grams, the person is guilty of a Class E felony.

3. More than 10 grams but not more than 50 grams, the person is guilty of a Class D felony.

4. More than 50 grams, the person is guilty of a Class C felony.

(f) *Lysergic acid diethylamide.* If a person violates this subsection with respect to lysergic acid diethylamide or a controlled substance analog of lysergic acid diethylamide and the amount possessed, with intent to manufacture, distribute or deliver, is:

1. One gram or less, the person is guilty of a Class G felony.

2. More than one gram but not more than 5 grams, the person is guilty of a Class F felony.

3. More than 5 grams, the person is guilty of a Class E felony.

(g) *Psilocin and psilocybin.* If a person violates this subsection with respect to psilocin or psilocybin, or a controlled substance analog of psilocin or psilocybin, and the amount possessed, with intent to manufacture, distribute or deliver, is:

1. One hundred grams or less, the person is guilty of a Class G felony.

2. More than 100 grams but not more than 500 grams, the person is guilty of a Class F felony.

3. More than 500 grams, the person is guilty of a Class E felony.

(h) *Tetrahydrocannabinols.* If a person violates this subsection with respect to tetrahydrocannabinols, included under s. 961.14 (4) (t), or a controlled substance analog of tetrahydrocannabinols, and the amount possessed, with intent to manufacture, distribute, or deliver, is:

1. Two hundred grams or less, or 4 or fewer plants containing tetrahydrocannabinols, the person is guilty of a Class I felony.

2. More than 200 grams but not more than 1,000 grams, or more than 4 plants containing tetrahydrocannabinols but not more than 20 plants containing tetrahydrocannabinols, the person is guilty of a Class H felony.

3. More than 1,000 grams but not more than 2,500 grams, or more than 20 plants containing tetrahydrocannabinols but not

more than 50 plants containing tetrahydrocannabinols, the person is guilty of a Class G felony.

4. More than 2,500 grams but not more than 10,000 grams, or more than 50 plants containing tetrahydrocannabinols but not more than 200 plants containing tetrahydrocannabinols, the person is guilty of a Class F felony.

5. More than 10,000 grams, or more than 200 plants containing tetrahydrocannabinols, the person is guilty of a Class E felony.

(hm) *Certain other schedule I controlled substances and ketamine.* If the person violates this subsection with respect to gamma-hydroxybutyric acid, gamma-butyrolactone, 1,4-butanediol, 3,4-methylenedioxymethamphetamine, 4-bromo-2,5-dimethoxy-beta-phenylethylamine, 4-methylthioamphetamine, ketamine, or a controlled substance analog of gamma-hydroxybutyric acid, gamma-butyrolactone, 1,4-butanediol, 3,4-methylenedioxymethamphetamine, 4-bromo-2,5-dimethoxy-beta-phenylethylamine, or 4-methylthioamphetamine is subject to the following penalties if the amount possessed, with intent to manufacture, distribute, or deliver is:

1. Three grams or less, the person is guilty of a Class F felony.

2. More than 3 grams but not more than 10 grams, the person is guilty of a Class E felony.

3. More than 10 grams but not more than 50 grams, the person is guilty of a Class D felony.

4. More than 50 grams, the person is guilty of a Class C felony.

(i) *Schedule IV drugs generally.* Except as provided in par. (im), if a person violates this subsection with respect to a substance included in schedule IV, the person is guilty of a Class H felony.

(im) *Flunitrazepam.* If a person violates this subsection with respect to flunitrazepam and the amount possessed, with intent to manufacture, distribute, or deliver, is:

1. Three grams or less, the person is guilty of a Class F felony.

2. More than 3 grams but not more than 10 grams, the person is guilty of a Class E felony.

3. More than 10 grams but not more than 50 grams, the person is guilty of a Class D felony.

4. More than 50 grams, the person is guilty of a Class C felony.

(j) *Schedule V drugs.* If a person violates this subsection with respect to a substance included in schedule V, the person is guilty of a Class I felony.

(1n) PIPERIDINE POSSESSION. (a) No person may possess any quantity of piperidine or its salts with the intent to use the piperidine or its salts to manufacture a controlled substance or controlled substance analog in violation of this chapter.

(b) No person may possess any quantity of piperidine or its salts if he or she knows or has reason to know that the piperidine or its salts will be used to manufacture a controlled substance or controlled substance analog in violation of this chapter.

(c) A person who violates par. (a) or (b) is guilty of a Class F felony.

(1q) PENALTY RELATING TO TETRAHYDROCANNABINOLS IN CERTAIN CASES. Under s. 961.49 (2), 1999 stats., and subs. (1) (h) and (1m) (h), if different penalty provisions apply to a person depending on whether the weight of tetrahydrocannabinols or the number of plants containing tetrahydrocannabinols is considered, the greater penalty provision applies.

(1r) DETERMINING WEIGHT OF SUBSTANCE. In determining amounts under s. 961.49 (2) (b), 1999 stats., and subs. (1) and (1m), an amount includes the weight of cocaine, cocaine base, heroin, phencyclidine, lysergic acid diethylamide, psilocin, psilocybin, amphetamine, methamphetamine, methcathinone or tetrahydrocannabinols or any controlled substance analog of any of these substances together with any compound, mixture, diluent, plant material or other substance mixed or combined with the controlled substance or controlled substance analog. In addition, in determining amounts under subs. (1) (h) and (1m) (h), the amount of tetrahydrocannabinols means anything included under s. 961.14 (4) (t) and includes the weight of any marijuana.

(1x) CONSPIRACY. Any person who conspires, as specified in s. 939.31, to commit a crime under sub. (1) (cm) to (h) or (1m) (cm) to (h) is subject to the applicable penalties under sub. (1) (cm) to (h) or (1m) (cm) to (h).

(2) COUNTERFEIT SUBSTANCES. Except as authorized by this chapter, it is unlawful for any person to create, manufacture, distribute, deliver or possess with intent to distribute or deliver, a counterfeit substance. Any person who violates this subsection is subject to the following penalties:

(a) *Counterfeit schedule I and II narcotic drugs.* If a person violates this subsection with respect to a counterfeit substance included in schedule I or II which is a narcotic drug, the person is guilty of a Class E felony.

(b) *Counterfeit schedule I, II, III, and IV drugs.* Except as provided in pars. (bm) and (cm), if a person violates this subsection with respect to any other counterfeit substance included in schedule I, II, III, or IV, the person is guilty of a Class H felony.

(bm) *Counterfeit of phencyclidine and certain other drugs.* If a person violates this subsection with respect to a counterfeit substance that is a counterfeit of phencyclidine, methamphetamine, lysergic acid diethylamide, gamma-hydroxybutyric acid, gamma-butyrolactone, 1,4-butanediol, 3,4-methylenedioxymethamphetamine, 4-bromo-2,5-dimethoxy-beta-phenylethylamine, 4-methylthioamphetamine, or ketamine, the person is subject to the applicable fine and imprisonment for manufacture, distribution, delivery, or possession with intent to manufacture, distribute, or deliver, of the genuine controlled substance under sub. (1) or (1m).

(cm) *Counterfeit flunitrazepam.* If a person violates this subsection with respect to a counterfeit substance that is flunitrazepam, the person is subject to the applicable fine and imprisonment for manufacture, distribution, delivery, or possession with intent to manufacture, distribute, or deliver, of the genuine controlled substance under sub. (1) or (1m).

(d) *Counterfeit schedule V drugs.* If a person violates this subsection with respect to a counterfeit substance included in schedule V, the person is guilty of a Class I felony.

(3g) POSSESSION. No person may possess or attempt to possess a controlled substance or a controlled substance analog unless the person obtains the substance or the analog directly from, or pursuant to a valid prescription or order of, a practitioner who is acting in the course of his or her professional practice, or unless the person is otherwise authorized by this chapter to possess the substance or the analog. Any person who violates this subsection is subject to the following penalties:

(am) *Schedule I and II narcotic drugs.* If a person possesses a controlled substance included in schedule I or II which is a narcotic drug, or possesses a controlled substance analog of a controlled substance included in schedule I or II which is a narcotic drug, the person is guilty of a Class I felony.

(b) *Other drugs generally.* Except as provided in pars. (c) to (g), if the person possesses or attempts to possess a controlled substance or controlled substance analog, other than a controlled substance included in schedule I or II that is a narcotic drug or a controlled substance analog of a controlled substance included in schedule I or II that is a narcotic drug, the person is guilty of a misdemeanor, punishable under s. 939.61.

(c) *Cocaine and cocaine base.* If a person possess or attempts to possess cocaine or cocaine base, or a controlled substance analog of cocaine or cocaine base, the person shall be fined not more than $5,000 and may be imprisoned for not more than one year in the county jail upon a first conviction and is guilty of a Class I felony for a 2nd or subsequent offense. For purposes of this paragraph, an offense is considered a 2nd or subsequent offense if, prior to the offender's conviction of the offense, the offender has at any time been convicted of any felony or misdemeanor under this chapter or under any statute of the United States or of any state relating to controlled substances, controlled substance analogs, narcotic drugs, marijuana, or depressant, stimulant, or hallucinogenic drugs.

(d) *Certain hallucinogenic and stimulant drugs.* If a person possesses or attempts to possess lysergic acid diethylamide, phencyclidine, amphetamine, methcathinone, methylenedioxypyrovalerone, 4-methylmethcathinone, psilocin or psilocybin, or a controlled substance analog of lysergic acid diethylamide, phencyclidine, amphetamine, methcathinone, methylenedioxypyrovalerone, 4-methylmethcathinone, psilocin or psilocybin, the person may be fined not more than $5,000 or imprisoned for not more than one year in the county jail or both upon a first conviction and is guilty of a Class I felony for a 2nd or subsequent offense. For purposes of this paragraph, an offense is considered a 2nd or subsequent offense if, prior to the offender's conviction of the offense, the offender has at any time been convicted of any felony or misdemeanor under this chapter or under any statute of the United States or of any state relating to controlled substances, controlled substance analogs, narcotic drugs, marijuana, or depressant, stimulant, or hallucinogenic drugs.

(e) *Tetrahydrocannabinols.* If a person possesses or attempts to possess tetrahydrocannabinols included under s. 961.14 (4) (t), or a controlled substance analog of tetrahydrocannabinols, the person may be fined not more than $1,000 or imprisoned for not more than 6 months or both upon a first conviction and is guilty of a Class I felony for a 2nd or subsequent offense. For purposes of this paragraph, an offense is considered a 2nd or subsequent offense if, prior to the offender's conviction of the offense, the offender has at any time been convicted of any felony or misdemeanor under this chapter or under any statute of the United States or of any state relating to controlled substances, controlled substance analogs, narcotic drugs, marijuana, or depressant, stimulant, or hallucinogenic drugs.

(em) *Synthetic cannabinoids.* If a person possesses or attempts to possess a controlled substance specified in s. 961.14 (4) (tb) to (ty), or a controlled substance analog of a controlled substance specified in s. 961.14 (4) (tb) to (ty), the person may be fined not more than $1,000 or imprisoned for not more than 6 months or both upon a first conviction and is guilty of a Class I felony for a 2nd or subsequent offense. For purposes of this paragraph, an offense is considered a 2nd or subsequent offense if, prior to the offender's conviction of the offense, the offender has at any time been convicted of any felony or misdemeanor under this chapter or under any statute of the United States or of any state relating to controlled substances, controlled substance analogs, narcotic drugs, marijuana, or depressant, stimulant, or hallucinogenic drugs.

(f) *Gamma-hydroxybutyric acid, gamma-butyrolactone, 1,4-butanediol, ketamine, or flunitrazepam.* If a person possesses or attempts to possess gamma-hydroxybutyric acid, gamma-butyrolactone, 1,4-butanediol, ketamine or flunitrazepam, the person is guilty of a Class H felony.

(g) *Methamphetamine.* If a person possesses or attempts to possess methamphetamine or a controlled substance analog of methamphetamine, the person is guilty of a Class I felony.

(3j) PURCHASES OF PSEUDOEPHEDRINE PRODUCTS. Whoever purchases more than 7.5 grams of pseudoephedrine contained in a pseudoephedrine product within a 30-day period, other than by purchasing the product in person from a pharmacy or pharmacist, is guilty of a Class I felony. This subsection does not apply to a purchase by a physician, dentist, veterinarian, or pharmacist or a purchase that is authorized by a physician, dentist, or veterinarian.

(4) IMITATION CONTROLLED SUBSTANCES. (am) 1. No person may knowingly distribute or deliver, attempt to distribute or deliver or cause to be distributed or delivered a noncontrolled substance and expressly or impliedly represent any of the following to the recipient:

a. That the substance is a controlled substance.

b. That the substance is of a nature, appearance or effect that will allow the recipient to display, sell, distribute, deliver or use the noncontrolled substance as a controlled substance, if the representation is made under circumstances in which the person has reasonable cause to believe that the noncontrolled substance will be used or distributed for use as a controlled substance.

2. Proof of any of the following is prima facie evidence of a representation specified in subd. 1. a. or b.:

a. The physical appearance of the finished product containing the substance is substantially the same as that of a specific controlled substance.

b. The substance is unpackaged or is packaged in a manner normally used for the illegal delivery of a controlled substance.

c. The substance is not labeled in accordance with 21 USC 352 or 353.

d. The person distributing or delivering, attempting to distribute or deliver or causing distribution or delivery of the substance to be made states to the recipient that the substance

may be resold at a price that substantially exceeds the value of the substance.

3. A person who violates this paragraph is guilty of a Class I felony.

(bm) It is unlawful for any person to agree, consent or offer to lawfully manufacture, deliver, distribute or dispense any controlled substance to any person, or to offer, arrange or negotiate to have any controlled substance unlawfully manufactured, delivered, distributed or dispensed, and then manufacture, deliver, distribute or dispense or offer, arrange or negotiate to have manufactured, delivered, distributed or dispensed to any such person a substance which is not a controlled substance. Any person who violates this paragraph may be fined not more than $500 or imprisoned for not more than 6 months or both.

(5) DRUG ABUSE PROGRAM IMPROVEMENT SURCHARGE. (a) When a court imposes a fine for a violation of this section, it shall also impose a drug abuse program improvement surcharge under ch. 814 in an amount of 75 percent of the fine and penalty surcharge imposed.

(b) The clerk of the court shall collect and transmit the amount to the county treasurer as provided in s. 59.40 (2) (m). The county treasurer shall then make payment to the secretary of administration as provided in s. 59.25 (3) (f) 2.

(c) 1. The first $850,000 plus two-thirds of all moneys in excess of $1,275,000 collected in each fiscal year from drug surcharges under this subsection shall be credited to the appropriation account under s. 20.435 (5) (gb).

2. All moneys in excess of $850,000 and up to $1,275,000 plus one-third of moneys in excess of $1,275,000 collected in each fiscal year from drug surcharges under this subsection shall be credited to the appropriation account under s. 20.505 (6) (ku).

History: 1971 c. 219, 307; 1973 c. 12; 1981 c. 90, 314; 1985 a. 328; 1987 a. 339, 403; 1989 a. 31, 56, 121; 1991 a. 39; 138; 1993 a. 98, 118, 437, 482; 1995 a. 201; 1995 a. 448 ss. 243 to 266, 487 to 490; Stats. 1995 s. 961.41; 1997 a. 220, 283; 1999 a. 21, 32, 48, 57; 2001 a. 16, 109; 2003 a. 33, 49, 139, 320, 325, 327; 2005 a. 14, 25, 52, 262; 2007 a. 20; 2009 a. 28, 180; 2011 a. 31.

An inference of intent could be drawn from possession of hashish with a street value of $2,000 to $4,000 and opium with a street value of $20,000 to $24,000. State v. Trimbell, 64 Wis. 2d 379, 219 N.W.2d 369 (1974).

No presumption of intent to deliver is raised by sub. (1m). The statute merely lists evidence from which intent may be inferred. State ex rel. Bena v. Hon. John J. Crosetto, 73 Wis. 2d 261, 243 N.W.2d 442 (1976).

Evidence of a defendant's possession of a pipe containing burnt residue of marijuana was insufficient to impute knowledge to the defendant of possession of a controlled substance. Kabat v. State, 76 Wis. 2d 224, 251 N.W.2d 38 (1977).

This section prohibits the act of manufacture, as defined in 161.01 (13) [now s. 961.01 (13)]. Possession of a controlled substance created by an accused is not required for conviction. This section is not unconstitutionally vague. State ex rel. Bell v. Columbia County Ct. 82 Wis. 2d 401, 263 N.W.2d 162 (1978).

A conviction under sub. (1m) was upheld when the defendant possessed 1/3 gram of cocaine divided into 4 packages and evidence of defendant's prior sales of other drugs was admitted under s. 904.04 (2) as probative of intent to deliver the cocaine. Peasley v. State, 83 Wis. 2d 224, 265 N.W.2d 506 (1978).

Testimony that weapons were found at the accused's home was admissible as part of the chain of facts relevant to the accused's intent to deliver heroin. State v. Wedgeworth, 100 Wis. 2d 514, 302 N.W.2d 810 (1981).

Being a procuring agent of the buyer is not a valid defense to a charge under this section. By facilitating a drug deal, the defendant was party to the crime. State v. Hecht, 116 Wis. 2d 605, 342 N.W.2d 721 (1984).

When police confiscated a large quantity of drugs from an empty home and the next day searched the defendant upon his return to the home, confiscating a small quantity of the same drugs, the defendant's conviction for the lesser-included offense of possession and the greater offense of possession with intent to deliver did not violate double jeopardy. State v. Stevens, 123 Wis. 2d 303, 367 N.W.2d 788 (1985).

The defendant was properly convicted of attempted delivery of cocaine even though a noncontrolled substance was delivered. State v. Cooper, 127 Wis. 2d 429, 380 N.W.2d 383 (Ct. App. 1985).

Possession is not a lesser included offense of manufacturing. State v. Peck, 143 Wis. 2d 624, 422 N.W.2d 160 (Ct. App. 1988).

Identification of a controlled substance can be established by circumstantial evidence such as lay experience based on familiarity through prior use, trading, or law enforcement. State v. Anderson, 176 Wis. 2d 196, N.W.2d (Ct. App. 1993).

A conspiracy under sub. (1x) must involve at least 2 people with each subject to the same penalty for the conspiracy. If the buyer of drugs is guilty of misdemeanor possession only, a felony conspiracy charge may not be brought against the buyer. State v. Smith, 189 Wis. 2d 496, 525 N.W.2d 264 (1995).

The state is not required to prove that a defendant knew the exact nature or precise chemical name of a possessed controlled substance. The state must only prove that the defendant knew or believed that the substance was a controlled substance. State v. Sartin, 200 Wis. 2d 47, 546 N.W.2d 449 (1996), 94-0037.

A delivery conspiracy under sub. (1x) requires an agreement between a buyer and a seller that the buyer will deliver at least some of the controlled substance to a 3rd party. State v. Cavallari, 214 Wis. 2d 42, 571 N.W.2d 176 (Ct. App. 1997), 96-3391.

Standing alone, the presence of drugs in someone's system is insufficient to support a conviction for possession, but it is circumstantial evidence of prior possession. Evidence that the defendant was selling drugs is irrelevant to a charge of simple possession. Evidence that the defendant had money but no job does not have a tendency to prove possession. State v. Griffin, 220 Wis. 2d 371, 584 N.W.2d 127 (Ct. App. 1998), 97-0914.

Delivery under sub. (1m) requires transfer from one person to another. Intent to transfer drugs to the person from whom they were originally received satisfies this definition. Transfer to a 3rd party is not required. State v. Pinkard, 2005 WI App 226, 287 Wis. 2d 592, 706 N.W.2d 157, 04-2755.

A person may be a member of a conspiracy, in particular, a conspiracy to manufacture a controlled substance, based on the person's sale of goods that are not illegal to sell or possess. One does not become a party to a conspiracy by aiding and abetting it, through sales of supplies or otherwise, unless he or she knows of the conspiracy, the inference of which knowledge cannot be drawn from mere knowledge that the buyer will use the goods illegally. The gist of the conspiracy is the seller's intent, when given effect by an overt act to further, promote, and cooperate in the buyer's intended illegal use. There must be clear, unequivocal evidence of the seller's knowledge of the buyer's intended illegal use. State v. Routon, 2007 WI App 178, 304 Wis. 2d 480, 736 N.W.2d 530, 06-2557.

Possession requires evidence that the individual had a substance in his or her control. When combined with other corroborating evidence of sufficient probative value, evidence of ingestion can be sufficient to prove possession. State v. Patterson, 2009 WI App 161, 321 Wis. 2d 752, 776 N.W.2d 602, 08-1968.

Double jeopardy was not violated when the defendant was convicted of separate offenses under s. 161.41 [now s. 961.41] for simultaneous delivery of different controlled substances. Leonard v. Warden, Dodge Correctional Inst. 631 F. Supp. 1403 (1986).

961.42 Prohibited acts B — penalties. (1) It is unlawful for any person knowingly to keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft or other structure or place, which is resorted to by persons using controlled substances in violation of this chapter for the purpose of using these substances, or which is used for manufacturing, keeping or delivering them in violation of this chapter.

(2) Any person who violates this section is guilty of a Class I felony.

History: 1971 c. 219; 1995 a. 448 s. 267; Stats. 1995 s. 961.42; 1997 a. 283; 2001 a. 109.

"Keeping" a substance under sub. (1) means more than simple possession; it means keeping for the purpose of warehousing or storage for ultimate manufacture or delivery. State v. Brooks, 124 Wis. 2d 349, 369 N.W.2d 183 (Ct. App. 1985).

Warehousing or storage under *Brooks* does not encompass merely possessing an item while transporting it. Cocaine was not warehoused or stored when the cocaine was carried in the defendant's truck while moving from one location to another. State v. Slagle, 2007 WI App 117, 300 Wis. 2d 662, 731 N.W.2d 284, 06-0775.

961.43 Prohibited acts C — penalties. (1) It is unlawful for any person:

(a) To acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge;

(b) Without authorization, to make, distribute or possess any punch, die, plate, stone or other thing designed to print, imprint or reproduce the trademark, trade name or other identifying mark, imprint or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as:

1. To make a counterfeit substance; or

2. To duplicate substantially the physical appearance, form, package or label of a controlled substance.

(2) Any person who violates this section is guilty of a Class H felony.

History: 1971 c. 219; 1981 c. 90; 1995 a. 448 s. 268; Stats. 1995 s. 961.43; 1997 a. 283; 2001 a. 109.

961.435 Specific penalty. Any person who violates s. 961.38 (5) may be fined not more than $500 or imprisoned not more than 30 days or both.

History: 1975 c. 190; 1995 a. 448 s. 269; Stats. 1995 s. 961.435.

961.44 Penalties under other laws. Any penalty imposed for violation of this chapter is in addition to, and not in lieu of, any civil or administrative penalty or sanction otherwise authorized by law.

History: 1971 c. 219; 1995 a. 448 s. 271; Stats. 1995 s. 961.44.

961.45 Bar to prosecution. If a violation of this chapter is a violation of a federal law or the law of another state, a conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this state.

History: 1971 c. 219; 1995 a. 448 s. 272; Stats. 1995 s. 961.45.

Under this section, a "prosecution" is to be equated with a conviction or acquittal. The date on which a sentence is imposed is not relevant to the determination of whether a "prosecution" has occurred. State v. Petty, 201 Wis. 2d 337, 548 N.W.2d 817 (1996), 93-2200.

This section bars a Wisconsin prosecution under ch. 961 for the same conduct on which a prior federal conviction is based. The restriction is not limited to the same crime as defined by its statutory elements. State v. Hansen, 2001 WI 53, 243 Wis. 2d 328, 627 N.W.2d 195, 99-1128.

If a conspiracy involves multi-layered conduct, and all such conduct is part of the overarching common scheme, this section does not bar prosecution when some other part of the multi-layered conduct has resulted in a prosecution in some other jurisdiction. State v. Bautista, 2009 WI App 100, 320 Wis. 2d 582, 770 N.W.2d 744, 08-1692.

961.452 Defenses in certain schedule V prosecutions. (1) A person who proves all of the following by a preponderance of the evidence has a defense to prosecution under s. 961.41 (1) (j) that is based on the person's violation of a condition specified in s. 961.23 with respect to the person's distribution or delivery of a pseudoephedrine product:

(a) The person did not knowingly or recklessly violate the condition under s. 961.23.

(b) The person reported his or her own violation of the condition under s. 961.23 to a law enforcement officer in the county or municipality in which the violation occurred within 30 days after the violation.

(2) A seller who proves all of the following by a preponderance of the evidence has a defense to prosecution under s. 961.41 (1) (j) that is based on the person's violation of a condition specified in s. 961.23 with respect to the person's distribution or delivery of a pseudoephedrine product:

(a) The person did not knowingly or recklessly violate the condition under s. 961.23.

(b) The acts or omissions constituting the violation of the condition under s. 961.23 were the acts or omissions of one or more of the person's employees.

(c) The person provided training to each of those employees regarding the restrictions imposed under s. 961.23 on the delivery of pseudoephedrine products.

(3) A person who proves all of the following by a preponderance of the evidence has a defense to prosecution under s. 961.41 (1) (j) for a violation of s. 961.23 (6):

(a) The purchaser presented an identification card that contained a name or address other than the person's own.

(b) The appearance of the purchaser was such that an ordinary and prudent person would believe that the purchaser was the person depicted in the photograph contained in that identification card.

(c) The sale was made in good faith, in reasonable reliance on the identification card and appearance of the purchaser, and with the belief that the name and address of the purchaser were as listed on the identification card.

(4) A person who proves all of the following by a preponderance of the evidence has a defense to prosecution under s. 961.41 (1) (j) for a violation of s. 961.23 (8):

(a) The purchaser presented an identification card that indicated that he or she was 18 years of age or older.

(b) The appearance of the purchaser was such that an ordinary and prudent person would believe that the purchaser was 18 years of age or older.

(c) The sale was made in good faith, in reasonable reliance on the identification card and appearance of the purchaser, and with the belief that the purchaser was 18 years of age or older.

History: 2005 a. 14.

961.453 Purchases of pseudoephedrine products on behalf of another person. (1) (a) No person may, with the intent to acquire more than 7.5 grams of pseudoephedrine contained in a pseudoephedrine product within a 30-day period, knowingly solicit, hire, direct, employ, or use another to purchase a pseudoephedrine product on his or her behalf.

(b) 1. Except as provided in subd. 2., a person who violates par. (a) is guilty of a Class I felony.

2. If the person who is solicited, hired, directed, employed, or used to purchase the pseudoephedrine product is an individual who is less than 18 years of age, the actor is guilty of a Class H felony.

(2) No person may purchase a pseudoephedrine product on behalf of another with the intent to facilitate another person's manufacture of methamphetamine. A person who violates this subsection is guilty of a Class I felony.

History: 2005 a. 14, 262.

961.455 Using a child for illegal drug distribution or manufacturing purposes. **(1)** Any person who has attained the age of 17 years who knowingly solicits, hires, directs, employs or uses a person who is under the age of 17 years for the purpose of violating s. 961.41 (1) is guilty of a Class F felony.

(2) The knowledge requirement under sub. (1) does not require proof of knowledge of the age of the child. It is not a defense to a prosecution under this section that the actor mistakenly believed that the person solicited, hired, directed, employed or used under sub. (1) had attained the age of 18 years, even if the mistaken belief was reasonable.

(3) Solicitation under sub. (1) occurs in the manner described under s. 939.30, but the penalties under sub. (1) apply instead of the penalties under s. 939.30.

(4) If the conduct described under sub. (1) results in a violation under s. 961.41 (1), the actor is subject to prosecution and conviction under s. 961.41 (1) or this section or both.

History: 1989 a. 121; 1991 a. 153; 1995 a. 27; 1995 a. 448 ss. 273 to 275; Stats. 1995 s. 961.455; 1997 a. 283; 2001 a. 109.

961.46 Distribution to persons under age 18. If a person 17 years of age or over violates s. 961.41 (1) by distributing or delivering a controlled substance or a controlled substance analog to a person 17 years of age or under who is at least 3 years his or her junior, the applicable maximum term of imprisonment prescribed under s. 961.41 (1) for the offense may be increased by not more than 5 years.

History: 1971 c. 219; 1985 a. 328; 1987 a. 339; 1989 a. 121; 1993 a. 98, 118, 490; 1995 a. 27; 1995 a. 448 ss. 276 to 279; Stats. 1995 s. 961.46; 1999 a. 48, 57; 2001 a. 109.

961.47 Conditional discharge for possession or attempted possession as first offense. **(1)** Whenever any person who has not previously been convicted of any offense under this chapter, or of any offense under any statute of the United States or of any state or of any county ordinance relating to controlled substances or controlled substance analogs, narcotic drugs, marijuana or stimulant, depressant or hallucinogenic drugs, pleads guilty to or is found guilty of possession or attempted possession of a controlled substance or controlled substance analog under s. 961.41 (3g) (b), the court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him or her on probation upon terms and conditions. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against him or her. Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the additional penalties imposed for 2nd or subsequent convictions under s. 961.48. There may be only one discharge and dismissal under this section with respect to any person.

(2) Within 20 days after probation is granted under this section, the clerk of court shall notify the department of justice of the name of the individual granted probation and any other information required by the department. This report shall be upon forms provided by the department.

History: 1971 c. 219; 1985 a. 29; 1989 a. 121; 1991 a. 39; 1995 a. 448 s. 285; Stats. 1995 s. 961.47.

A disposition of probation without entering a judgment of guilt, was not appealable because there was no judgment. If a defendant desires either a final judgment or order in the nature of a final judgment for appeal purposes, he or she has only to withhold consent. State v. Ryback, 64 Wis. 2d 574, 219 N.W.2d 263 (1974).

The reference to s. 161.41 (3) [now s. 961.41 (3g) (b)] in sub. (1) means that proceedings may only be deferred for convictions for crimes encompassed by s. 161.41 (3) [now s. 961.41 (3g) (b)]. State v. Boyer, 198 Wis. 2d 837, 543 N.W.2d 562 (Ct. App. 1995), 95-0624.

961.472 Assessment; certain possession or attempted possession offenses. **(1)** In this section, "facility" means an approved public treatment facility, as defined under s. 51.45 (2) (c).

(2) Except as provided in sub. (5), if a person pleads guilty or is found guilty of possession or attempted possession of a controlled substance or controlled substance analog under s. 961.41 (3g) (am), (c), (d), or (g), the court shall order the person to comply with an assessment of the person's use of controlled substances. The court's order shall designate a facility that is operated by or pursuant to a contract with the county department established under s. 51.42 and that is certified by the department of health services to provide assessment services to perform the assessment and, if appropriate, to develop a proposed treatment plan. The court shall notify the person that noncompliance with the order limits the court's ability to determine whether the treatment option under s. 961.475 is appropriate. The court shall also notify the person of the fee provisions under s. 46.03 (18) (fm).

(3) The facility shall submit an assessment report within 14 days to the court. At the request of the facility, the court may extend the time period by not more than 20 additional workdays. The assessment report may include a proposed treatment plan.

(4) The court shall consider the assessment report in determining whether the treatment option under s. 961.475 is appropriate.

(5) The court is not required to enter an order under sub. (2) if any of the following applies:

(a) The court finds that the person is already covered by or has recently completed an assessment under this section or a substantially similar assessment.

(b) The person is participating in a substance abuse treatment program that meets the requirements of s. 16.964 (12) (c), as determined by the office of justice assistance under s. 16.964 (12) (i).

History: 1985 a. 328; 1987 a. 339; 1989 a. 121; 1993 a. 118; 1995 a. 27 s. 9126 (19); 1995 a. 448 s. 286; Stats. 1995 s. 961.472; 1999 a. 48; 2001 a. 109; 2003 a. 49; 2005 a. 25; 2007 a. 20 s. 9121 (6) (a).

961.475 Treatment option. Whenever any person pleads guilty to or is found guilty of possession or attempted possession of a controlled substance or controlled substance analog under s. 961.41 (3g), the court may, upon request of the person and with the consent of a treatment facility with special inpatient or outpatient programs for the treatment of drug dependent persons, allow the person to enter the treatment programs voluntarily for purposes of treatment and rehabilitation. Treatment shall be for the period the treatment facility feels is necessary and required, but shall not exceed the maximum sentence allowable unless the person consents to the continued treatment. At the end of the necessary and required treatment, with the consent of the court, the person may be

released from sentence. If treatment efforts are ineffective or the person ceases to cooperate with treatment rehabilitation efforts, the person may be remanded to the court for completion of sentencing.

History: 1971 c. 219, 336; 1985 a. 328; 1987 a. 339; 1989 a. 121; 1993 a. 118; 1995 a. 448 s. 287; Stats. 1995 s. 961.475.

961.48 Second or subsequent offenses. (1) If a person is charged under sub. (2m) with a felony offense under this chapter that is a 2nd or subsequent offense as provided under sub. (3) and the person is convicted of that 2nd or subsequent offense, the maximum term of imprisonment for the offense may be increased as follows:

(a) By not more than 6 years, if the offense is a Class C or D felony.

(b) By not more than 4 years, if the offense is a Class E, F, G, H, or I felony.

(2m) (a) Whenever a person charged with a felony offense under this chapter may be subject to a conviction for a 2nd or subsequent offense, he or she is not subject to an enhanced penalty under sub. (1) unless any applicable prior convictions are alleged in the complaint, indictment or information or in an amended complaint, indictment or information that is filed under par. (b) 1. A person is not subject to an enhanced penalty under sub. (1) for an offense if an allegation of applicable prior convictions is withdrawn by an amended complaint filed under par. (b) 2.

(b) Notwithstanding s. 971.29 (1), at any time before entry of a guilty or no contest plea or the commencement of a trial, a district attorney may file without leave of the court an amended complaint, information or indictment that does any of the following:

1. Charges an offense as a 2nd or subsequent offense under this chapter by alleging any applicable prior convictions.

2. Withdraws the charging of an offense as a 2nd or subsequent offense under this chapter by withdrawing an allegation of applicable prior convictions.

(3) For purposes of this section, a felony offense under this chapter is considered a 2nd or subsequent offense if, prior to the offender's conviction of the offense, the offender has at any time been convicted of any felony or misdemeanor offense under this chapter or under any statute of the United States or of any state relating to controlled substances or controlled substance analogs, narcotic drugs, marijuana or depressant, stimulant or hallucinogenic drugs.

(5) This section does not apply if the person is presently charged with a felony under s. 961.41 (3g) (c), (d), (e), or (g).

History: 1971 c. 219; 1985 a. 328; 1987 a. 339; 1989 a. 121; 1993 a. 98, 118, 482, 490; 1995 a. 402; 1995 a. 448 s. 288; Stats. 1995 s. 961.48; 1997 a. 35 ss. 340, 584; 1997 a. 220; 1999 a. 48; 2001 a. 109; 2003 a. 49.

The trial court erred in imposing a 2nd sentence on a defendant convicted of a 2nd violation of 161.41 (1) (a) and 161.14 (3) (k) [now s. 961.41 (1) (a) and 961.14 (3) (k)]. While the repeater statute, 161.48 [now s. 961.48], allows imposition of a penalty not exceeding twice that allowable for a 1st offense, it does not of itself create a crime and cannot support a separate and independent sentence. Olson v. State, 69 Wis. 2d 605, 230 N.W.2d 634.

For offenses under ch. 161 [now ch. 961], the court may apply this section or s. 939.62, but not both. State v. Ray, 166 Wis. 2d 855, 481 N.W.2d 288 (Ct. App. 1992).

In sentencing a defendant when the maximum sentence is doubled under this section, the court considers the same factors it considers in all sentencing, including prior convictions. State v. Canadeo, 168 Wis. 2d 559, 484 N.W.2d 340 (Ct. App. 1992).

Sentencing under this section was improper when the defendant did not admit a prior conviction and the state did not offer proof of one. State v. Coolidge, 173 Wis. 2d 783, 496 N.W.2d 701 (Ct. App. 1993).

Sub. (4) sets forth a limitation on the 2nd or subsequent offense; the previous offense may be any conviction under ch. 161 [now ch. 961]. State v. Robertson, 174 Wis. 2d 36, 496 N.W.2d 221 (Ct. App. 1993).

This section is self-executing; a prosecutor may not prevent the imposition of the sentences under this section by not charging the defendant as a repeater. State v. Young, 180 Wis. 2d 700, 511 N.W.2d 309 (Ct. App. 1993).

Conviction under this section for a second or subsequent offense does not require proof of the prior offense at trial beyond a reasonable doubt. State v. Miles, 221 Wis. 2d 56, 584 N.W.2d 703 (Ct. App. 1998), 97-1364.

A conviction for possessing drug paraphernalia under s. 961.573 qualifies as a prior offense under sub. (3). State v. Moline, 229 Wis. 2d 38, 598 N.W.2d 929 (Ct. App. 1999), 98-2176.

A defendant convicted of a second or subsequent controlled substance offense is subject to the penalty enhancements provided for in both ss. 939.62 and 961.48 (2) if the application of each enhancer is based on a separate and distinct prior conviction or convictions. State v. Maxey, 2003 WI App 94, 264 Wis. 2d 878, 663 N.W.2d 811, 02-1171.

961.49 Offenses involving intent to deliver or distribute a controlled substance on or near certain places. (1m) If any person violates s. 961.41 (1) (cm), (d), (e), (f), (g) or (h) by delivering or distributing, or violates s. 961.41 (1m) (cm), (d), (e), (f), (g) or (h) by possessing with intent to deliver or distribute, cocaine, cocaine base, heroin, phencyclidine, lysergic acid diethylamide, psilocin, psilocybin, amphetamine, methamphetamine, methcathinone or any form of tetrahydrocannabinols or a controlled substance analog of any of these substances and the delivery, distribution or possession takes place under any of the following circumstances, the maximum term of imprisonment prescribed by law for that crime may be increased by 5 years:

(a) While the person is in or on the premises of a scattered-site public housing project.

(b) While the person is in or on or otherwise within 1,000 feet of any of the following:

1. A state, county, city, village or town park.
2. A jail or correctional facility.
3. A multiunit public housing project.
4. A swimming pool open to members of the public.
5. A youth center or a community center.
6. Any private or public school premises and any premises of a tribal school, as defined in s. 115.001 (15m).
7. A school bus, as defined in s. 340.01 (56).

(c) While the person is in or on the premises of an approved treatment facility, as defined in s. 51.01 (2), that provides alcohol and other drug abuse treatment.

(d) While the person is within 1,000 feet of the premises of an approved treatment facility, as defined in s. 51.01 (2), that provides alcohol and other drug abuse treatment, if the person knows or should have known that he or she is within 1,000 feet of the premises of the facility or if the facility is readily recognizable as a facility that provides alcohol and other drug abuse treatment.

(2m) If any person violates s. 961.65 and, during the violation, the person intends to deliver or distribute methamphetamine or a controlled substance analog of methamphetamine under any of the circumstances listed under sub. (1m) (a), (b), (c), or (d), the maximum term of imprisonment for that crime is increased by 5 years.

History: 1985 a. 328; 1987 a. 332, 339, 403; 1989 a. 31, 107, 121; 1991 a. 39; 1993 a. 87, 98, 118, 281, 490, 491; 1995 a. 448 s. 289, 491; Stats. 1995 s. 961.49; 1997 a. 283, 327; 1999 a. 32, 48, 57; 2001 a. 109; 2005 a. 14; 2009 a. 302.

Scienter is not an element of this section. State v. Hermann, 164 Wis. 2d 269, 474 N.W.2d 906 (Ct. App. 1991).

A university campus is not a "school" within the meaning of s. 161.49 [now ch. 961.49]. State v. Andrews, 171 Wis. 2d 217, 491 N.W.2d 504 (Ct. App. 1992).

Anyone who passes within a zone listed in sub. (1) while in possession of a controlled substance with an intent to deliver it somewhere is subject to the penalty enhancer provided by this section whether or not the arrest is made within the zone and whether or not there is an intent to deliver the controlled substance within the zone. State v. Rasmussen, 195 Wis. 2d 109, 536 N.W.2d 106 (Ct. App. 1995), 94-2400.

School "premises" begin at the school property line. State v. Hall, 196 Wis. 2d 850, 540 N.W.2d 219 (Ct. App. 1995), 94-2848.

The penalty enhancer for sales close to parks does not violate due process and is not unconstitutionally vague. The ordinary meaning of "parks" includes undeveloped parks. Proximity to a park is rationally related to protecting public health and safety from drug sale activities. State v. Lopez, 207 Wis. 2d 413, 559 N.W.2d 264 (Ct. App. 1996), 95-3250.

Day care centers are a subset of "youth centers" as defined in s. 961.01(22) and come within the definition of places listed in s. 961.49 (2). State v. Van Riper, 222 Wis. 2d 197, 586 N.W.2d 198 (Ct. App. 1998), 97-3367.

This section contains two elemental facts, a distance requirement and a particularized protected place, both of which must be submitted to the jury and proven beyond a reasonable doubt. State v. Harvey, 2002 WI 93, 254 Wis. 2d 442, 647 N.W.2d 189, 00-0541.

961.495 Possession or attempted possession of a controlled substance on or near certain places. If any person violates s. 961.41 (3g) by possessing or attempting to possess a controlled substance included in schedule I or II, a controlled substance analog of a controlled substance included in schedule I or II or ketamine or flunitrazepam while in or on the premises of a scattered-site public housing project, while in or on or otherwise within 1,000 feet of a state, county, city, village, or town park, a jail or correctional facility, a multiunit public housing project, a swimming pool open to members of the public, a youth center or a community center, while in or on or otherwise within 1,000 feet of any private or public school premises or of any premises of a tribal school, as defined in s. 115.001 (15m), or while in or on or otherwise within 1,000 feet of a school bus, as defined in s. 340.01 (56), the court shall, in addition to any other penalties that may apply to the crime, impose 100 hours of community service work for a public agency or a nonprofit charitable organization. The court shall ensure that the defendant is provided a written statement of the terms of the community service order and that the community service order is monitored. Any organization or agency acting in good faith to which a defendant is assigned pursuant to an order under this section has immunity from any civil liability in excess of $25,000 for acts or omissions by or impacting on the defendant.

History: 1989 a. 31, 121; 1991 a. 39; 1993 a. 87, 118, 281, 490; 1995 a. 448 s. 290; Stats. 1995 s. 961.495; 1999 a. 57; 2009 a. 302.

961.50 Suspension or revocation of operating privilege. (1) If a person is convicted of any violation of this chapter, the court may, in addition to any other penalties that may apply to the crime, suspend the person's operating privilege, as defined in s. 340.01 (40), for not less than 6 months nor more than 5 years. If a court suspends a person's operating privilege under this subsection, the court may take possession of any suspended license. If the court takes possession of a license, it shall destroy the license. The court shall forward to the department of transportation the record of conviction and notice of the suspension. The person is eligible for an occupational license under s. 343.10 as follows:

(a) For the first such conviction, at any time.

(b) For a 2nd conviction within a 5-year period, after the first 60 days of the suspension or revocation period.

(c) For a 3rd or subsequent conviction within a 5-year period, after the first 90 days of the suspension or revocation period.

(2) For purposes of counting the number of convictions under sub. (1), convictions under the law of a federally recognized American Indian tribe or band in this state, federal law or the law of another jurisdiction, as defined in s. 343.32 (1m) (a), for any offense therein which, if the person had committed the offense in this state and been convicted of the offense under the laws of this state, would have required suspension or revocation of such person's operating privilege under this section, shall be counted and given the effect specified under sub. (1). The 5-year period under this section shall be measured from the dates of the violations which resulted in the convictions.

(3) If the person's license or operating privilege is currently suspended or revoked or the person does not currently possess a valid operator's license issued under ch. 343, the suspension or revocation under this section is effective on the date on which the person is first eligible for issuance, renewal, or reinstatement of an operator's license under ch. 343.

History: 1991 a. 39; 1993 a. 16, 480; 1995 a. 448 s. 291; Stats. 1995 s. 961.50; 1997 a. 84; 2009 a. 8, 103; 2011 a. 258.

A suspension imposed pursuant to this section is not a "presumptive minimum sentence" under s. 961.438. A minimum 6-month suspension is mandatory. State v. Herman, 2002 WI App 28, 250 Wis. 2d 166, 640 N.W.2d 539, 01-1118.

SUBCHAPTER V

ENFORCEMENT AND ADMINISTRATIVE PROVISIONS

961.51 Powers of enforcement personnel. (1) Any officer or employee of the pharmacy examining board designated by the examining board may:

(a) Execute and serve search warrants, arrest warrants, administrative inspection warrants, subpoenas and summonses issued under the authority of this state;

(b) Make arrests without warrant for any offense under this chapter committed in the officer's or employee's presence, or if the officer or employee has reasonable grounds to believe that the person to be arrested has committed or is committing a violation of this chapter which may constitute a felony; and

(c) Make seizures of property pursuant to this chapter.

(2) This section does not affect the responsibility of law enforcement officers and agencies to enforce this chapter, nor the authority granted the department of justice under s. 165.70.

History: 1971 c. 219; 1985 a. 29; 1993 a. 482; 1995 a. 448 s. 293; Stats. 1995 s. 961.51.

961.52 Administrative inspections and warrants. (1) Issuance and execution of administrative inspection warrants shall be as follows:

(a) A judge of a court of record, upon proper oath or affirmation showing probable cause, may issue warrants for the purpose of conducting administrative inspections authorized by this chapter or rules hereunder, and seizures of property appropriate to the inspections. For purposes of the issuance of

administrative inspection warrants, probable cause exists upon showing a valid public interest in the effective enforcement of this chapter or rules hereunder, sufficient to justify administrative inspection of the area, premises, building or conveyance in the circumstances specified in the application for the warrant.

(b) A warrant shall issue only upon an affidavit of a designated officer or employee of the pharmacy examining board or the department of justice having knowledge of the facts alleged, sworn to before the judge and establishing the grounds for issuing the warrant. If the judge is satisfied that grounds for the application exist or that there is probable cause to believe they exist, the judge shall issue a warrant identifying the area, premises, building or conveyance to be inspected, the purpose of the inspection, and, if appropriate, the type of property to be inspected, if any. The warrant shall:

1. State the grounds for its issuance and the name of each person whose affidavit has been taken in support thereof;

2. Be directed to a person authorized by law to execute it;

3. Command the person to whom it is directed to inspect the area, premises, building or conveyance identified for the purpose specified and, if appropriate, direct the seizure of the property specified;

4. Identify the item or types of property to be seized, if any;

5. Direct that it be served during normal business hours and designate the judge to whom it shall be returned.

(c) A warrant issued pursuant to this section must be executed and returned within 10 days of its date unless, upon a showing of a need for additional time, the court orders otherwise. If property is seized pursuant to a warrant, a copy shall be given to the person from whom or from whose premises the property is taken, together with a receipt for the property taken. The return of the warrant shall be made promptly, accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if present, or in the presence of at least one credible person other than the person executing the warrant. A copy of the inventory shall be delivered to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(d) The judge who has issued a warrant shall attach thereto a copy of the return and all papers returnable in connection therewith and file them with the clerk of court for the county in which the inspection was made.

(2) The pharmacy examining board and the department of justice may make administrative inspections of controlled premises in accordance with the following provisions:

(a) For purposes of this section only, "controlled premises" means:

1. Places where persons authorized under s. 961.32 to possess controlled substances in this state are required by federal law to keep records; and

2. Places including factories, warehouses, establishments and conveyances in which persons authorized under s. 961.32 to possess controlled substances in this state are permitted by federal law to hold, manufacture, compound, process, sell, deliver or otherwise dispose of any controlled substance.

(b) When authorized by an administrative inspection warrant issued pursuant to sub. (1), an officer or employee designated by the pharmacy examining board or the department of justice, upon presenting the warrant and appropriate credentials to the owner, operator or agent in charge, may enter controlled premises for the purpose of conducting an administrative inspection.

(c) When authorized by an administrative inspection warrant, an officer or employee designated by the pharmacy examining board or the department of justice may:

1. Inspect and copy records relating to controlled substances;

2. Inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished material, containers and labeling found therein, and, except as provided in par. (e), all other things therein, including records, files, papers, processes, controls and facilities bearing on violation of this chapter; and

3. Inventory any stock of any controlled substance therein and obtain samples thereof.

(d) This section does not prevent entries and administrative inspections, including seizures of property, without a warrant:

1. If the owner, operator or agent in charge of the controlled premises consents;

2. In situations presenting imminent danger to health or safety;

3. In situations involving inspection of conveyances if there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;

4. In any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking; or

5. In all other situations in which a warrant is not constitutionally required.

(e) An inspection authorized by this section shall not extend to financial data, sales data, other than shipment data, or pricing data unless the owner, operator or agent in charge of the controlled premises consents in writing.

History: 1971 c. 219; 1983 a. 538; 1985 a. 29; 1993 a. 482; 1995 a. 448 s. 294; Stats. 1995 s. 961.52.

961.53 Violations constituting public nuisance. Violations of this chapter constitute public nuisances under ch. 823, irrespective of any criminal prosecutions which may be or are commenced based on the same acts.

History: 1971 c. 219; Sup. Ct. Order, 67 Wis. 2d 585, 775 (1975); 1995 a. 448 s. 295; Stats. 1995 s. 961.53.

961.54 Cooperative arrangements and confidentiality. The department of justice shall cooperate with federal, state and local agencies in discharging its responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. To this end, it may:

(1) Arrange for the exchange of information among governmental officials concerning the use and abuse of controlled substances;

(2) Coordinate and cooperate in training programs concerning controlled substance law enforcement at local and state levels;

(3) Cooperate with the bureau by establishing a centralized unit to accept, catalog, file and collect statistics, including records of drug dependent persons and other controlled substance law offenders within the state, and make the information available for federal, state and local law enforcement purposes. It shall not furnish the name or identity of a patient or research subject whose identity could not be obtained under s. 961.335 (7); and

(4) Conduct programs of eradication aimed at destroying wild or illicit growth of plant species from which controlled substances may be extracted.

History: 1971 c. 219, 336; 1975 c. 110; 1995 a. 448 s. 296; Stats. 1995 s. 961.54.

961.55 Forfeitures. (1) The following are subject to forfeiture:

(a) All controlled substances or controlled substance analogs which have been manufactured, delivered, distributed, dispensed or acquired in violation of this chapter.

(b) All raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, distributing, importing or exporting any controlled substance or controlled substance analog in violation of this chapter.

(c) All property which is used, or intended for use, as a container for property described in pars. (a) and (b).

(d) All vehicles which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in pars. (a) and (b) or for the purpose of transporting any property or weapon used or to be used or received in the commission of any felony under this chapter, but:

1. No vehicle used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the vehicle is a consenting party or privy to a violation of this chapter;

2. No vehicle is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the owner's knowledge or consent. This subdivision does not apply to any vehicle owned by a person who is under 16 years of age on the date that the vehicle is used, or is intended for use, in the manner described under par. (d) (intro.), unless the court determines that the owner is an innocent bona fide owner;

3. A vehicle is not subject to forfeiture for a violation of s. 961.41 (3g) (b) to (g); and

4. If forfeiture of a vehicle encumbered by a bona fide perfected security interest occurs, the holder of the security interest shall be paid from the proceeds of the forfeiture if the security interest was perfected prior to the date of the commission of the felony which forms the basis for the forfeiture and he or she neither had knowledge of nor consented to the act or omission.

(e) All books, records, and research products and materials, including formulas, microfilm, tapes and data, which are used, or intended for use, in violation of this chapter.

(f) All property, real or personal, including money, directly or indirectly derived from or realized through the commission of any crime under this chapter.

(g) Any drug paraphernalia, as defined in s. 961.571, used in violation of this chapter.

(2) Property subject to forfeiture under this chapter may be seized by any officer or employee designated in s. 961.51 (1) or (2) or a law enforcement officer upon process issued by any court of record having jurisdiction over the property. Seizure without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;

(c) The officer or employee or a law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) The officer or employee or a law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter, that the property was derived from or realized through a crime under this chapter or that the property is a vehicle which was used as described in sub. (1) (d).

(3) In the event of seizure under sub. (2), proceedings under sub. (4) shall be instituted promptly. All dispositions and forfeitures under this section and ss. 961.555 and 961.56 shall be made with due provision for the rights of innocent persons under sub. (1) (d) 1., 2. and 4. Any property seized but not forfeited shall be returned to its rightful owner. Any person claiming the right to possession of property seized may apply for its return to the circuit court for the county in which the property was seized. The court shall order such notice as it deems adequate to be given the district attorney and all persons who have or may have an interest in the property and shall hold a hearing to hear all claims to its true ownership. If the right to possession is proved to the court's satisfaction, it shall order the property returned if:

(a) The property is not needed as evidence or, if needed, satisfactory arrangements can be made for its return for subsequent use as evidence; or

(b) All proceedings in which it might be required have been completed.

(4) Property taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the sheriff of the county in which the seizure was made subject only to the orders and decrees of the court having jurisdiction over the forfeiture proceedings. When property is seized under this chapter, the person seizing the property may:

(a) Place the property under seal;

(b) Remove the property to a place designated by it; or

(c) Require the sheriff of the county in which the seizure was made to take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(5) When property is forfeited under this chapter, the agency whose officer or employee seized the property shall do one of the following:

(a) Retain it for official use.

(b) Sell that which is not required to be destroyed by law and which is not harmful to the public. The agency may use 50 percent of the amount received for payment of forfeiture

expenses. The remainder shall be deposited in the school fund as proceeds of the forfeiture. In this paragraph, "forfeiture expenses" include all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs and the costs of investigation and prosecution reasonably incurred.

(c) Require the sheriff of the county in which the property was seized to take custody of the property and remove it for disposition in accordance with law.

(d) Forward it to the bureau for disposition.

(e) If the property forfeited is money, retain the sum of all of the following for payment of forfeiture expenses, as defined in par. (b), and deposit the remainder in the school fund:

1. If the amount of money does not exceed $2,000, 70 percent of that amount.

2. Fifty percent of any amount seized in excess of $2,000.

(6) Controlled substances included in schedule I and controlled substance analogs of controlled substances included in schedule I that are possessed, transferred, sold, offered for sale or attempted to be possessed in violation of this chapter are contraband and shall be seized and summarily forfeited to the state. Controlled substances included in schedule I and controlled substance analogs of controlled substances included in schedule I that are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be summarily forfeited to the state.

(6m) Flunitrazepam or ketamine that is possessed, transferred, sold, offered for sale or attempted to be possessed in violation of this chapter is contraband and shall be seized and summarily forfeited to the state. Flunitrazepam or ketamine that is seized or comes into the possession of the state, the owner of which is unknown, is contraband and shall be summarily forfeited to the state.

(7) Species of plants from which controlled substances in schedules I and II may be derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the state.

(8) The failure, upon demand by any officer or employee designated in s. 961.51 (1) or (2), of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored, to produce an appropriate federal registration, or proof that the person is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.

History: 1971 c. 219, 307; 1981 c. 267; 1985 a. 245, 328; 1987 a. 339; 1989 a. 121; 1993 a. 118, 482; 1995 a. 448 ss. 297 to 305; Stats. 1995 s. 961.55; 1997 a. 220; 1999 a. 48, 57, 110; 2001 a. 109; 2003 a. 49; 2005 a. 91.

A vehicle obtained out of state and used to transport a controlled substance is subject to forfeiture under sub. (1) (d). State v. S & S Meats, Inc. 92 Wis. 2d 64, 284 N.W.2d 712 (Ct. App. 1979).

A vehicle subject to sub. (1) (d) 4. is not subject to forfeiture unless the secured party consents. State v. Fouse, 120 Wis. 2d 471, 355 N.W.2d 366 (Ct. App. 1984).

Under sub. (1) (f), the state may seize property from an owner not charged with a crime. State v. Hooper, 122 Wis. 2d 748, 364 N.W.2d 175 (Ct. App. 1985).

The "seized but not forfeited" language of s. 961.55 (3) means that the portion of that subsection related to return of property is only triggered by an unsuccessful forfeiture action brought by the state; in the event that the district attorney elects not to bring a forfeiture action, a person seeking the return of seized property may do so under s. 968.20. Jones v. State, 226 Wis. 2d 565, 594 N.W.2d 738 (1999), 97-3306.

A law enforcement agency may not retain unclaimed contraband money for its own use. In the absence of an asset forfeiture proceeding initiated by the state or a judicial determination that the money constitutes contraband, a local law enforcement agency should dispose of the money as unclaimed property under s. 59.66 (2). OAG 10-09.

961.555 Forfeiture proceedings. (1) TYPE OF ACTION; WHERE BROUGHT. In an action brought to cause the forfeiture of any property seized under s. 961.55, the court may render a judgment in rem or against a party personally, or both. The circuit court for the county in which the property was seized shall have jurisdiction over any proceedings regarding the property when the action is commenced in state court. Any property seized may be the subject of a federal forfeiture action.

(2) COMMENCEMENT. (a) The district attorney of the county within which the property was seized shall commence the forfeiture action within 30 days after the seizure of the property, except that the defendant may request that the forfeiture proceedings be adjourned until after adjudication of any charge concerning a crime which was the basis for the seizure of the property. The request shall be granted. The forfeiture action shall be commenced by filing a summons, complaint and affidavit of the person who seized the property with the clerk of circuit court, provided service of authenticated copies of those papers is made in accordance with ch. 801 within 90 days after filing upon the person from whom the property was seized and upon any person known to have a bona fide perfected security interest in the property.

(b) Upon service of an answer, the action shall be set for hearing within 60 days of the service of the answer but may be continued for cause or upon stipulation of the parties.

(c) In counties having a population of 500,000 or more, the district attorney or corporation counsel may proceed under par. (a).

(d) If no answer is served or no issue of law or fact has been joined and the time for that service or joining issue has expired, or if any defendant fails to appear at trial after answering or joining issue, the court may render a default judgment as provided in s. 806.02.

(3) BURDEN OF PROOF. The state shall have the burden of satisfying or convincing to a reasonable certainty by the greater weight of the credible evidence that the property is subject to forfeiture under s. 961.55.

(4) ACTION AGAINST OTHER PROPERTY OF THE PERSON. The court may order the forfeiture of any other property of a defendant up to the value of property found by the court to be subject to forfeiture under s. 961.55 if the property subject to forfeiture meets any of the following conditions:

(a) Cannot be located.

(b) Has been transferred or conveyed to, sold to or deposited with a 3rd party.

(c) Is beyond the jurisdiction of the court.

(d) Has been substantially diminished in value while not in the actual physical custody of the law enforcement agency.

(e) Has been commingled with other property that cannot be divided without difficulty.

History: 1971 c. 219; Sup. Ct. Order, 67 Wis. 2d 585, 752 (1975); 1981 c. 113, 267; Sup. Ct. Order, 120 Wis. 2d xiii; 1985 a. 245; 1989 a. 121; 1993 a. 321; 1995 a. 448 s. 306; Stats. 1995 s. 961.555; 1997 a. 187.

Judicial Council Committee Note, 1974: The district attorney would be required to file within the 15 [now 30] day period. The answer need not be verified. [Re Order effective Jan. 1, 1976]

Judicial Council Note, 1984: Sub. (2) (a) has been amended by allowing 60 days after the action is commenced for service of the summons, complaint and affidavit on the defendants. The prior statute, requiring service within 30 days

after seizure of the property, was an exception to the general rule of s. 801.02 (2), stats. [Re Order effective Jan. 1, 1985]

The time provisions of sub. (2) are mandatory and jurisdictional. State v. Rosen, 72 Wis. 2d 200, 240 N.W.2d 168 (1976).

Persons served under sub. (2) (a) must be named as defendants. An action cannot be brought against an inanimate object as a sole "defendant." State v. One 1973 Cadillac, 95 Wis. 2d 641, 291 N.W.2d 626 (Ct. App. 1980).

An affidavit under sub. (2) (a) must be executed by a person who was present at the seizure or who ordered the seizure and received reports from those present at the seizure. State v. Hooper, 122 Wis. 2d 748, 364 N.W.2d 175 (Ct. App. 1985).

Sub. (2) (b) requires a hearing be held, not set, within 60 days of the service of the answer and allows a continuance only when it is applied for within the 60 day period. State v. Baye, 191 Wis. 2d 334, 528 N.W.2d 81 (Ct. App. 1995).

The 60-day limit in sub. (2) (b) is mandatory and a forfeiture petition must be dismissed with prejudice unless the requisite hearing is held within the 60-day period. Once the 60-day period has expired, the circuit court loses competency, and the state may not start the clock running anew by filing another forfeiture petition based on the same facts. State v. One 2000 Lincoln Navigator, its Tools and Appurtenances, 2007 WI App 127, 301 Wis. 2d 714, 731 N.W.2d 375, 06-2016.

961.56 Burden of proof; liabilities. (1) It is not necessary for the state to negate any exemption or exception in this chapter in any complaint, information, indictment or other pleading or in any trial, hearing or other proceeding under this chapter. The burden of proof of any exemption or exception is upon the person claiming it.

(2) In the absence of proof that a person is the duly authorized holder of an appropriate federal registration or order form, the person is presumed not to be the holder of the registration or form. The burden of proof is upon the person to rebut the presumption.

(3) No liability is imposed by this chapter upon any authorized state, county or municipal officer or employee engaged in the lawful performance of the officer's or employee's duties.

History: 1971 c. 219, 307; 1993 a. 482; 1995 a. 448 s. 307; Stats. 1995 s. 961.56.

961.565 Enforcement reports. On or before November 15 annually, the governor and the attorney general shall submit a joint report to the chief clerk of each house of the legislature for distribution to the legislature under s. 13.172 (2) describing the activities in this state during the previous year to enforce the laws regulating controlled substances. The report shall contain recommendations for improving the effectiveness of enforcement activities and other efforts to combat the abuse of controlled substances.

History: 1989 a. 122; 1995 a. 448 s. 308; Stats. 1995 s. 961.565.

SUBCHAPTER VI

DRUG PARAPHERNALIA

961.571 Definitions. In this subchapter:

(1) (a) "Drug paraphernalia" means all equipment, products and materials of any kind that are used, designed for use or primarily intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance or controlled substance analog in violation of this chapter. "Drug paraphernalia" includes, but is not limited to, any of the following:

1. Kits used, designed for use or primarily intended for use in planting, propagating, cultivating, growing or harvesting of any species of plant that is a controlled substance or from which a controlled substance or controlled substance analog can be derived.

2. Kits used, designed for use or primarily intended for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances or controlled substance analogs.

3. Isomerization devices used, designed for use or primarily intended for use in increasing the potency of any species of plant that is a controlled substance.

4. Testing equipment used, designed for use or primarily intended for use in identifying, or in analyzing the strength, effectiveness or purity of, controlled substances or controlled substance analogs.

5. Scales and balances used, designed for use or primarily intended for use in weighing or measuring controlled substances or controlled substance analogs.

6. Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, designed for use or primarily intended for use in cutting controlled substances or controlled substance analogs.

7. Separation gins and sifters used, designed for use or primarily intended for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana.

8. Blenders, bowls, containers, spoons and mixing devices used, designed for use or primarily intended for use in compounding controlled substances or controlled substance analogs.

9. Capsules, balloons, envelopes and other containers used, designed for use or primarily intended for use in packaging small quantities of controlled substances or controlled substance analogs.

10. Containers and other objects used, designed for use or primarily intended for use in storing or concealing controlled substances or controlled substance analogs.

11. Objects used, designed for use or primarily intended for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil into the human body, such as:

a. Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls.

b. Water pipes.

c. Carburetion tubes and devices.

d. Smoking and carburetion masks.

e. Roach clips: meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand.

f. Miniature cocaine spoons and cocaine vials.

g. Chamber pipes.

h. Carburetor pipes.

i. Electric pipes.

j. Air-driven pipes.

k. Chilams.

L. Bongs.

m. Ice pipes or chillers.

(b) "Drug paraphernalia" excludes:

1. Hypodermic syringes, needles and other objects used or intended for use in parenterally injecting substances into the human body.

2. Any items, including pipes, papers and accessories, that are designed for use or primarily intended for use with tobacco products.

(2) "Primarily" means chiefly or mainly.

History: 1989 a. 121; 1991 a. 140; 1995 a. 448 s. 310; Stats. 1995 s. 961.571.

A tobacco pipe is excluded from the definition of drug paraphernalia under sub. (1) (b) 2. The presence of residue of a controlled substance in the pipe does not change that result. State v. Martinez, 210 Wis. 2d 396, 563 N.W.2d 922 (Ct. App. 1997), 96-1899.

961.572 Determination. (1) In determining whether an object is drug paraphernalia, a court or other authority shall consider, in addition to all other legally relevant factors, the following:

(a) Statements by an owner or by anyone in control of the object concerning its use.

(b) The proximity of the object, in time and space, to a direct violation of this chapter.

(c) The proximity of the object to controlled substances or controlled substance analogs.

(d) The existence of any residue of controlled substances or controlled substance analogs on the object.

(e) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he or she knows intend to use the object to facilitate a violation of this chapter; the innocence of an owner, or of anyone in control of the object, as to a direct violation of this chapter shall not prevent a finding that the object is designed for use or primarily intended for use as drug paraphernalia.

(f) Instructions, oral or written, provided with the object concerning its use.

(g) Descriptive materials accompanying the object that explain or depict its use.

(h) Local advertising concerning its use.

(i) The manner in which the object is displayed for sale.

(j) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products.

(k) The existence and scope of legitimate uses for the object in the community.

(L) Expert testimony concerning its use.

(2) In determining under this subchapter whether an item is designed for a particular use, a court or other authority shall consider the objective physical characteristics and design features of the item.

(3) In determining under this subchapter whether an item is primarily intended for a particular use, a court or other authority shall consider the subjective intent of the defendant.

History: 1989 a. 121; 1991 a. 140; 1995 a. 448 s. 311; Stats. 1995 s. 961.572.

961.573 Possession of drug paraphernalia. (1) No person may use, or possess with the primary intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance or controlled substance analog in violation of this chapter. Any person who violates this subsection may be fined not more than $500 or imprisoned for not more than 30 days or both.

(2) Any person who violates sub. (1) who is under 17 years of age is subject to a disposition under s. 938.344 (2e).

(3) (a) No person may use, or possess with the primary intent to use, drug paraphernalia to manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, or store methamphetamine or a controlled substance analog of methamphetamine in violation of this chapter.

(b) 1. Except as provided in subd. 2., any person who violates par. (a) is guilty of a Class H felony.

2. Any person who is 18 years of age or older and who violates par. (a) while in the presence of a child who is 14 years of age or younger is guilty of a Class G felony.

History: 1989 a. 121; 1991 a. 39, 140; 1995 a. 27, 77; 1995 a. 448 ss. 312 to 314, 492; Stats. 1995 s. 961.573; 1999 a. 129; 2001 a. 109; 2005 a. 263.

961.574 Manufacture or delivery of drug paraphernalia. (1) No person may deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing that it will be primarily used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance or controlled substance analog in violation of this chapter. Any person who violates this subsection may be fined not more than $1,000 or imprisoned for not more than 90 days or both.

(2) Any person who violates sub. (1) who is under 17 years of age is subject to a disposition under s. 938.344 (2e).

(3) No person may deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing that it will be primarily used to manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack or store methamphetamine or a controlled substance analog of methamphetamine in violation of this chapter. Any person who violates this subsection is guilty of a Class H felony.

History: 1989 a. 121; 1991 a. 39, 140; 1995 a. 27, 77; 1995 a. 448 ss. 315 to 317, 493; Stats. 1995 s. 961.574; 1999 a. 129; 2001 a. 109.

961.575 Delivery of drug paraphernalia to a minor. (1) Any person 17 years of age or over who violates s. 961.574 (1) by delivering drug paraphernalia to a person 17 years of age or under who is at least 3 years younger than the violator may be fined not more than $10,000 or imprisoned for not more than 9 months or both.

(2) Any person who violates this section who is under 17 years of age is subject to a disposition under s. 938.344 (2e).

(3) Any person 17 years of age or over who violates s. 961.574 (3) by delivering drug paraphernalia to a person 17 years of age or under is guilty of a Class G felony.

History: 1989 a. 121; 1991 a. 39; 1995 a. 27, 77; 1995 a. 448 ss. 318, 494; Stats. 1995 s. 961.575; 1999 a. 129; 2001 a. 109.

961.576 Advertisement of drug paraphernalia. No person may place in any newspaper, magazine, handbill or other publication any advertisement, knowing that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed for use or primarily intended for use as drug paraphernalia in violation of this chapter. Any person who

violates this section may be fined not more than $500 or imprisoned for not more than 30 days or both.

History: 1989 a. 121; 1991 a. 140; 1995 a. 448 s. 319; Stats. 1995 s. 961.576.

961.577 Municipal ordinances. Nothing in this subchapter precludes a city, village, or town from prohibiting conduct that is the same as that prohibited by s. 961.573 (1) or (2), 961.574 (1) or (2), or 961.575 (1) or (2) or a county from prohibiting conduct that is the same as that prohibited by s. 961.573 (1) or (2), 961.574 (1) or (2), or 961.575 (1) or (2).

History: 1989 a. 121; 1995 a. 448 s. 320; Stats. 1995 s. 961.577; 2003 a. 193; 2005 a. 90, 116; 2007 a. 97.

SUBCHAPTER VII

MISCELLANEOUS

961.65 Possessing materials for manufacturing methamphetamine. Except as authorized by this chapter, any person who possesses an ephedrine or pseudoephedrine product, red phosphorus, lithium metal, sodium metal, iodine, anhydrous ammonia, or pressurized ammonia with intent to manufacture methamphetamine is guilty of a Class H felony. Possession of more than 9 grams of ephedrine or pseudoephedrine, other than pseudoephedrine contained in a product to which s. 961.01 (20c) (a) or (b) applies, creates a rebuttable presumption of intent to manufacture methamphetamine. In this section, "ephedrine" and "pseudoephedrine" include any of their salts, isomers, and salts of isomers.

History: 2005 a. 14.

961.67 Possession and disposal of waste from manufacture of methamphetamine. (1) In this section:

(a) "Dispose of" means discharge, deposit, inject, dump, spill, leak or place methamphetamine manufacturing waste into or on any land or water in a manner that may permit the waste to be emitted into the air, to be discharged into any waters of the state or otherwise to enter the environment.

(b) "Intentionally" has the meaning given in s. 939.23 (3).

(c) "Methamphetamine manufacturing waste" means any solid, semisolid, liquid or contained gaseous material or article that results from or is produced by the manufacture of methamphetamine or a controlled substance analog of methamphetamine in violation of this chapter.

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

(a) Knowingly possess methamphetamine manufacturing waste.

(b) Intentionally dispose of methamphetamine manufacturing waste.

(3) Subsection (2) does not apply to a person who possesses or disposes of methamphetamine manufacturing waste under all of the following circumstances:

(a) The person is storing, treating or disposing of the methamphetamine manufacturing waste in compliance with chs. 287, 289, 291 and 292 or the person has notified a law enforcement agency of the existence of the methamphetamine manufacturing waste.

(b) The methamphetamine manufacturing waste had previously been possessed or disposed of by another person in violation of sub. (2).

(4) A person who violates sub. (2) is subject to the following penalties:

(a) For a first offense, the person is guilty of a Class H felony.

(b) For a 2nd or subsequent offense, the person is guilty of a Class F felony.

(5) Each day of a continuing violation of sub. (2) (a) or (b) constitutes a separate offense.

History: 1999 a. 129; 2001 a. 109; 2005 a. 14 s. 33; Stats. 2005 s. 961.67.

CHAPTER 967

CRIMINAL PROCEDURE — GENERAL PROVISIONS

967.01 Title and effective date. Chapters 967 to 979 may be referred to as the criminal procedure code and shall be interpreted as a unit. Chapters 967 to 979 shall govern all criminal proceedings and is effective on July 1, 1970. Chapters 967 to 979 apply in all prosecutions commenced on or after that date. Prosecutions commenced prior to July 1, 1970, shall be governed by the law existing prior thereto.

History: 1979 c. 89.

967.02 Words and phrases defined. In chs. 967 to 979, unless the context of a specific section manifestly requires a different construction:

(1) "Clerk" means clerk of circuit court of the county including the clerk's deputies.

(2) "Department" means the department of corrections, except as provided in ss. 971.14 and 975.001.

(3) "Bail" means the amount of money set by the court which is required to be obligated and secured as provided by law for the release of a person in custody so that the person will appear before the court in which the person's appearance may be required and that the person will comply with such conditions as are set forth in the bail bond.

(4) "Bond" means an undertaking either secured or unsecured entered into by a person in custody by which the person binds himself or herself to comply with such conditions as are set forth therein.

(5) "Law enforcement officer" means any person who by virtue of the person's office or public employment is vested by law with the duty to maintain public order or to make arrests for crimes while acting within the scope of the person's authority.

(6) "Judge" means judge of a court of record.

(7) "Court" means the circuit court unless otherwise indicated.

(8) "Judgment" means an adjudication by the court that the defendant is guilty or not guilty.

History: 1971 c. 298; 1977 c. 323, 449; 1979 c. 89; 1989 a. 31; 1993 a. 486; 1995 a. 27; 1997 a. 27; 2009 a. 214.

A John Doe judge is not the equivalent of a court and a John Doe proceeding is not a proceeding in a court of record. State v. Washington, 83 Wis. 2d 808, 266 N.W.2d 597 (1978).

967.05 Methods of prosecution. (1) A prosecution may be commenced by the filing of:

(a) A complaint;

(b) In the case of a corporation or limited liability company, an information;

(c) An indictment.

(2) The trial of a misdemeanor action shall be upon a complaint.

(3) The trial of a felony action shall be upon an information.

History: 1979 c. 291; 1993 a. 112.

967.055 Prosecution of offenses; operation of a motor vehicle or motorboat; alcohol, intoxicant or drug. (1) INTENT. (a) The legislature intends to encourage the vigorous prosecution of offenses concerning the operation of motor vehicles by persons under the influence of an intoxicant, a controlled substance, a controlled substance analog or any combination of an intoxicant, controlled substance and controlled substance analog, under the influence of any other drug to a degree which renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving or having a prohibited alcohol concentration, as defined in s. 340.01 (46m), offenses concerning the operation of motor vehicles by persons with a detectable amount of a restricted controlled substance in his or her blood, and offenses concerning the operation of commercial motor vehicles by persons with an alcohol concentration of 0.04 or more.

(b) The legislature intends to encourage the vigorous prosecution of offenses concerning the operation of motorboats by persons under the influence of an intoxicant, a controlled substance, a controlled substance analog or any combination of an intoxicant, controlled substance and controlled substance analog to a degree which renders him or her incapable of operating a motorboat safely, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of operating a motorboat safely or having an alcohol concentration of 0.08 or more.

(1m) DEFINITIONS. In this section:

(a) "Drug" has the meaning specified in s. 450.01 (10).

(b) "Restricted controlled substance" means any of the following:

1. A controlled substance included in schedule I under ch. 961 other than a tetrahydrocannabinol.

2. A controlled substance analog, as defined in s. 961.01 (4m), of a controlled substance described in subd. 1.

3. Cocaine or any of its metabolites.

4. Methamphetamine.

5. Delta-9-tetrahydrocannabinol.

(2) DISMISSING OR AMENDING CHARGE. (a) Notwithstanding s. 971.29, if the prosecutor seeks to dismiss or amend a charge under s. 346.63 (1) or (5) or a local ordinance in conformity therewith, or s. 346.63 (2) or (6) or 940.25, or s.

940.09 where the offense involved the use of a vehicle or an improper refusal under s. 343.305, the prosecutor shall apply to the court. The application shall state the reasons for the proposed amendment or dismissal. The court may approve the application only if the court finds that the proposed amendment or dismissal is consistent with the public's interest in deterring the operation of motor vehicles by persons who are under the influence of an intoxicant, a controlled substance, a controlled substance analog or any combination of an intoxicant, controlled substance and controlled substance analog, under the influence of any other drug to a degree which renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving, in deterring the operation of motor vehicles by persons with a detectable amount of a restricted controlled substance in his or her blood, or in deterring the operation of commercial motor vehicles by persons with an alcohol concentration of 0.04 or more. The court may not approve an application to amend the vehicle classification from a commercial motor vehicle to a noncommercial motor vehicle unless there is evidence in the record that the motor vehicle being operated by the defendant at the time of his or her arrest was not a commercial motor vehicle.

(b) Notwithstanding s. 971.29, if the prosecutor seeks to dismiss or amend a charge under s. 30.681 (1) or a local ordinance in conformity therewith, a charge under s. 30.681 (2), a charge under s. 30.684 (5) or a local ordinance in conformity therewith or a charge under s. 940.09 or 940.25 if the offense involved the use of a motorboat, except a sailboat operating under sail alone, the prosecutor shall apply to the court. The application shall state the reasons for the proposed amendment or dismissal. The court may approve the application only if the court finds that the proposed amendment or dismissal is consistent with the public's interest in deterring the operation of motorboats by persons who are under the influence of an intoxicant, a controlled substance, a controlled substance analog or any combination of an intoxicant, controlled substance and controlled substance analog, under the influence of any other drug to a degree which renders him or her incapable of operating a motorboat safely, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of operating a motorboat safely.

(3) NO DEFERRED PROSECUTION. A prosecutor may not place a person in a deferred prosecution program if the person is accused of or charged with any of the following offenses:

(a) A violation of s. 346.63 (1) or (5) or a local ordinance in conformity therewith.

(b) A violation of s. 346.63 (2) or (6).

(c) A violation of s. 940.09 if the offense involved the use of a vehicle.

(d) A violation of s. 940.25.

History: 1981 c. 20, 184; 1983 a. 459; 1985 a. 146 s. 8; 1985 a. 331, 337; 1987 a. 3, 101; 1989 a. 105; 1991 a. 277; 1995 a. 113, 436, 448; 1997 a. 252; 2003 a. 30, 97.

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

Sub. (2) does not conflict with the separation of powers doctrine and is constitutional. State v. Dums, 149 Wis. 2d 314, 440 N.W.2d 814 (Ct. App. 1989).

967.057 Prosecution decisions based on contributions to organizations and agencies. A prosecutor may not, in exchange for a person's payment of money, other than restitution, to any organization or agency, dismiss or amend a charge alleging a criminal offense or elect not to commence a criminal prosecution.

History: 1999 a. 58, 186; 2007 a. 84.

A prosecutor may engage in negotiations relating to a defendant's reimbursement of blood withdrawal expenses, but a prosecutor may not, as a result of a defendant's payment or offer of payment of blood withdrawal expenses, dismiss or amend the charge, citation, or complaint or forego the initiation of a criminal prosecution, action, or special proceeding based on the violation. OAG 11-09.

CHAPTER 968

COMMENCEMENT OF CRIMINAL PROCEEDINGS

Cross-reference: See definitions in s. 967.02.

968.01 Complaint. (1) In this section:

(a) "Electronic" has the meaning given in s. 137.11 (5).

(b) "Electronic signature" has the meaning given in s. 801.17 (1) (e).

(c) "Facsimile machine" has the meaning given in s. 134.72 (1) (a).

(2) The complaint is a written statement of the essential facts constituting the offense charged. A person may make a complaint on information and belief. Except as provided in sub. (3) or (4), the complaint shall be made upon oath before a district attorney or judge as provided in this chapter.

(3) A person may comply with sub. (2) if he or she makes the oath by telephone contact with the district attorney or judge, signs the statement and immediately thereafter transmits a copy of the signed statement to the district attorney or judge using a facsimile machine. The person shall also transmit the original signed statement, without using a facsimile machine, to the district attorney or judge. If the complaint is filed, both the original and the copy shall be filed under s. 968.02 (2).

(4) A person may comply with sub. (2) if he or she makes the oath by telephone contact with the district attorney or judge and immediately thereafter electronically transmits the statement, accompanied by the person's electronic signature, to the district attorney or judge. If the complaint is filed, the electronically transmitted statement shall be incorporated into a criminal complaint filed in either an electronic or paper format under s. 968.02 (2).

History: 1989 a. 336; 1995 a. 351; 2009 a. 184.

To be constitutionally sufficient to support the issuance of an arrest warrant and to show probable cause, a complaint must contain the essential facts constituting the offense charged. A complaint was fatally defective in merely repeating the language of the statute allegedly violated. State v. Williams, 47 Wis. 2d 242, 177 N.W.2d 611 (1970).

For a charge of resisting arrest, a complaint stated in statutory language was sufficient and no further facts were necessary. State v. Smith, 50 Wis. 2d 460, 184 N.W.2d 889 (1971).

A complaint is sufficient as to reliability of hearsay information if the officer making it states that it is based on a written statement of the minor victim of the offense charged. State v. Knudson, 51 Wis. 2d 270, 187 N.W.2d 321 (1971).

A disorderly conduct complaint, which alleged that the defendant at a stated time and place violated s. 947.01 (1) by interfering with the police officer-complainant while he was taking another person into custody and that the charge was based on the complainant's personal observations, met the test of legal sufficiency and did not lack specificity so as to invalidate a conviction. State v. Becker, 51 Wis. 2d 659, 188 N.W.2d 449 (1971).

A defendant waives objections to the sufficiency of a complaint by not objecting before or at the time of pleading to the information. Day v. State, 52 Wis. 2d 122, 187 N.W.2d 790 (1971).

A complaint is a self-contained charge, and it alone can be considered in determining probable cause. Facts that would lead a reasonable person to conclude that a crime was committed by the defendant must appear within the 4 corners of the document. State v. Haugen, 52 Wis. 2d 791, 191 N.W.2d 12 (1971).

A complaint is not defective because, based on statements to an officer that cannot be admitted at the trial, *Miranda* warnings were not given. Such an objection is waived if not raised prior to trial. Gelhaar v. State, 58 Wis. 2d 547, 207 N.W.2d 88 (1973).

To charge a defendant with the possession or sale of obscene materials, the complaint must allege that the defendant knew the nature of the materials; a charge of acting "feloniously" is insufficient to charge scienter. State v. Schneider, 60 Wis. 2d 563, 211 N.W.2d 630 (1973).

A complaint based on a police officer's sworn statement of what the alleged victim described as having actually happened met the test of reliability of the informer and constituted probable cause for a magistrate to issue a warrant for the arrest of the defendant. Allison v. State, 62 Wis. 2d 14, 214 N.W.2d 437 (1974).

An absolute privilege attached to alleged defamatory statements made by the defendant about the plaintiff to an assistant district attorney in seeking the

issuance of a criminal complaint. Bergman v. Hupy, 64 Wis. 2d 747, 221 N.W.2d 898 (1974).

A criminal complaint sufficiently alleges probable cause that the defendant has committed the alleged offense when it recites that a participant in the crime has admitted his own participation and implicates the defendant, since an inference may be reasonably drawn that the participant is telling the truth. Ruff v. State, 65 Wis. 2d 713, 223 N.W.2d 446 (1974).

A complaint, alleging that the defendant burglarized a trailer at a construction site, based in part upon the hearsay statements of the construction foreman that tools found in the defendant's automobile had been locked in the trailer, was sufficient to satisfy the two-pronged test of *Aguilar*. Anderson v. State, 66 Wis. 2d 233, 223 N.W.2d 879 (1974).

In determining the sufficiency of a complaint, the credibility of informants or witnesses is adequately tested by the 2-pronged *Aguilar* standard. State v. Marshall, 92 Wis. 2d 101, 284 N.W.2d 592 (1979).

A criminal complaint may be attacked when there has been an omission of critical material when inclusion is necessary for an impartial judge to determine probable cause. State v. Mann, 123 Wis. 2d 375, 367 N.W.2d 209 (1985).

Neither a presumption of prosecutor vindictiveness or actual vindictiveness was found when, following a mistrial resulting from a hung jury, the prosecutor filed increased charges and then offered to accept a plea bargain requiring a guilty plea to the original charges. Adding additional charges to obtain a guilty plea does no more than present the defendant with the alternative of forgoing trial or facing charges on which the defendant is subject to prosecution. State v. Johnson, 2000 WI 12, 232 Wis. 2d 679, 605 N.W.2d 846, 97-1360.

The test of a complaint is of minimal adequacy in setting forth the essential facts establishing probable cause through a common sense, and not hypertechnical, evaluation. Only affidavits specifically incorporated into the complaint may be used to show probable cause, but the legal term of art, "incorporated by reference," need not be used; the term "attached" was sufficient. State v. Smaxwell, 2000 WI App 112, 235 Wis. 2d 230, 612 N.W.2d 756, 99-2261.

For a complaint to pass constitutional muster, it must contain the essential facts constituting the offense charged. It is not enough to list only the language of the criminal statute the defendant allegedly violated, let alone a statutory cite. In this case, the complaint listed s. 948.02 (1) (d), which contains a use or threat of force or violence element, but the complaint did not allege that the defendant used or threatened force or violence and did not set forth the statutory language. As the complaint did not contain facts that established probable cause that the defendant violated s. 948.02 (1) (d), the complaint did not comply with the 4th amendment. State v. Travis, 2012 WI App 46, 340 Wis. 2d 639, 813 N.W.2d 702, 11-0685.

Forms similar to the uniform traffic citations that are used as complaints to initiate criminal prosecutions in certain misdemeanor cases are sufficient to confer subject matter jurisdiction on the court, but any conviction that results from their use in the manner described in the opinion is null and void; ss. 968.02, 968.04, 971.01, 971.04, 971.05 and 971.08 are discussed. 63 Atty. Gen. 540.

968.02 Issuance and filing of complaints. (1) Except as otherwise provided in this section, a complaint charging a person with an offense shall be issued only by a district attorney of the county where the crime is alleged to have been committed. A complaint is issued when it is approved for filing by the district attorney. The approval shall be in the form of a written endorsement on the complaint.

(2) After a complaint has been issued, it shall be filed with a judge and either a warrant or summons shall be issued or the complaint shall be dismissed, pursuant to s. 968.03. Such filing commences the action.

(3) If a district attorney refuses or is unavailable to issue a complaint, a circuit judge may permit the filing of a complaint, if the judge finds there is probable cause to believe that the person to be charged has committed an offense after conducting a hearing. If the district attorney has refused to issue a complaint, he or she shall be informed of the hearing and may attend. The hearing shall be ex parte without the right of cross-examination.

(4) If the alleged violator under s. 948.55 (2) or 948.60 (2) (c) is or was the parent or guardian of a child who is injured or dies as a result of an accidental shooting, the district attorney may consider, among other factors, the impact of the injury or death on the alleged violator when deciding whether to issue a complaint regarding the alleged violation. This subsection does not restrict the factors that a district attorney may consider in deciding whether to issue a complaint regarding any alleged violation.

History: 1977 c. 449; 1991 a. 139; 1999 a. 185.

A judge abused his discretion in barring the public from a hearing under sub. (3). State ex rel. Newspapers v. Circuit Court, 124 Wis. 2d 499, 370 N.W.2d 209 (1985).

A judge's order under sub. (3) is not appealable. Gavcus v. Maroney, 127 Wis. 2d 69, 377 N.W.2d 201 (Ct. App. 1985).

Sub. (3) does not give a trial court authority to order a district attorney to file different or additional charges than those already brought. Unnamed Petitioner v. Walworth Circuit Ct., 157 Wis. 2d 157, 458 N.W.2d 575 (Ct. App. 1990).

Sub. (3) does not confer upon the person who is the subject of a proposed prosecution the right to participate in any way or to obtain reconsideration of the ultimate decision reached. A defendant named in a complaint issued pursuant to sub. (3) has the same opportunity to challenge in circuit court the legal and factual sufficiency of that complaint as a defendant named in a complaint issued pursuant to sub. (1). Kalal v. Dane County, 2004 WI 58, 271 Wis. 2d 633, 681 N.W.2d 110, 02-2490.

A refusal to issue a complaint under sub. (3) may be proven directly or circumstantially, by inferences reasonably drawn from words and conduct. The refusal can be open and explicit or indirect and inferred. Inaction alone will ordinarily not support an inference of a refusal to prosecute. Kalal v. Dane County, 2004 WI 58, 271 Wis. 2d 633, 681 N.W.2d 110, 02-2490.

Forms similar to the uniform traffic citation that are used as complaints to initiate criminal prosecutions in certain misdemeanor cases are sufficient to confer subject matter jurisdiction on the court but any conviction that results from their use in the manner described in the opinion is null and void; ss. 968.02, 968.04, 971.01, 971.04, 971.05, and 971.08 are discussed. 63 Atty. Gen. 540.

Judicial scrutiny of prosecutorial discretion in decision not to file complaint. Becker. 71 MLR 749 (1988).

968.03 Dismissal or withdrawal of complaints. (1) If the judge does not find probable cause to believe that an offense has been committed or that the accused has committed it, the judge shall endorse such finding on the complaint and file the complaint with the clerk.

(2) An unserved warrant or summons shall, at the request of the district attorney, be returned to the judge who may dismiss the action. Such request shall be in writing, it shall state the reasons therefor in writing and shall be filed with the clerk.

(3) The dismissals in subs. (1) and (2) are without prejudice.

History: 1993 a. 486.

968.04 Warrant or summons on complaint. (1) WARRANTS. If it appears from the complaint, or from an affidavit or affidavits filed with the complaint or after an examination under oath of the complainant or witnesses, when the judge determines that this is necessary, that there is probable cause to believe that an offense has been committed and that the accused has committed it, the judge shall issue a warrant for the arrest of the defendant or a summons in lieu thereof. The warrant or summons shall be delivered forthwith to a law enforcement officer for service.

(a) When an accused has been arrested without a warrant and is in custody or appears voluntarily before a judge, no warrant shall be issued and the complaint shall be filed forthwith with a judge.

(b) A warrant or summons may be issued by a judge in another county when there is no available judge of the county in which the complaint is issued. The warrant shall be returnable before a judge in the county in which the offense alleged in the complaint was committed, and the summons shall be returnable before the circuit court of the county in which the offense alleged in the complaint was committed.

(c) A judge may specify geographical limits for enforcement of a warrant.

(d) An examination of the complainant or witness under sub. (1) may take place by telephone on request of the person seeking the warrant or summons unless good cause to the contrary appears. The judge shall place each complainant or witness under oath and arrange for all sworn testimony to be recorded, either by a stenographic reporter or by means of a voice recording device. The judge shall have the record transcribed. The transcript, certified as accurate by the judge or reporter, as appropriate, shall be filed with the court. If the testimony was recorded by means of a voice recording device, the judge shall also file the original recording with the court.

(2) SUMMONS. (a) In any case the district attorney, after the issuance of a complaint, may issue a summons in lieu of requesting the issuance of a warrant. The complaint shall then be filed with the clerk.

(b) In misdemeanor actions where the maximum imprisonment does not exceed 6 months, the judge shall issue a summons instead of a warrant unless the judge believes that the defendant will not appear in response to a summons.

(c) If a person summoned fails to appear in response to a summons issued by a district attorney, the district attorney may proceed to file the complaint as provided in s. 968.02 and, in addition to endorsing his or her approval on the complaint, shall endorse upon the complaint the fact that the accused failed to respond to a summons.

(3) MANDATORY PROVISIONS. (a) *Warrant.* The warrant shall:

1. Be in writing and signed by the judge.

2. State the name of the crime and the section charged and number of the section alleged to have been violated.

3. Have attached to it a copy of the complaint.

4. State the name of the person to be arrested, if known, or if not known, designate the person to be arrested by any description by which the person to be arrested can be identified with reasonable certainty.

5. State the date when it was issued and the name of the judge who issued it together with the title of the judge's office.

6. Command that the person against whom the complaint was made be arrested and brought before the judge issuing the warrant, or, if the judge is absent or unable to act, before some other judge in the same county.

7. The warrant shall be in substantially the following form:

STATE OF WISCONSIN,

.... County

State of Wisconsin

vs.

.... (Defendant(s))

THE STATE OF WISCONSIN TO ANY LAW ENFORCEMENT OFFICER:

A complaint, copy of which is attached, having been filed with me accusing the defendant(s) of committing the crime of .... contrary to sec. ...., Stats., and I having found that probable cause exists that the crime was committed by the defendant(s).

You are, therefore, commanded to arrest the defendant(s) and bring .... before me, or, if I am not available, before some other judge of this county.

Dated ...., ... (year)

....(Signature)

....(Title)

8. The complaint and warrant may be on the same form. The warrant shall be beneath the complaint. If separate forms are used, a copy of the complaint shall be attached to the warrant.

(b) *Summons.* 1. The summons shall command the defendant to appear before a court at a certain time and place and shall be in substantially the form set forth in subd. 3.

2. A summons may be served anywhere in the state and it shall be served by delivering a copy to the defendant personally or by leaving a copy at the defendant's usual place of abode with a person of discretion residing therein or by mailing a copy to the defendant's last-known address. It shall be served by a law enforcement officer.

3. The summons shall be in substantially the following form:

a. When issued by a judge:

STATE OF WISCONSIN,

.... County

State of Wisconsin

vs.

.... (Defendant)

THE STATE OF WISCONSIN TO SAID DEFENDANT:

A complaint, copy of which is attached, having been filed with me accusing the defendant of committing the crime of .... contrary to sec. ...., Stats., and I having found that probable cause exists that the crime was committed by the defendant.

You, ..., are, therefore, summoned to appear before Branch .... of the .... court of .... County at the courthouse in the City of .... to answer said complaint, on ...., ..., (year) at .... o'clock in the .... noon, and in case of your failure to appear, a warrant for your arrest will be issued.

Dated ...., ... (year)

....(Signature)

....(Title)

b. When issued by a district attorney:

STATE OF WISCONSIN,

.... County

State of Wisconsin

vs.

.... (Defendant)

THE STATE OF WISCONSIN TO SAID DEFENDANT:

A complaint, copy of which is attached, having been made before me accusing the defendant of committing the crime of .... contrary to sec. ...., Stats.

You, ..., are, therefore, summoned to appear before Branch .... of the .... court of .... County at the courthouse in the City of .... to answer said complaint, on ...., ... (year), at .... o'clock in the .... noon, and in case of your failure to appear, a warrant for your arrest may be issued.

Dated ...., ... (year)

.... (Signature)

.... District Attorney

4. The complaint and summons may be on the same form. The summons shall be beneath the complaint. If separate forms are used, a copy of the complaint shall be attached to the summons.

(4) SERVICE. (a) The warrant shall be directed to all law enforcement officers of the state. A warrant may be served anywhere in the state.

(b) A warrant is served by arresting the defendant and informing the defendant as soon as practicable of the nature of the crime with which the defendant is charged.

(c) An arrest may be made by a law enforcement officer without a warrant in the law enforcement officer's possession when the law enforcement officer has knowledge that a warrant has been issued. In such case, the officer shall inform the defendant as soon as practicable of the nature of the crime with which the defendant is charged.

(d) The law enforcement officer arresting a defendant shall endorse upon the warrant the time and place of the arrest and the law enforcement officer's fees and mileage therefor.

History: 1973 c. 12; 1975 c. 39, 41, 199; 1977 c. 449 ss. 480, 497; 1983 a. 535; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1987 a. 151; 1993 a. 486; 1997 a. 250.

Judicial Council Note, 1988: Sub. (1) (d) permits an arrest warrant or summons to be issued upon the basis of sworn recorded testimony received by telephone on request of the person seeking the warrant or summons unless good cause to the contrary appears. The telephone procedure permits faster processing of the application, while preserving a record of the basis for subsequent review. [Re Order effective Jan. 1, 1988]

To be constitutionally sufficient to support the issuance of an arrest warrant and to show probable cause, a complaint must contain the essential facts constituting the offense charged. A complaint was fatally defective in merely repeating the language of the statute allegedly violated. State v. Williams, 47 Wis. 2d 242, 177 N.W.2d 611 (1970).

A warrant was properly issued upon sworn testimony of a sheriff that an accomplice had confessed and implicated the defendant, since reliable hearsay is permitted and a confession is not inherently untrustworthy. Okrasinski v. State, 51 Wis. 2d 210, 186 N.W.2d 314 (1971).

When a complaint alleged that a reliable informant procured a sample of drugs from the defendant's apartment, the inference that the informant observed the defendant's possession of a controlled substance satisfied the *Aguilar* test. Scott v. State, 73 Wis. 2d 504, 243 N.W.2d 215 (1976).

A criminal prosecution is properly and timely commenced by a John Doe complaint and arrest warrant that identify the defendant solely by a DNA profile, which meets the requirement of sub. (3) (a) 4. that if the defendant's name is not known the person to be arrested must be identified by any description by which the person to be arrested can be identified with reasonable certainty. State v. Dabney, 2003 WI App 108, 264 Wis. 2d 843, 663 N.W.2d 366, 02-2445.

Applicable law allows electronic transmission of certain confidential case information among clerks of circuit court, county sheriff's offices, and the Department of Justice through electronic interfaces involving the Department of Administration's Office of Justice Assistance, specifically including electronic data messages about adult arrest warrants if either the warrant or the case in which it was issued has been ordered sealed by the court. OAG 2-10.

NOTE: See also the notes to Article I, section 11, of the Wisconsin Constitution.

968.05 Corporations or limited liability companies: summons in criminal cases. (1) When a corporation or limited liability company is charged with the commission of a criminal offense, the judge or district attorney shall issue a summons setting forth the nature of the offense and commanding the corporation or limited liability company to appear before a court at a specific time and place.

(2) The summons for the appearance of a corporation or limited liability company may be served as provided for service of a summons upon a corporation or limited liability company in a civil action. The summons shall be returnable not less than 10 days after service.

History: 1993 a. 112.

Cross-reference: See s. 973.17 for provision for default judgment against a corporation.

968.06 Indictment by grand jury. Upon indictment by a grand jury a complaint shall be issued, as provided by s. 968.02, upon the person named in the indictment and the person shall be entitled to a preliminary hearing under s. 970.03, and all proceedings thereafter shall be the same as if the person had been initially charged under s. 968.02 and had not been indicted by a grand jury.

History: 1979 c. 291.

968.07 Arrest by a law enforcement officer. (1) A law enforcement officer may arrest a person when:

(a) The law enforcement officer has a warrant commanding that such person be arrested; or

(b) The law enforcement officer believes, on reasonable grounds, that a warrant for the person's arrest has been issued in this state; or

(c) The law enforcement officer believes, on reasonable grounds, that a felony warrant for the person's arrest has been issued in another state; or

(d) There are reasonable grounds to believe that the person is committing or has committed a crime.

(1m) Notwithstanding sub. (1), a law enforcement officer shall arrest a person when required to do so under s. 813.12 (7), 813.122 (10), 813.125 (6), 813.128 (1) (b), or 968.075 (2) (a) or (5) (e).

(2) A law enforcement officer making a lawful arrest may command the aid of any person, and such person shall have the same power as that of the law enforcement officer.

(3) If the alleged violator under s. 948.55 (2) or 948.60 (2) (c) is or was the parent or guardian of a child who is injured or dies as a result of an accidental shooting, no law enforcement officer may arrest the alleged violator until at least 7 days after the date of the shooting.

History: 1991 a. 139; 1993 a. 486; 2005 a. 104.

If the police have probable cause for arrest without a warrant, they may break down a door to effect the arrest after announcing their purpose in demanding admission. The remedy for excessive force is not dismissal of the criminal charge. Nadolinski v. State, 46 Wis. 2d 259, 174 N.W.2d 483 (1970).

An arrest based solely on evidence discovered after an illegal search is invalid. State ex rel. Furlong v. Waukesha County Court, 47 Wis. 2d 515, 177 N.W.2d 333 (1970).

While probable cause for an arrest without a warrant requires that an officer have more than a mere suspicion, the officer does not need the same quantum of evidence necessary for conviction, but information that would lead a reasonable officer to believe that guilt is more than a possibility, which information can be based in part on hearsay. State v. DiMaggio, 49 Wis. 2d 565, 182 N.W.2d 466 (1971).

An officer need not be in possession of a warrant to make a valid arrest. Schill v. State, 50 Wis. 2d 473, 184 N.W.2d 858 (1971).

An arrest was valid when a defendant, approached by an officer, voluntarily stated that he assumed they would be looking for him because he had been the last person to see the victim alive. Schenk v. State, 51 Wis. 2d 600, 187 N.W.2d 853 (1971).

Police have grounds to arrest without a warrant when they have information from a reliable informer that a crime is to be committed, when they check the information, and when the defendants attempt to escape when stopped. Molina v. State, 53 Wis. 2d 662, 193 N.W.2d 874 (1972).

A person is not under arrest and the officer is not attempting an arrest, so far as the right to use force is concerned, until the person knows or should know that the person restraining or attempting to restrain him or her is an officer. Celmer v. Quarberg, 56 Wis. 2d 581, 203 N.W.2d 45 (1972).

An arrest pursuant to a valid warrant is legal even though the officer entered the defendant's home without warning or knocking; therefore the court had personal jurisdiction. State v. Monsoor, 56 Wis. 2d 689, 203 N.W.2d 20 (1973).

The fact that a witness had identified the defendant by photograph was sufficient to support an arrest, even though the witness was not allowed to identify the defendant at the trial. State v. Wallace, 59 Wis. 2d 66, 207 N.W.2d 855 (1973).

When an officer, mistakenly believing in good faith that the occupants of a car had committed a crime, stopped a car and arrested the occupants, the arrest was illegal, but a shotgun in plain sight on the back seat could be seized and used in evidence. State v. Taylor, 60 Wis. 2d 506, 210 N.W.2d 873 (1973).

Enforcement officers may make constitutionally valid arrests without warrants under sub. (1) (d) if they have reasonable grounds to believe that the person has committed a crime. Rinehart v. State, 63 Wis. 2d 760, 218 N.W.2d 323 (1974).

The police force is considered as a unit. If there is a police-channeled communication to the arresting officer who acts in good faith, the arrest is based on probable cause when facts exist within the police department. State v. Shears, 68 Wis. 2d 217, 229 N.W.2d 103 (1975).

When bags were heavy and contained brick-like objects obtained in an overnight trip and the defendant's house was under surveillance, there was probable cause for arrest for possession of marijuana. State v. Phelps, 73 Wis. 2d 313, 243 N.W.2d 213 (1976).

The test under sub. (1) (d) is whether the arresting officer could have obtained a warrant on the basis of information known prior to the arrest. Police may rely on eyewitness reports of citizen informers. Loveday v. State, 74 Wis. 2d 503, 247 N.W.2d 116 (1976).

An officer may make a warrantless arrest for an ordinance violation if a statutory counterpart of the ordinance exists. City of Madison v. Ricky Two Crow, 88 Wis. 2d 156, 276 N.W.2d 359 (Ct. App. 1979).

Evidence obtained during a mistaken arrest is admissible as long as the arresting officer acted in good faith and had reasonable, articulable grounds to believe that the suspect was the intended arrestee. State v. Lee, 97 Wis. 2d 679, 294 N.W.2d 547 (Ct. App. 1980).

An arrest by an out-of-state police officer was a valid citizen's arrest. State v. Slawek, 114 Wis. 2d 332, 338 N.W.2d 120 (Ct. App. 1983).

When a defendant's mother admitted police into her home to talk to her son, the subsequent arrest of her son was valid. State v. Rodgers, 119 Wis. 2d 102, 349 N.W.2d 453 (1984).

Municipal police may arrest and detain a person for whom another municipality in another county has issued a civil arrest warrant. 61 Atty. Gen. 275.

A city police officer is a law enforcement officer and traffic officer within s. 345.22. 61 Atty. Gen. 419.

NOTE: See also the notes to Article I, section 11, of the Wisconsin Constitution.

968.073 Recording custodial interrogations. (1) In this section:

(a) "Custodial interrogation" means an interrogation by a law enforcement officer or an agent of a law enforcement agency of a person suspected of committing a crime from the time the suspect is or should be informed of his or her rights to counsel and to remain silent until the questioning ends, during which the officer or agent asks a question that is reasonably likely to elicit an incriminating response and during which a reasonable person in the suspect's position would believe that he or she is in custody or otherwise deprived of his or her freedom of action in any significant way.

(b) "Law enforcement agency" has the meaning given in s. 165.83 (1) (b).

(c) "Law enforcement officer" has the meaning given in s. 165.85 (2) (c).

(2) It is the policy of this state to make an audio or audio and visual recording of a custodial interrogation of a person suspected of committing a felony unless a condition under s. 972.115 (2) (a) 1. to 6. applies or good cause is shown for not making an audio or audio and visual recording of the interrogation.

(3) A law enforcement officer or agent of a law enforcement agency conducting a custodial interrogation is not required to inform the subject of the interrogation that the officer or agent is making an audio or audio and visual recording of the interrogation.

History: 2005 a. 60.

Instituting Innocence Reform: Wisconsin's New Government Experiment. Kruse. 2006 WLR 645.

968.075 Domestic abuse incidents; arrest and prosecution. (1) DEFINITIONS. In this section:

(a) "Domestic abuse" means any of the following engaged in by an adult person against his or her spouse or former spouse, against an adult with whom the person resides or formerly resided or against an adult with whom the person has a child in common:

1. Intentional infliction of physical pain, physical injury or illness.

2. Intentional impairment of physical condition.

3. A violation of s. 940.225 (1), (2) or (3).

4. A physical act that may cause the other person reasonably to fear imminent engagement in the conduct described under subd. 1., 2. or 3.

(b) "Law enforcement agency" has the meaning specified in s. 165.83 (1) (b).

(d) "Party" means a person involved in a domestic abuse incident.

(e) "Predominant aggressor" means the most significant, but not necessarily the first, aggressor in a domestic abuse incident.

NOTE: Par. (e) is shown as renumbered from par. (c) by the legislative reference bureau under s. 13.92 (1) (bm) 2.

(2) CIRCUMSTANCES REQUIRING ARREST; PRESUMPTION AGAINST CERTAIN ARRESTS. (a) Notwithstanding s. 968.07 (1) and except as provided in pars. (am) and (b), a law enforcement officer shall arrest and take a person into custody if:

1. The officer has reasonable grounds to believe that the person is committing or has committed domestic abuse and that the person's actions constitute the commission of a crime; and

2. Any of the following apply:

a. The officer has a reasonable basis for believing that continued domestic abuse against the alleged victim is likely.

b. There is evidence of physical injury to the alleged victim.

c. The person is the predominant aggressor.

(am) Notwithstanding s. 968.07 (1), unless the person's arrest is required under s. 813.12 (7), 813.122 (10), 813.125 (6), or 813.128 (1) (b) or sub. (5) (e), if a law enforcement officer identifies the predominant aggressor, it is generally not appropriate for a law enforcement officer to arrest anyone under par. (a) other than the predominant aggressor.

(ar) In order to protect victims from continuing domestic abuse, a law enforcement officer shall consider all of the following in identifying the predominant aggressor:

1. The history of domestic abuse between the parties, if it can be reasonably ascertained by the officer, and any information provided by witnesses regarding that history.

2. Statements made by witnesses.

3. The relative degree of injury inflicted on the parties.

4. The extent to which each person present appears to fear any party.

5. Whether any party is threatening or has threatened future harm against another party or another family or household member.

6. Whether either party acted in self-defense or in defense of any other person under the circumstances described in s. 939.48.

(b) If the officer's reasonable grounds for belief under par. (a) 1. are based on a report of an alleged domestic abuse incident, the officer is required to make an arrest under par. (a) only if the report is received, within 28 days after the day the incident is alleged to have occurred, by the officer or the law enforcement agency that employs the officer.

(2m) IMMEDIATE RELEASE PROHIBITED. Unless s. 968.08 applies, a law enforcement officer may not release a person whose arrest was required under sub. (2) until the person posts bail under s. 969.07 or appears before a judge under s. 970.01 (1).

(3) LAW ENFORCEMENT POLICIES. (a) Each law enforcement agency shall develop, adopt and implement written policies regarding arrest procedures for domestic abuse incidents. The policies shall include, but not be limited to, the following:

1. a. A statement emphasizing that in most circumstances, other than those under sub. (2), a law enforcement officer should arrest and take a person into custody if the officer has reasonable grounds to believe that the person is committing or has committed domestic abuse and that the person's actions constitute the commission of a crime.

b. A policy reflecting the requirements of subs. (2) and (2m).

c. A statement emphasizing that a law enforcement officer's decision as to whether or not to arrest under this section may not be based on the consent of the victim to any subsequent prosecution or on the relationship of the parties.

d. A statement emphasizing that a law enforcement officer's decision not to arrest under this section may not be based solely upon the absence of visible indications of injury or impairment.

e. A statement discouraging, but not prohibiting, the arrest of more than one party.

f. A statement emphasizing that a law enforcement officer, in determining whether to arrest a party, should consider whether he or she acted in self-defense or in defense of another person.

2. A procedure for the written report and referral required under sub. (4).

3. A procedure for notifying the alleged victim of the incident of the provisions in sub. (5), the procedure for releasing the arrested person and the likelihood and probable time of the arrested person's release.

(b) In the development of these policies, each law enforcement agency is encouraged to consult with community organizations and other law enforcement agencies with expertise in the recognition and handling of domestic abuse incidents.

(c) This subsection does not limit the authority of a law enforcement agency to establish policies that require arrests under more circumstances than those set forth in sub. (2), but the policies may not conflict with the presumption under sub. (2) (am).

(4) REPORT REQUIRED WHERE NO ARREST. If a law enforcement officer does not make an arrest under this section when the officer has reasonable grounds to believe that a person is committing or has committed domestic abuse and that person's acts constitute the commission of a crime, the officer shall prepare a written report stating why the person was not arrested. The report shall be sent to the district attorney's office, in the county where the acts took place, immediately after investigation of the incident has been completed. The district attorney shall review the report to determine whether the person involved in the incident should be charged with the commission of a crime.

(5) CONTACT PROHIBITION. (a) 1. Unless there is a waiver under par. (c), during the 72 hours immediately following an arrest for a domestic abuse incident, the arrested person shall avoid the residence of the alleged victim of the domestic abuse incident and, if applicable, any premises temporarily occupied by the alleged victim, and avoid contacting or causing any person, other than law enforcement officers and attorneys for the arrested person and alleged victim, to contact the alleged victim.

2. An arrested person who intentionally violates this paragraph may be fined not more than $10,000 or imprisoned for not more than 9 months or both.

(b) 1. Unless there is a waiver under par. (c), a law enforcement officer or other person who releases a person arrested for a domestic abuse incident from custody less than 72 hours after the arrest shall inform the arrested person orally and in writing of the requirements under par. (a), the consequences of violating the requirements and the provisions of s. 939.621. The arrested person shall sign an acknowledgment on the written notice that he or she has received notice of, and understands the requirements, the consequences of violating the requirements and the provisions of s. 939.621. If the arrested person refuses to sign the notice, he or she may not be released from custody.

2. If there is a waiver under par. (c) and the person is released under subd. 1., the law enforcement officer or other person who releases the arrested person shall inform the arrested person orally and in writing of the waiver and the provisions of s. 939.621.

3. Failure to comply with the notice requirement under subd. 1. regarding a person who is lawfully released from custody bars a prosecution under par. (a), but does not affect the application of s. 939.621 in any criminal prosecution.

(c) At any time during the 72-hour period specified in par. (a), the alleged victim may sign a written waiver of the requirements in par. (a). The law enforcement agency shall have a waiver form available.

(d) The law enforcement agency responsible for the arrest of a person for a domestic abuse incident shall notify the alleged victim of the requirements under par. (a) and the possibility of, procedure for and effect of a waiver under par. (c).

(e) Notwithstanding s. 968.07 (1), a law enforcement officer shall arrest and take a person into custody if the officer has reasonable grounds to believe that the person has violated par. (a).

(6) CONDITIONAL RELEASE. A person arrested and taken into custody for a domestic abuse incident is eligible for conditional release. Unless there is a waiver under sub. (5) (c), as part of the conditions of any such release that occurs during the 72 hours immediately following such an arrest, the person

shall be required to comply with the requirements under sub. (5) (a) and to sign the acknowledgment under sub. (5) (b). The arrested person's release shall be conditioned upon his or her signed agreement to refrain from any threats or acts of domestic abuse against the alleged victim or other person.

(6m) OFFICER IMMUNITY. A law enforcement officer is immune from civil and criminal liability arising out of a decision by the officer to arrest or not arrest an alleged offender, if the decision is made in a good faith effort to comply with this section.

(7) PROSECUTION POLICIES. Each district attorney's office shall develop, adopt and implement written policies encouraging the prosecution of domestic abuse offenses. The policies shall include, but not be limited to, the following:

(a) A policy indicating that a prosecutor's decision not to prosecute a domestic abuse incident should not be based:

1. Solely upon the absence of visible indications of injury or impairment;

2. Upon the victim's consent to any subsequent prosecution of the other person involved in the incident; or

3. Upon the relationship of the persons involved in the incident.

(b) A policy indicating that when any domestic abuse incident is reported to the district attorney's office, including a report made under sub. (4), a charging decision by the district attorney should, absent extraordinary circumstances, be made not later than 2 weeks after the district attorney has received notice of the incident.

(8) EDUCATION AND TRAINING. Any education and training by the law enforcement agency relating to the handling of domestic abuse complaints shall stress enforcement of criminal laws in domestic abuse incidents and protection of the alleged victim. Law enforcement agencies and community organizations with expertise in the recognition and handling of domestic abuse incidents shall cooperate in all aspects of the training.

(9) ANNUAL REPORT. (a) Each district attorney shall submit an annual report to the department of justice listing all of the following:

1. The number of arrests for domestic abuse incidents in his or her county as compiled and furnished by the law enforcement agencies within the county.

2. The number of subsequent prosecutions and convictions of the persons arrested for domestic abuse incidents.

(b) The listing of the number of arrests, prosecutions and convictions under par. (a) shall include categories by statutory reference to the offense involved and include totals for all categories.

History: 1987 a. 346; 1989 a. 293; 1993 a. 319; 1995 a. 304; 2005 a. 104; 2011 a. 267; s. 13.92 (1) (bm) 2.

NOTE: 1987 Wis. Act 346, which created this section, states the legislative intent and purpose in section 1 of the Act.

Questions by an officer prior to an arrest to determine which spouse was the primary physical aggressor under sub. (3) (a) 1. b. were investigatory and *Miranda* warnings were not required when the defendant was not deprived of freedom or questioned in a coercive environment. State v. Leprich, 160 Wis. 2d 472, 465 N.W.2d 844 (Ct. App. 1991).

Warrantless arrest and detention for bail jumping, 946.49, is authorized if probable cause exists that the arrestee violated the contact prohibition in sub. (5) (a) 1. after being released under ch. 969. 78 Atty. Gen. 177.

This section applies to roommates living in university residence halls, whether privately or state owned. If criteria requiring arrest under sub. (2) exist, a law enforcement officer must make a custodial arrest. 79 Atty. Gen. 109.

A Prosecutor's View of Elder Abuse. Hanrahan. Wis. Law. Sept. 2000.

968.08 Release by law enforcement officer of arrested person. A law enforcement officer having custody of a person arrested without a warrant may release the person arrested without requiring the person to appear before a judge if the law enforcement officer is satisfied that there are insufficient grounds for the issuance of a criminal complaint against the person arrested.

History: 1993 a. 486.

968.085 Citation; nature; issuance; release of accused. **(1)** NATURE. A citation under this section is a directive, issued by a law enforcement officer, that a person appear in court and answer criminal charges. A citation is not a criminal complaint and may not be used as a substitute for a criminal complaint.

(2) AUTHORITY TO ISSUE; EFFECT. Except as provided in sub. (8), a law enforcement officer may issue a citation to any person whom he or she has reasonable grounds to believe has committed a misdemeanor. A citation may be issued in the field or at the headquarters or precinct station of the officer instead of or subsequent to a lawful arrest. If a citation is issued, the person cited shall be released on his or her own recognizance. In determining whether to issue a citation, the law enforcement officer may consider whether:

(a) The accused has given proper identification.

(b) The accused is willing to sign the citation.

(c) The accused appears to represent a danger of harm to himself or herself, another person or property.

(d) The accused can show sufficient evidence of ties to the community.

(e) The accused has previously failed to appear or failed to respond to a citation.

(f) Arrest or further detention appears necessary to carry out legitimate investigative action in accordance with law enforcement agency policies.

(3) CONTENTS. The citation shall do all of the following:

(a) Identify the offense and section which the person is alleged to have violated, including the date, and if material, identify the property and other persons involved.

(b) Contain the name and address of the person cited, or other identification if that cannot be ascertained.

(c) Identify the officer issuing the citation.

(d) Direct the person cited to appear for his or her initial appearance in a designated court, at a designated time and date.

(4) SERVICE. A copy of the citation shall be delivered to the person cited, and the original must be filed with the district attorney.

(5) REVIEW BY DISTRICT ATTORNEY. If the district attorney declines to prosecute, he or she shall notify the law enforcement agency which issued the citation. The law enforcement agency shall attempt to notify the person cited that he or she will not be charged and is not required to appear as directed in the citation.

(6) CITATION NO BAR TO CRIMINAL SUMMONS OR WARRANT. The prior issuance of a citation does not bar the issuance of a summons or a warrant for the same offense.

(7) PREPARATION OF FORM. The judicial conference shall prescribe the form and content of the citation under s. 758.171.

(8) INAPPLICABILITY TO CERTAIN DOMESTIC ABUSE CASES. A law enforcement officer may not issue a citation to a person for an offense if the officer is required to arrest the person for that offense under s. 968.075 (2).

History: 1983 a. 433; 2005 a. 104.

968.09 Warrant on failure to appear. (1) When a defendant or a witness fails to appear before the court as required, or violates a term of the defendant's or witness's bond or the defendant's or witness's probation, if any, the court may issue a bench warrant for the defendant's or witness's arrest which shall direct that the defendant or witness be brought before the court without unreasonable delay. The court shall state on the record at the time of issuance of the bench warrant the reason therefor.

(2) Prior to the defendant's appearance in court after the defendant's arrest under sub. (1), ch. 969 shall not apply.

History: 1971 c. 298; 1993 a. 486.

A bench warrant may be directed to all law enforcement officers in the state without regard to whether the defendant is charged with a violation of a state statute or county ordinance. The form of the warrant should be as suggested by s. 968.04 (3) (a) 7. 62 Atty. Gen. 208.

968.10 Searches and seizures; when authorized. A search of a person, object or place may be made and things may be seized when the search is made:

(1) Incident to a lawful arrest;

(2) With consent;

(3) Pursuant to a valid search warrant;

(4) With the authority and within the scope of a right of lawful inspection;

(5) Pursuant to a search during an authorized temporary questioning as provided in s. 968.25; or

(6) As otherwise authorized by law.

NOTE: See the notes to Article I, section 11, of the Wisconsin Constitution.

968.11 Scope of search incident to lawful arrest. When a lawful arrest is made, a law enforcement officer may reasonably search the person arrested and an area within such person's immediate presence for the purpose of:

(1) Protecting the officer from attack;

(2) Preventing the person from escaping;

(3) Discovering and seizing the fruits of the crime; or

(4) Discovering and seizing any instruments, articles or things which may have been used in the commission of, or which may constitute evidence of, the offense.

The holding of *Arizona v. Gant*, 556 U.S. 332, that *Belton* does not authorize a vehicle search incident to a recent occupant's arrest after the arrestee has been secured and cannot access the interior of the vehicle is adopted as the proper interpretation of the Wisconsin Constitution's protection against unreasonable searches and seizures. State v. Dearborn, 2010 WI 84, 327 Wis. 2d 252, 786 N.W.2d 97, 07-1894.

NOTE: See also the notes to Article I, section 11, of the Wisconsin Constitution.

968.12 Search warrant. (1) DESCRIPTION AND ISSUANCE. A search warrant is an order signed by a judge directing a law enforcement officer to conduct a search of a designated person, a designated object or a designated place for the purpose of seizing designated property or kinds of property. A judge shall issue a search warrant if probable cause is shown.

(2) WARRANT UPON AFFIDAVIT. A search warrant may be based upon sworn complaint or affidavit, or testimony recorded by a phonographic reporter or under sub. (3) (d), showing probable cause therefor. The complaint, affidavit or testimony may be upon information and belief.

(3) WARRANT UPON ORAL TESTIMONY. (a) *General rule.* A search warrant may be based upon sworn oral testimony communicated to the judge by telephone, radio or other means of electronic communication, under the procedure prescribed in this subsection.

(b) *Application.* The person who is requesting the warrant shall prepare a duplicate original warrant and read the duplicate original warrant, verbatim, to the judge. The judge shall enter, verbatim, what is read on the original warrant. The judge may direct that the warrant be modified.

(c) *Issuance.* If the judge determines that there is probable cause for the warrant, the judge shall order the issuance of a warrant by directing the person requesting the warrant to sign the judge's name on the duplicate original warrant. In addition, the person shall sign his or her own name on the duplicate original warrant. The judge shall immediately sign the original warrant and enter on the face of the original warrant the exact time when the warrant was ordered to be issued. The finding of probable cause for a warrant upon oral testimony shall be based on the same kind of evidence as is sufficient for a warrant upon affidavit.

(d) *Recording and certification of testimony.* When a caller informs the judge that the purpose of the call is to request a warrant, the judge shall place under oath each person whose testimony forms a basis of the application and each person applying for the warrant. The judge or requesting person shall arrange for all sworn testimony to be recorded either by a stenographic reporter or by means of a voice recording device. The judge shall have the record transcribed. The transcript, certified as accurate by the judge or reporter, as appropriate, shall be filed with the court. If the testimony was recorded by means of a voice recording device, the judge shall also file the original recording with the court.

(e) *Contents.* The contents of a warrant upon oral testimony shall be the same as the contents of a warrant upon affidavit.

(f) *Entry of time of execution.* The person who executes the warrant shall enter the exact time of execution on the face of the duplicate original warrant.

(4) LOCATION OF SEARCH. A search warrant may authorize a search to be conducted anywhere in the state and may be executed pursuant to its terms anywhere in the state.

History: 1971 c. 298; 1983 a. 443; Sup. Ct. Order, 141 Wis. 2d xiii (1987).

Judicial Council Note, 1988: Sub. (2) is amended to eliminate the preference for written affidavits as the basis for search warrants. Telephoned testimony allows faster response and the transcribed record is no less adequate for review.

Sub. (3) (a) is amended to eliminate the preference for written affidavits as the basis for search warrants. Telephoned testimony allows faster response and the transcribed record is no less adequate for review.

Sub. (3) (c) is amended to eliminate the preference for written affidavits as the basis for search warrants. Telephoned testimony allows faster response and the transcribed record is no less adequate for review.

Sub. (3) (d) is amended to authorize that the testimony be recorded either by a stenographic reporter or a voice recording device. [Re Order effective Jan. 1, 1988]

NOTE: See the notes to Article I, section 11, of the Wisconsin Constitution.

968.13 Search warrant; property subject to seizure. (1) A search warrant may authorize the seizure of the following:

(a) Contraband, which includes without limitation because of enumeration lottery tickets, gambling machines or other gambling devices, lewd, obscene or indecent written matter, pictures, sound recordings or motion picture films, forged money or written instruments and the tools, dies, machines or materials for making them, and controlled substances, as defined in s. 961.01 (4), and controlled substance analogs, as defined in s. 961.01 (4m), and the implements for smoking or injecting them. Gambling machines or other gambling devices possessed by a shipbuilding business that complies with s. 945.095 are not subject to this section.

(b) Anything which is the fruit of or has been used in the commission of any crime.

(c) Anything other than documents which may constitute evidence of any crime.

(d) Documents which may constitute evidence of any crime, if probable cause is shown that the documents are under the control of a person who is reasonably suspected to be concerned in the commission of that crime under s. 939.05 (2).

(2) In this section, "documents" includes, but is not limited to, books, papers, records, recordings, tapes, photographs, films or computer or electronic data.

History: 1971 c. 219; 1979 c. 81; 1995 a. 11, 448.

An adversary hearing is not necessary for the seizure of a limited quantity of obscene material as evidence but is necessary before more than evidentiary copies are seized. State ex rel. Howard v. O'Connell, 53 Wis. 2d 248, 192 N.W.2d 201 (1971).

"Contraband" under sub. (1) (a) is not limited to items that are per se illegal; it also encompasses items used, acquired, or transferred illegally, including money. Jones v. State, 226 Wis. 2d 565, 594 N.W.2d 738 (1999), 97-3306.

NOTE: See also the notes to Article I, section 11, of the Wisconsin Constitution.

968.135 Subpoena for documents. Upon the request of the attorney general or a district attorney and upon a showing of probable cause under s. 968.12, a court shall issue a subpoena requiring the production of documents, as specified in s. 968.13 (2). The documents shall be returnable to the court which issued the subpoena. Motions to the court, including, but not limited to, motions to quash or limit the subpoena, shall be addressed to the court which issued the subpoena. Any person who unlawfully refuses to produce the documents may be compelled to do so as provided in ch. 785. This section does not limit or affect any other subpoena authority provided by law.

History: 1979 c. 81, 177; 1983 a. 443 s. 4.

A bank's voluntary surrender of records other than those demanded on the subpoena provided no basis for suppression. State v. Swift, 173 Wis. 2d 870, 496 N.W.2d 713 (Ct. App. 1993).

This section protects the interests of persons whose documents are sought in addition to protecting the interests of the person on whom a subpoena is served. The defendant had standing to challenge subpoenas issued to produce her bank records. A person has standing to seek judicial intervention when that person has a personal stake in the outcome and is directly affected by the issues in controversy. State v. Popenhagen, 2008 WI 55, 309 Wis. 2d 601, 749 N.W.2d 611, 06-1114.

This section encompasses a motion to suppress documents in violation of this section and to suppress statements directly derived from those documents. The circuit court has discretion to suppress or allow evidence obtained in violation of a statute that does not specifically require suppression of evidence obtained contrary to the statute, depending on the facts and circumstances of the case and the objectives of the statute. State v. Popenhagen, 2008 WI 55, 309 Wis. 2d 601, 749 N.W.2d 611, 06-1114.

If a person were permitted to bring a motion to quash the subpoena for bank documents unlawfully obtained but not permitted to bring a motion to suppress incriminating statements derived directly from the unlawfully obtained bank documents, the person would not get the full benefit of the protections of the statute, and the underlying objectives of the statute would be defeated. State v. Popenhagen, 2008 WI 55, 309 Wis. 2d 601, 749 N.W.2d 611, 06-1114.

968.14 Use of force. All necessary force may be used to execute a search warrant or to effect any entry into any building or property or part thereof to execute a search warrant.

Officers acted legally when, armed with a search warrant, they knocked on a door, pushed it open when the defendant opened it 2 inches, and put him under restraint before showing the warrant. State v. Meier, 60 Wis. 2d 452, 210 N.W.2d 685 (1973).

To dispense with the rule of announcement in executing a warrant, particular facts must be shown in each case that support an officer's reasonable suspicion that exigent circumstances exist. An officer's experience and training are valid relevant considerations. State v. Meyer, 216 Wis. 2d 729, 576 N.W.2d 260 (1998), 96-2243.

Irrespective of whether the search warrant authorizes a "no-knock" entry, reasonableness is determined when the warrant is executed. State v. Davis, 2000 WI 270, 240 Wis. 2d 15, 622 N.W.2d 1.

There is no blanket exception to the knock and announce requirement for executing warrants. To justify no-knock entry, a reasonable suspicion that knocking and announcing will be dangerous, or futile, or will inhibit the effective investigation of a crime must exist. Richards v. Wisconsin, 520 U.S. 385, 137 L. Ed. 2d 615 (1997).

NOTE: See also the notes to Article I, section 11, of the Wisconsin Constitution.

968.15 Search warrants; when executable. (1) A search warrant must be executed and returned not more than 5 days after the date of issuance.

(2) Any search warrant not executed within the time provided in sub. (1) shall be void and shall be returned to the judge issuing it.

Execution of search warrant is timely if in compliance with (1) and if probable cause which led to issuance still exists at time of execution. Defense has burden of proof in timeliness challenge. State v. Edwards, 98 Wis. 2d 367, 297 N.W.2d 12 (1980).

Law enforcement's failure to return an order and inventory within the confines of ss. 968.15 and 968.17 did not render the execution of the order unreasonable. The timely return of a warrant is a ministerial duty that does not affect the validity of the search absent prejudice to the defendant. State v. Sveum, 2010 WI 92, 328 Wis. 2d 369, 787 N.W.2d 317, 08-0658.

968.16 Detention and search of persons on premises. The person executing the search warrant may reasonably detain and search any person on the premises at the time to protect himself or herself from attack or to prevent the disposal or concealment of any item particularly described in the search warrant.

History: 1993 a. 486.

The defendant had sufficient control and dominion over a car for it to be considered "premises," justifying a search of the defendant. State v. Reed, 156 Wis. 2d 546, 457 N.W.2d 494 (Ct. App 1990).

The frisk of a person not named in a search warrant during the execution of the warrant was reasonable when occupants of the residence were very likely to be involved in drug trafficking; drugs felt in a pocket during the frisk were lawfully seized when the officer had probable cause to believe that there was a connection between what was felt and criminal activity. State v. Guy, 172 Wis. 2d 86, 492 N.W.2d 311 (1992).

Law enforcement's failure to return an order and inventory within the confines of ss. 968.15 and 968.17 did not render the execution of the order unreasonable. The timely return of a warrant is a ministerial duty that does not affect the validity of the search absent prejudice to the defendant. State v. Sveum, 2010 WI 92, 328 Wis. 2d 369; 787 N.W.2d 317, 08-0658.

NOTE: See also the notes to Article I, section 11, of the Wisconsin Constitution.

968.17 Return of search warrant. (1) The return of the search warrant shall be made within 48 hours after execution to the clerk designated in the warrant. The return shall be accompanied by a written inventory of any property taken. Upon request, the clerk shall deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the search warrant.

(2) An affidavit or complaint made in support of the issuance of the warrant and the transcript of any testimony taken shall be filed with the clerk within 5 days after the date of the execution of any search warrant.

History: 1971 c. 298.

In computing the time within which a search warrant must be returned, the court may exclude the hours between 4:30 p.m. Friday and 8 a.m. Monday. Such a delay would not affect the validity of the search. State v. Meier, 60 Wis. 2d 452, 210 N.W.2d 685 (1973).

The trial court erred in suppressing controlled substances and associated paraphernalia seized pursuant to a search warrant on the ground that a transcript of testimony upon which the warrant was based was not filed within 5 days of its execution, as required by sub. (2), because: 1) s. 968.22 provides that no evidence seized under a search warrant may be suppressed due to technical irregularities not affecting the defendant's substantial rights; 2) the 5-day filing requirement is a ministerial duty, a violation of which does not invalidate a search absent prejudice; and 3) there was no prejudice when the transcript was filed approximately 6 weeks prior to the filing of the information, before which the defendant was statutorily precluded from making any motion to suppress. State v. Elam, 68 Wis. 2d 614, 229 N.W.2d 664 (1975).

968.18 Receipt for seized property. Any law enforcement officer seizing any items without a search warrant shall give a receipt as soon as practicable to the person from whose possession they are taken. Failure to give such receipt shall not render the evidence seized inadmissible upon a trial.

968.19 Custody of property seized. Property seized under a search warrant or validly seized without a warrant shall be safely kept by the officer, who may leave it in the custody of the sheriff and take a receipt therefor, so long as necessary for the purpose of being produced as evidence on any trial.

968.20 Return of property seized. (1) Any person claiming the right to possession of property seized pursuant to a search warrant or seized without a search warrant may apply for its return to the circuit court for the county in which the property was seized or where the search warrant was returned. The court shall order such notice as it deems adequate to be given the district attorney and all persons who have or may have an interest in the property and shall hold a hearing to hear all claims to its true ownership. If the right to possession is proved to the court's satisfaction, it shall order the property, other than contraband or property covered under sub. (1m) or (1r) or s. 173.12, 173.21 (4), or 968.205, returned if:

(a) The property is not needed as evidence or, if needed, satisfactory arrangements can be made for its return for subsequent use as evidence; or

(b) All proceedings in which it might be required have been completed.

(1m) (a) In this subsection:

1. "Crime" includes an act committed by a juvenile or by an adult who is adjudicated incompetent that would have been a crime if the act had been committed by a competent adult.

2. "Dangerous weapon" has the meaning given in s. 939.22 (10).

(b) If the seized property is a dangerous weapon or ammunition, the property shall not be returned to any person who committed a crime involving the use of the dangerous weapon or the ammunition. The property may be returned to the rightful owner under this section if the owner had no prior knowledge of and gave no consent to the commission of the crime. Property which may not be returned to an owner under this subsection shall be disposed of under subs. (3) and (4).

(1r) (a) If the seized property is a firearm ordered seized under s. 51.20 (13) (cv) 1., 2007 stats., the court that issued that order shall order the firearm returned if the order under s. 51.20 (13) (cv) 1., 2007 stats., has been canceled under s. 51.20 (13) (cv) 2. or (16) (gm), 2007 stats., or is canceled under s. 51.20 (13) (cv) 1m. c.

(b) If the seized property is a firearm ordered seized under s. 51.20 (13) (cv) 1., the court that issued that order shall order the firearm returned if the order under s. 51.20 (13) (cv) 1. is canceled under s. 51.20 (13) (cv) 1m. c.

(c) If the seized property is a firearm ordered seized under s. 51.45 (13) (i) 1., the court that issued that order shall order the firearm returned if the order under s. 51.45 (13) (i) 1. is canceled under s. 51.45 (13) (i) 2. c.

(d) If the seized property is a firearm ordered seized under s. 54.10 (3) (f) 1., the court that issued that order shall order the firearm returned if the order under s. 54.10 (3) (f) 1. is canceled under s. 54.10 (3) (f) 2. c.

(e) If the seized property is a firearm ordered seized under s. 55.12 (10) (a), the court that issued that order shall order the firearm returned if the order under s. 55.12 (10) (a) is canceled under s. 55.12 (10) (b) 3.

(2) Property not required for evidence or use in further investigation, unless contraband or property covered under sub. (1m) or (1r) or s. 173.12 or 968.205, may be returned by the officer to the person from whom it was seized without the requirement of a hearing.

(3) (a) First class cities shall dispose of dangerous weapons or ammunition seized 12 months after taking possession of them if the owner, authorized under sub. (1m), has not requested their return and if the dangerous weapon or ammunition is not required for evidence or use in further investigation and has not been disposed of pursuant to a court order at the completion of a criminal action or proceeding. Disposition procedures shall be established by ordinance or resolution and may include provisions authorizing an attempt to return to the rightful owner any dangerous weapons or ammunition which appear to be stolen or are reported stolen. If enacted, any such provision shall include a presumption that if the dangerous weapons or ammunition appear to be or are reported stolen an attempt will be made to return the dangerous weapons or ammunition to the authorized rightful owner. If the return of a seized dangerous weapon other than a firearm is not requested by its rightful owner under sub. (1) and is not returned by the officer under sub. (2), the city shall safely dispose of the dangerous weapon or, if the dangerous weapon is a motor vehicle, as defined in s. 340.01 (35), sell the motor vehicle following the procedure under s. 973.075 (4) or authorize a law enforcement agency to retain and use the motor vehicle. If the return of a seized firearm or ammunition is not requested by its authorized rightful owner under sub. (1) and is not returned by the officer under sub. (2), the seized firearm or ammunition shall be shipped to and become property of the state crime laboratories. A person designated by the department of justice may destroy any material for which the laboratory has no use or arrange for the exchange of material with other public agencies. In lieu of destruction, shoulder weapons for which the laboratories have no use shall be turned over to the department of natural resources for sale and distribution of proceeds under s. 29.934 or for use under s. 29.938.

(b) Except as provided in par. (a) or sub. (1m) or (4), a city, village, town or county or other custodian of a seized dangerous weapon or ammunition, if the dangerous weapon or ammunition is not required for evidence or use in further investigation and has not been disposed of pursuant to a court order at the completion of a criminal action or proceeding, shall make reasonable efforts to notify all persons who have or may have an authorized rightful interest in the dangerous weapon or ammunition of the application requirements under sub. (1). If, within 30 days after the notice, an application under sub. (1) is not made and the seized dangerous weapon or ammunition is not returned by the officer under sub. (2), the city, village, town or county or other custodian may retain the dangerous weapon or ammunition and authorize its use by a law enforcement agency, except that a dangerous weapon used in the commission of a homicide or a handgun, as defined in s. 175.35 (1) (b), may not be retained. If a dangerous weapon other than a firearm is not so retained, the city, village, town or county or other custodian shall safely dispose of the dangerous weapon or, if the dangerous weapon is a motor vehicle, as defined in s. 340.01 (35), sell the motor vehicle following the procedure under s. 973.075 (4). If a firearm or ammunition is not so retained, the city, village, town or county or other custodian shall ship it to the state crime laboratories and it is then the property of the laboratories. A person designated by the department of justice may destroy any material for which the laboratories have no use or arrange for the exchange of material with other public agencies. In lieu of destruction, shoulder weapons for which the laboratory has no use shall be turned over to the department of natural resources for sale and distribution of proceeds under s. 29.934 or for use under s. 29.938.

(4) Any property seized, other than property covered under s. 968.205, that poses a danger to life or other property in storage, transportation or use and that is not required for evidence or further investigation shall be safely disposed of upon command of the person in whose custody they are committed. The city, village, town or county shall by ordinance or resolution establish disposal procedures. Procedures may include provisions authorizing an attempt to return to the rightful owner substances which have a commercial value in normal business usage and do not pose an immediate threat to life or property. If enacted, any such provision shall include a presumption that if the substance appears to be or is reported stolen an attempt will be made to return the substance to the rightful owner.

History: 1977 c. 260; 1977 c. 449 s. 497; 1979 c. 221; 1981 c. 160; 1983 a. 189 s. 329 (3); 1983 a. 278; 1985 a. 29 ss. 2447 to 2449, 3200 (35); 1987 a. 203; 1987 a. 332 s. 64; 1993 a. 90, 196; 1996 a. 157; 1997 a. 192, 248; 1999 a. 185; 2001 a. 16; 2005 a. 387, 394; 2009 a. 258; 2011 a. 257 s. 56.

A claimant of seized property has the burden of showing that it is not contraband and is not needed as evidence in a possible retrial. Money may be applied to the payment of counsel fees. Welter v. Sauk County Clerk of Court, 53 Wis. 2d 178, 191 N.W.2d 852 (1971).

Under sub. (1m) (b), "rightful owner" refers to an innocent person who owned a firearm or ammunition at the time an offense was committed. State v. Williams, 148 Wis. 2d 852, 436 N.W.2d 924 (Ct. App. 1989).

Whether explicit photographs seized during the execution of a search warrant were contraband is discussed. In re Return of Property in State v. Benhoff, 185 Wis. 2d 600, 518 N.W.2d 307 (Ct. App. 1994).

In the event that the district attorney elects not to bring a forfeiture action against seized property, a person seeking the return of the property may do so under this section, not s. 961.55 (3). Jones v. State, 226 Wis. 2d 565, 594 N.W.2d 738 (1999), 97-3306.

The definition of contraband in s. 968.13 applies to this section. The burden is on the state to prove by the greater weight of the credible evidence that property is contraband not subject to return under this section. Jones v. State, 226 Wis. 2d 565, 594 N.W.2d 738 (1999), 97-3306.

The term "use" in sub. (1m) (b) requires more than than the mere fact that a firearm is with a person. It must be part of the crime in some way. State v. Perez, 2000 WI App 115, 235 Wis. 2d 238, 612 N.W.2d 374, 99-3108.

This section establishes an in rem proceeding to establish true ownership of property. It does not authorize granting a money judgment to the rightful owner when seized property is missing or mistakenly returned to another as a judgment in an in rem proceeding is valid only against the property and not against a defendant or a defendant's assets. City of Milwaukee v. Glass, 2001 WI 61, 243 Wis. 2d 636, 628 N.W.2d 343, 99-2389.

Sub. (1m) (b) prohibits the return of a dangerous weapon to a person convicted of carrying a concealed and dangerous weapon. State v. Perez, 2001 WI 79, 244 Wis. 2d 582, 628 N.W.2d 820, 99-3108.

Sub. (1m) (b) is subject to the excessive fines clause of the 8th amendment. State v. Bergquist, 2002 WI App 39, 250 Wis. 2d 792, 641 N.W.2d 179, 01-0814.

Sub. (1m) (b) forbids returning weapons to one who committed a crime involving their use; it does not require that the defendant be convicted of that crime. Agreeing to a crime being read in at the time of sentencing constitutes an admission of having committed the crime. When charged with possession of a firearm by a person ordered not to possess a firearm under an injunction, a defendant need not have them literally in his hands or on premises that he occupies but must have the right to possess them. Not having contact with the weapons for several years did not establish lack of possession, especially when the defendant was allowing the firearms to appreciate for later sale. State v. Kueny, 2006 WI App 197, 296 Wis. 2d 658, 724 N.W. 2d 399, 04-1291.

A law enforcement agency may not retain unclaimed contraband money for its own use. In the absence of an asset forfeiture proceeding initiated by the state or a judicial determination that the money constitutes contraband, a local law enforcement agency should dispose of the money as unclaimed property under s. 59.66 (2). OAG 10-09.

Due process does not require states to give detailed instructions to owners who seek the return of lawfully seized property no longer needed in a police interrogation or criminal proceeding. West Covina v. Perkins, 525 U.S. 234, 142 L.Ed. 2d 636 (1999).

This section applies although a criminal action has not been commenced; the property owner has the burden of moving for the return of the property. Supreme Video, Inc. v. Schulz, 808 F. Supp. 1380 (1992).

968.205 Preservation of certain evidence.

(1) In this section:

(a) "Custody" means actual custody of a person under a sentence of imprisonment, custody of a probationer, parolee, or person on extended supervision by the department of corrections, actual or constructive custody of a person pursuant to a dispositional order under ch. 938, supervision of a person, whether in institutional care or on conditional release, pursuant to a commitment order under s. 971.17 and supervision of a person under ch. 980, whether in detention before trial or while in institutional care or on supervised release pursuant to a commitment order.

(b) "Discharge date" means the date on which a person is released or discharged from custody that resulted from a criminal action, a delinquency proceeding under ch. 938, or a commitment proceeding under s. 971.17 or ch. 980 or, if the person is serving consecutive sentences of imprisonment, the date on which the person is released or discharged from custody under all of the sentences.

(2) Except as provided in sub. (3), if physical evidence that is in the possession of a law enforcement agency includes any biological material that was collected in connection with a criminal investigation that resulted in a criminal conviction, delinquency adjudication, or commitment under s. 971.17 or 980.06 and the biological material is from a victim of the offense that was the subject of the criminal investigation or may reasonably be used to incriminate or exculpate any person for the offense, the law enforcement agency shall preserve the physical evidence until every person in custody as a result of the

conviction, adjudication, or commitment has reached his or her discharge date.

(2m) A law enforcement agency shall retain evidence to which sub. (2) applies in an amount and manner sufficient to develop a deoxyribonucleic acid profile, as defined in s. 939.74 (2d) (a), from the biological material contained in or included on the evidence.

(3) Subject to sub. (5), a law enforcement agency may destroy evidence that includes biological material before the expiration of the time period specified in sub. (2) if all of the following apply:

(a) The law enforcement agency sends a notice of its intent to destroy the evidence to all persons who remain in custody as a result of the criminal conviction, delinquency adjudication, or commitment, and to either the attorney of record for each person in custody or the state public defender.

(b) No person who is notified under par. (a) does either of the following within 90 days after the date on which the person received the notice:

1. Files a motion for testing of the evidence under s. 974.07 (2).

2. Submits a written request for retention of the evidence to the law enforcement agency.

(c) No other provision of federal or state law requires the law enforcement agency to retain the evidence.

(4) A notice provided under sub. (3) (a) shall clearly inform the recipient that the evidence will be destroyed unless, within 90 days after the date on which the person receives the notice, either a motion for testing of the evidence is filed under s. 974.07 (2) or a written request for retention of the evidence is submitted to the law enforcement agency.

(5) If, after providing notice under sub. (3) (a) of its intent to destroy evidence, a law enforcement agency receives a written request for retention of the evidence, the law enforcement agency shall retain the evidence until the discharge date of the person who made the request or on whose behalf the request was made, subject to a court order issued under s. 974.07 (7), (9) (a), or (10) (a) 5., unless the court orders destruction or transfer of the evidence under s. 974.07 (9) (b) or (10) (a) 5.

History: 2001 a. 16; 2005 a. 60.

968.21 Search warrant; secrecy. A search warrant shall be issued with all practicable secrecy, and the complaint, affidavit or testimony upon which it is based shall not be filed with the clerk or made public in any way until the search warrant is executed.

968.22 Effect of technical irregularities. No evidence seized under a search warrant shall be suppressed because of technical irregularities not affecting the substantial rights of the defendant.

The incorrect identification of a building's address in a warrant was a technical error and did not render the resulting search unreasonable when the search made was of the building identified by the informant, which was otherwise correctly identified in the warrant. State v. Nicholson, 174 Wis. 2d 542, 497 N.W.2d 791 (Ct. App. 1993).

Mistakes on the face of a warrant were a technical irregularity under s. 968.22 and the warrant met the 4th amendment standard of reasonableness when although the warrant identified the car to be searched incorrectly two times, the executing officer attached and incorporated an affidavit that correctly identified the car 3 times, describing the correct color, make, model, and style of the car along with the correct license plate, and the information was based on the executing officer's personal knowledge from prior encounters. State v. Rogers, 2008 WI App 176, 315 Wis. 2d 60, 762 N.W.2d 795, 07-1850.

NOTE: See also the notes to Article I, section 11, of the Wisconsin Constitution.

968.23 Forms. The following forms for use under this chapter are illustrative and not mandatory:

STATE OF WISCONSIN,

.... County.

AFFIDAVIT OR COMPLAINT.

In the .... court of the .... of ....

A. B., being duly sworn, says that on the .... day of ...., A. D., ... (year), in said county, in and upon certain premises in the (city, town or village) of .... in said county, occupied by .... and more particularly described as follows: (describe the premises) there are now located and concealed certain things, to wit: (describe the things to be searched for) (possessed for the purpose of evading or violating the laws of the state of Wisconsin and contrary to section .... of the Wisconsin statutes) (or, which things were stolen from their true owner, in violation of section .... of the Wisconsin statutes) (or, which things were used in the commission of (or may constitute evidence of) a crime to wit: (describe crime) committed in violation of section .... of the Wisconsin statutes).

The facts tending to establish the grounds for issuing a search warrant are as follows: (set forth evidentiary facts showing probable cause for issuance of warrant).

Wherefore, the said A. B. prays that a search warrant be issued to search such premises for the said property, and to bring the same, if found, and the person in whose possession the same is found, before the said court (or, before the .... court for .... County), to be dealt with according to law.

(Signed) A. B.

Subscribed and sworn to before me this .... day of ...., ... (year)

...., Judge of the .... Court.

STATE OF WISCONSIN,

.... County.

SEARCH WARRANT.

In the .... court of the .... of ....

THE STATE OF WISCONSIN, To the sheriff or any constable or any peace officer of said county:

Whereas, A. B. has this day complained (in writing) to the said court upon oath that on the .... day of ...., A. D., ... (year), in said county, in and upon certain premises in the (city, town or village) of .... in said county, occupied by .... and more particularly described as follows: (describe the premises) there are now located and concealed certain things, to wit: (describe the things to be searched for) (possessed for the purpose of evading or violating the laws of the state of Wisconsin and contrary to section .... of the Wisconsin statutes) (or, which things were stolen from their true owner, in violation of section .... of the Wisconsin statutes) (or which things were used in the commission of (or, may constitute evidence of) a crime, to wit: (describe crime) committed in violation of section .... of the Wisconsin statutes) and prayed that a search warrant be issued to search said premises for said property.

Now, therefore, in the name of the state of Wisconsin you are commanded forthwith to search the said premises for said things, and if the same or any portion thereof are found, to bring the same and the person in whose possession the same are found, and return this warrant within 48 hours before the said

court (or, before the .... court for .... County), to be dealt with according to law.

Dated this .... day of ...., ... (year)

...., Judge of the .... Court.

ENDORSEMENT ON WARRANT

Received by me ...., ... (year), at .... o'clock ....M.

...., Sheriff (or peace officer)

RETURN OF OFFICER

State of Wisconsin

.... Court,

.... County.

I hereby certify that by virtue of the within warrant I searched the within named premises and found the following things: (describe things seized) and have the same now in my possession subject to the direction of the court.

Dated this .... day of ...., ... (year)

...., Sheriff (or peace officer)

History: 1997 a. 250.

968.24 Temporary questioning without arrest. After having identified himself or herself as a law enforcement officer, a law enforcement officer may stop a person in a public place for a reasonable period of time when the officer reasonably suspects that such person is committing, is about to commit or has committed a crime, and may demand the name and address of the person and an explanation of the person's conduct. Such detention and temporary questioning shall be conducted in the vicinity where the person was stopped.

History: 1993 a. 486.

Suspicious behavior of a driver and passenger justified detention. State v. Goebel, 103 Wis. 2d 203, 307 N.W.2d 915 (1981).

A defendant's flight from a police officer may, using the totality of circumstances test, justify a warrantless investigatory stop. State v. Jackson, 147 Wis. 2d 824, 434 N.W.2d 386 (1989).

Actions suggesting to a reasonable police officer that an individual is attempting to flee is adequately suspicious to support an investigatory stop. State v. Anderson, 155 Wis. 2d 77, 454 N.W.2d 763 (1990).

The *Terry* rule applies once a person becomes a valid suspect even though the encounter was initially consensual; if circumstances show investigation is not complete, the suspect does not have the right to terminate it. State v. Goyer, 157 Wis. 2d 532, 460 N.W.2d 424 (Ct. App. 1990).

When a person's activity may constitute either a civil forfeiture or crime, an investigative stop may be performed. State v. Krier, 165 Wis. 2d 673, 478 N.W.2d 63 (Ct. App. 1991).

A "showup" where police present a single suspect to a witness for identification, often at or near a crime scene shortly after the crime occurs, is suggestive but not impermissibly suggestive *per se*. State v. Garner, 207 Wis. 2d 520, 558 N.W.2d 916 (Ct. App. 1996), 96-0168.

Detaining a person at his home, then transporting him about one mile to the scene of an accident in which he was involved, was an investigative stop and a reasonable part of an ongoing accident investigation. State v. Quartana, 213 Wis. 2d 440, 570 N.W.2d 618 (Ct. App. 1997), 97-0695.

That the defendant is detained in a temporary *Terry* stop does not automatically mean *Miranda* warnings are not required. Whether the warnings are required depends on whether a reasonable person in the defendant's position would have considered himself or herself to be in custody. State v. Gruen, 218 Wis. 2d 581, 582 N.W.2d 728 (Ct. App. 1998), 96-2588.

This section authorizes officers to demand identification only when a person is suspected of committing a crime, but does not govern the lawfulness of requests for identification in other circumstances. State v. Griffith, 2000 WI 72, 236 Wis. 2d 48, 613 N.W.2d 72, 98-0931.

A police officer performing a *Terry* stop and requesting identification could perform a limited search for identifying papers when: 1) the information received by the officer was not confirmed by police records; 2) the intrusion on the suspect was minimal; 3) the officer observed that the suspect's pockets were bulging; and 4) the officer had experience with persons who claimed to have no identification when in fact they did. State v. Black, 2000 WI App 175, 238 Wis. 2d 203, 617 N.W.2d 210, 99-1686.

Under *Florida v. J.L.*, an anonymous tip giving rise to reasonable suspicion must bear indicia of reliability. That the tipster's anonymity is placed at risk indicates that the informant is genuinely concerned and not a fallacious prankster. Corroborated aspects of the tip also lend credibility; the corroborated actions of the suspect need be inherently criminal in and of themselves. State v. Williams, 2001 WI 21, 241 Wis. 2d 631, 623 N.W.2d 106, 96-1821.

An anonymous tip regarding erratic driving from another driver calling from a cell phone contained sufficient indicia of reliability to justify an investigative stop when: 1) the informant was exposed to possible identification, and therefore possible arrest if the tip proved false; 2) the tip reported contemporaneous and verifiable observations regarding the driving, location, and vehicle; and 3) the officer verified many of the details in the tip. That the tip reasonably suggested intoxicated driving created an exigency strongly in favor of immediate police investigation without the necessity that the officer personally observe erratic driving. State v. Rutzinski, 2001 WI 22, 241 Wis. 2d 729, 623 N.W.2d 516, 98-3541.

When a caller identifies himself or herself by name, placing his or her anonymity at risk, and the totality of the circumstances establishes a reasonable suspicion that criminal activity may be afoot, the police may execute a lawful investigative stop. Whether the caller gave correct identifying information, or whether the police ultimately could have verified the information, the caller, by providing the information, risked that his or her identity would be discovered and cannot be considered anonymous. State v. Sisk, 2001 WI App 182, 247 Wis. 2d 443, 634 N.W.2d 877, 00-2614.

It was reasonable to conduct a *Terry* search of a person who knocked on the door of a house while it was being searched for drugs pursuant to a warrant. State v. Kolp, 2002 WI App 17, 250 Wis. 2d 296, 640 N.W.2d 551, 01-0549.

Terry and this section apply to confrontations between the police and citizens in public places only. For private residences and hotels, in the absence of a warrant, the police must have probable cause and exigent circumstances or consent to justify an entry. Reasonable suspicion is not a prerequisite to an officer's seeking consent to enter a private dwelling. State v. Stout, 2002 WI App 41, 250 Wis. 2d 768, 641 N.W.2d 474, 01-0904.

To perform a protective search for weapons, an officer must have reasonable suspicion that a person may be armed and dangerous. A court may consider an officer's belief that his, her, or another's safety is threatened in finding reasonable suspicion, but such a belief is not a prerequisite to a valid search. There is no per se rule justifying a search any time an individual places his or her hands in his or her pockets contrary to police orders. The defendant's hand movements must be considered under the totality of the circumstances of the case. State v. Kyles, 2004 WI 15, 269 Wis. 2d 1, 675 N.W.2d 449, 02-1540.

The principles of *Terry* permit a state to require a suspect to disclose his or her name in the course of a *Terry* stop and allow imposing criminal penalties for failing to do so. Hiibel v. Sixth Judicial District Court of Nevada, Humboldt County, 542 U.S. 177, 159 L. Ed 2d 292, 124 S. Ct. 2451 (2004).

When the defendant's refusal to disclose his name was not based on any articulated real and appreciable fear that his name would be used to incriminate him, or that it would furnish a link in the chain of evidence needed to prosecute him, application of a criminal statute requiring disclosure of the person's name when the police officer reasonably suspected the person had committed a crime did not violate the protection against self-incrimination. Hiibel v. Sixth Judicial District Court of Nevada, Humboldt County, 542 U.S. 177, 159 L. Ed 2d 292, 124 S. Ct. 2451 (2004).

Weaving within a single traffic lane does not alone give rise to the reasonable suspicion necessary to conduct an investigative stop of a vehicle. The reasonableness of a stop must be determined based on the totality of the facts and circumstances. State v. Post, 2007 WI 60, 301 Wis. 2d 1, 733 N.W.2d 634, 05-2778.

The potential availability of an innocent explanation does not prohibit an investigative stop. If any reasonable inference of wrongful conduct can be objectively discerned, notwithstanding the existence of other innocent inferences that could be drawn, the officers have the right to temporarily detain the individual for the purpose of inquiry. State v. Limon, 2008 WI App 77, 312 Wis. 2d 174, 751 N.W.2d 877, 07-1578.

Cell Phone Tips of Crime and 'Reasonable Suspicion.' Andregg. Wis. Law. June 2005.

NOTE: See also the notes to Article I, section 11, of the Wisconsin Constitution.

968.25 Search during temporary questioning. When a law enforcement officer has stopped a person for temporary questioning pursuant to s. 968.24 and reasonably suspects that he or she or another is in danger of physical injury, the law enforcement officer may search such person for weapons or any instrument or article or substance readily capable of causing physical injury and of a sort not ordinarily carried in public

places by law abiding persons. If the law enforcement officer finds such a weapon or instrument, or any other property possession of which the law enforcement officer reasonably believes may constitute the commission of a crime, or which may constitute a threat to his or her safety, the law enforcement officer may take it and keep it until the completion of the questioning, at which time the law enforcement officer shall either return it, if lawfully possessed, or arrest the person so questioned.

History: 1993 a. 486.

An investigatory stop-and-frisk for the sole purpose of discovering a suspect's identity was lawful under the facts of the case. State v. Flynn, 92 Wis. 2d 427, 285 N.W.2d 710 (1979).

A stop-and-frisk was not an unreasonable search and seizure. State v. Williamson, 113 Wis. 2d 389, 335 N.W.2d 814 (1983).

This section permits an officer to search the passenger compartment of a vehicle for weapons if an individual who recently occupied the vehicle is stopped under s. 968.24 and the officer "reasonably suspects that he or another is in danger of physical injury." State v. Moretto, 144 Wis. 2d 171, 423 N.W.2d 841 (1988).

Although *Terry* provides only for an officer to conduct a carefully limited search of the outer clothing in an attempt to discover weapons that might be used to assault him or her, under the circumstances of this case, the search was properly broadened to encompass the opening of the defendant's purse, which was essentially an extension of her person where the purse was accessible by her. State v. Limon, 2008 WI App 77, 312 Wis. 2d 174, 751 N.W.2d 877, 07-1578.

Terry tempered or torpedoed? The new law of stop and frisk. Lewis. WBB Aug. 1988.

NOTE: See also the notes to Article I, section 11, of the Wisconsin Constitution.

968.255 Strip searches. (1) In this section:

(a) "Detained" means any of the following:

1. Arrested for any felony.

2. Arrested for any misdemeanor under s. 167.30 (1), 940.19, 941.20 (1), 941.23, 941.237, 941.24, 948.60, or 948.61.

3. Taken into custody under s. 938.19 and there are reasonable grounds to believe the juvenile has committed an act which if committed by an adult would be covered under subd. 1. or 2.

4. Arrested for any misdemeanor not specified in subd. 2., any other violation of state law punishable by forfeiture or any local ordinance if there is probable cause to believe the person is concealing a weapon or a thing which may constitute evidence of the offense for which he or she is detained.

(b) "Strip search" means a search in which a detained person's genitals, pubic area, buttock or anus, or a detained female person's breast, is uncovered and either is exposed to view or is touched by a person conducting the search.

(2) No person may be the subject of a strip search unless he or she is a detained person and if:

(a) The person conducting the search is of the same sex as the person detained, unless the search is a body cavity search conducted under sub. (3);

(b) The detained person is not exposed to the view of any person not conducting the search;

(c) The search is not reproduced through a visual or sound recording;

(d) A person conducting the search has obtained the prior written permission of the chief, sheriff or law enforcement administrator of the jurisdiction where the person is detained, or his or her designee, unless there is probable cause to believe that the detained person is concealing a weapon; and

(e) A person conducting the search prepares a report identifying the person detained, all persons conducting the search, the time, date and place of the search and the written authorization required by par. (d), and provides a copy of the report to the person detained.

(3) No person other than a physician, physician assistant or registered nurse licensed to practice in this state may conduct a body cavity search.

(4) A person who intentionally violates this section may be fined not more than $1,000 or imprisoned not more than 90 days or both.

(5) This section does not limit the rights of any person to civil damages or injunctive relief.

(6) A law enforcement agency, as defined in s. 165.83 (1) (b), may promulgate rules concerning strip searches which at least meet the minimum requirements of this section.

(7) This section does not apply to a search of any person who:

(a) Is serving a sentence, pursuant to a conviction, in a jail, state prison or house of correction.

(b) Is placed in or transferred to a juvenile correctional facility, as defined in s. 938.02 (10p), or a secured residential care center for children and youth, as defined in s. 938.02 (15g).

(c) Is committed, transferred or admitted under ch. 51, 971 or 975.

(d) Is confined as a condition of probation under s. 973.09 (4).

History: 1979 c. 240; 1981 c. 297; 1987 a. 332; 1991 a. 17; 1993 a. 95, 105; 1995 a. 77, 154; 1997 a. 35; 1999 a. 9; 2001 a. 109; 2005 a. 344; 2011 a. 35.

A visual body cavity search is more intrusive than a strip search. It is not objectively reasonable for police to conclude that consent to a strip search includes consent to scrutiny of body cavities. State v. Wallace, 2002 WI App 61, 251 Wis. 2d 625, 642 N.W.2d 549, 00-3524.

Intrusive searches of the mouth, nose, or ears are not covered by sub. (3). However, searches of those body orifices should be conducted by medical personnel to comply with the 4th and 5th amendments. 71 Atty. Gen. 12.

968.256 Search of physically disabled person. (1) In this section, "physically disabled person" means a person who requires an assistive device for mobility, including, but not limited to, a wheelchair, brace, crutch or artificial limb.

(2) A search of a physically disabled person shall be conducted in a careful manner. If a search of a physically disabled person requires the removal of an assistive device or involves a person lacking sensation in some portion of his or her body, the search shall be conducted with extreme care by a person who has had training in handling physically disabled persons.

History: 1979 c. 240.

968.26 John Doe proceeding. (1) If a district attorney requests a judge to convene a proceeding to determine whether a crime has been committed in the court's jurisdiction, the judge shall convene a proceeding described under sub. (3) and shall subpoena and examine any witnesses the district attorney identifies.

(2) (a) Except in par. (am), in this subsection, "district attorney" includes a prosecutor to whom the judge has referred the complaint under par. (am).

(am) If a person who is not a district attorney complains to a judge that he or she has reason to believe that a crime has been committed within the judge's jurisdiction, the judge shall refer the complaint to the district attorney or, if the complaint

may relate to the conduct of the district attorney, to another prosecutor under s. 978.045.

(b) If a district attorney receives a referral under par. (am), the district attorney shall, within 90 days of receiving the referral, issue charges or refuse to issue charges. If the district attorney refuses to issue charges, the district attorney shall forward to the judge in whose jurisdiction the crime has allegedly been committed all law enforcement investigative reports on the matter that are in the custody of the district attorney, his or her records and case files on the matter, and a written explanation why he or she refused to issue charges. The judge may require a law enforcement agency to provide to him or her any investigative reports that the law enforcement agency has on the matter. The judge shall convene a proceeding as described under sub. (3) if he or she determines that a proceeding is necessary to determine if a crime has been committed. When determining if a proceeding is necessary, the judge may consider the law enforcement investigative reports, the records and case files of the district attorney, and any other written records that the judge finds relevant.

(c) In a proceeding convened under par. (b), the judge shall subpoena and examine under oath the complainant and any witnesses that the judge determines to be necessary and appropriate to ascertain whether a crime has been committed and by whom committed. The judge shall consider the credibility of testimony in support of and opposed to the person's complaint.

(d) In a proceeding convened under par. (b), the judge may issue a criminal complaint if the judge finds sufficient credible evidence to warrant a prosecution of the complaint. The judge shall consider, in addition to any testimony under par. (c), the law enforcement investigative reports, the records and case files of the district attorney, and any other written reports that the judge finds relevant.

(3) The extent to which the judge may proceed in an examination under sub. (1) or (2) is within the judge's discretion. The examination may be adjourned and may be secret. Any witness examined under this section may have counsel present at the examination but the counsel shall not be allowed to examine his or her client, cross-examine other witnesses, or argue before the judge. Subject to s. 971.23, if the proceeding is secret, the record of the proceeding and the testimony taken shall not be open to inspection by anyone except the district attorney unless it is used by the prosecution at the preliminary hearing or the trial of the accused and then only to the extent that it is so used. A court, on the motion of a district attorney, may compel a person to testify or produce evidence under s. 972.08 (1). The person is immune from prosecution as provided in s. 972.08 (1), subject to the restrictions under s. 972.085.

History: 1989 a. 122; 1991 a. 88, 223, 315; 2009 a. 24.

A defendant must be allowed to use testimony of witnesses at a secret John Doe proceeding to impeach the same witnesses at the trial, even if the prosecution does not use the John Doe testimony. Myers v. State, 60 Wis. 2d 248, 208 N.W.2d 311 (1973).

An immunity hearing must be in open court. State ex rel. Newspapers, Inc. v. Circuit Court, 65 Wis. 2d 66, 221 N.W.2d 894 (1974).

A person charged as a result of a John Doe proceeding has no recognized interest in the maintenance of secrecy in that proceeding. John Doe proceedings are discussed. State v. O'Connor, 77 Wis. 2d 261, 252 N.W.2d 671 (1971).

No restriction under the 4th or 5th amendment precludes the enforcement of an order for handwriting exemplars directed by a presiding judge in a John Doe proceeding. State v. Doe, 78 Wis. 2d 161, 254 N.W.2d 210 (1977).

Due process does not require that a John Doe witness be advised of the nature of the proceeding or that the witness is a "target" of the investigation. Ryan v. State, 79 Wis. 2d 83, 255 N.W.2d 910 (1977).

This section does not violate the constitutional separation of powers doctrine. John Doe proceedings are discussed. State v. Washington, 83 Wis. 2d 808, 266 N.W.2d 597 (1978).

A balance between the public's right to know and the need for secrecy in John Doe proceedings is discussed. In re Wis. Family Counseling Services v. State, 95 Wis. 2d 670, 291 N.W.2d 631 (Ct. App. 1980).

A John Doe judge may not issue a material witness warrant under s. 969.01 (3). State v. Brady, 118 Wis. 2d 154, 345 N.W.2d 533 (Ct. App. 1984).

When a John Doe proceeding is not a joint executive and judicial undertaking, the procedure does not violate the separation of powers doctrine and is constitutional. State v. Unnamed Defendant, 150 Wis. 2d 352, 441 N.W.2d 696 (1989).

A John Doe judge may issue and seal a search warrant, and a district attorney may independently issue a criminal complaint, regardless of the existence of the John Doe. A John Doe cannot be used to obtain evidence against a defendant who has already been charged. State v. Cummings, 199 Wis. 2d 721, 546 N.W.2d 406 (1996), 93-2445.

To be entitled to a hearing, a John Doe complainant must do more than merely allege in conclusory terms that a crime has been committed. The complainant's petition must allege facts that raise a reasonable belief that a crime has been committed. State ex rel. Reimann v. Circuit Court for Dane County, 214 Wis. 2d 605, 571 N.W.2d 385 (1997), 96-2361.

A nonlawyer's questioning of a witness on the state's behalf at a John Doe hearing even if constituting the unauthorized practice of law did not require exclusion of the testimony at trial. State v. Noble, 2002 WI 64, 253 Wis. 2d 206, 646 N.W.2d 38, 99-3271.

Article VII, Section 5 (3), read together with ss. 808.03 (2) and 809.51 (1) is sufficiently broad in scope to permit the court of appeals to exercise supervisory jurisdiction over the actions of a judge presiding over a John Doe proceeding. When rendering judicial decisions in the context of a John Doe proceeding, the judge must create a record for possible review. On review of a petition for a writ stemming from a secret John Doe proceeding, the court of appeals may seal parts of a record in order to comply with existing secrecy orders issued by the John Doe judge. Unnamed Persons Numbers 1, 2, and 3 v. State, 2003 WI 30, 260 Wis. 2d 653, 660 N.W.2d 260, 01-3220.

A John Doe judge must have the authority to disqualify counsel, and may permit argument by counsel when necessary to ensure procedural fairness. Unnamed Persons Numbers 1, 2, and 3 v. State, 2003 WI 30, 260 Wis. 2d 653, 660 N.W.2d 260, 01-3220.

The John Doe judge erred as a matter of law by requiring an oath of secrecy from a witness's counsel when a secrecy order was in effect. Individual Subpoenaed to Appear at Waukesha County John Doe Case No. 2003 JD 001 v. Davis, 2005 WI 70, 281 Wis. 2d 431, 697 N.W.2d 803, 04-1804.

The circuit judge erred when in reviewing a John Doe petition he reviewed police reports containing information casting doubt on assertions in the petition and explained that his review of the petition and the police reports led him to conclude that the petitioner failed to allege facts sufficient to raise a reasonable belief that a crime has been committed. This section does not permit this sort of analysis at the threshold stage of determining whether a petition contains reason to believe that a crime has been committed. Williams v. Fiedler, 2005 WI App 91, 282 Wis. 2d 486, 698 N.W.2d 294, 04-0175.

A John Doe judge has exclusive authority to subpoena witnesses in a John Doe proceeding based upon the language of this section. Hipp v. Circuit Court for Milwaukee County, 2008 WI 67, 310 Wis. 2d 342, 750 N.W.2d 837, 07-0230.

The judge in a John Doe hearing is not required to examine all the witnesses a complainant produces and to issue subpoenas to all the witnesses a complainant wishes to produce. This section extends judicial discretion in a John Doe hearing not only to the scope of a witness's examination, but also to whether a witness need testify at all. Robins v. Madden, 2009 WI 46, 317 Wis. 2d 364, 766 N.W.2d 542, 07-1526.

Under sub. (3), as revised by 2009 Wis. Act 24, a John Doe judge must potentially undertake four inquiries: 1) decide whether to refer the John Doe complaint to the district attorney in the first instance; 2) decide whether it is necessary to conduct any additional proceedings if the district attorney chooses not to issue charges; 3) determine what, if any, witnesses to subpoena and examine if additional proceedings are deemed necessary; and 4) decide whether to issue a criminal complaint if the judge finds that the additional proceedings have produced sufficient credible evidence to warrant prosecution. Naseer v. Miller, 2010 WI App 142, 329 Wis. 2d 724, 793 N.W.2d 209, 09-2578.

Under the statute, as amended by 2009 Wis. Act 24, a judge has a mandatory duty to refer a John Doe complaint to the district attorney only if the four corners of the complaint provide a sufficient factual basis to establish an objective reason to believe that a crime has been committed in the judge's jurisdiction, the same as under the prior statute. Naseer v. Miller, 2010 WI App 142, 329 Wis. 2d 724, 793 N.W.2d 209, 09-2578.

Applicable law allows electronic transmission of certain confidential case information among clerks of circuit court, county sheriff's offices, and the Department of Justice through electronic interfaces involving the Department of Administration's Office of Justice Assistance, specifically including electronic data messages about an arrest warrant if the warrant was issued in John Doe proceedings that have been sealed under this section. OAG 2-10.

Limits of judge's authority in presiding over or conducting John Doe proceedings are discussed. 76 Atty. Gen. 217.

968.265 Lie detector tests; sexual assault victims. **(1)** In this section, "lie detector" has the meaning given in s. 111.37 (1) (b).

(2) If a person reports to a law enforcement officer that he or she was the victim of an offense under s. 940.22 (2), 940.225, 948.02 (1) or (2), or 948.085, no law enforcement officer may in connection with the report order, request, or suggest that the person submit to a test using a lie detector, or provide the person information regarding tests using lie detectors unless the person requests information regarding tests using lie detectors.

(3) If a person reports to a district attorney that he or she was the victim of an offense under s. 940.22 (2), 940.225, 948.02 (1) or (2), or 948.085, no district attorney may do any of the following in connection with the report:

(a) Order that the person submit to a test using a lie detector.

(b) Suggest or request that the person submit to a test using a lie detector without first providing the person with notice and an explanation of his or her right not to submit to such a test.

History: 2003 a. 224; 2005 a. 277.

968.27 Definitions. In ss. 968.28 to 968.375:

(1) "Aggrieved person" means a person who was a party to any intercepted wire, electronic or oral communication or a person against whom the interception was directed.

(2) "Aural transfer" means a transfer containing the human voice at any point from the point of origin to the point of reception.

(3) "Contents" when used with respect to any wire, electronic or oral communication, includes any information concerning the substance, purport or meaning of that communication.

(4) "Electronic communication" means any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature wholly or partially transmitted by a wire, radio, electromagnetic, photoelectronic or photooptical system. "Electronic communication" does not include any of the following:

(a) The radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit.

(b) Any wire or oral communication.

(c) Any communication made through a tone-only paging device.

(d) Any communication from a tracking device.

(5) "Electronic communication service" means any service that provides its users with the ability to send or receive wire or electronic communications.

(6) "Electronic communications system" means any wire, radio, electromagnetic, photooptical or photoelectronic facilities for the transmission of electronic communications, and any computer facilities or related electronic equipment for the electronic storage of those communications.

(7) "Electronic, mechanical or other device" means any device or apparatus which can be used to intercept a wire, electronic or oral communication other than:

(a) Any telephone or telegraph instrument, equipment or facilities, or any component thereof, which is:

1. Furnished to the subscriber or user by a provider of electronic or wire communication service in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business or furnished by the subscriber or user for connection to the facilities of the service and used in the ordinary course of its business; or

2. Being used by a provider of electronic or wire communication service in the ordinary course of its business, or by a law enforcement officer in the ordinary course of his or her duties.

(b) A hearing aid or similar device being used to correct subnormal hearing to not better than normal.

(8) "Electronic storage" means any of the following:

(a) Any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof.

(b) Any storage of a wire or electronic communication by an electronic communication service for purposes of backup protection of the communication.

(9) "Intercept" means the aural or other acquisition of the contents of any wire, electronic or oral communication through the use of any electronic, mechanical or other device.

(10) "Investigative or law enforcement officer" means any officer of this state or political subdivision thereof, who is empowered by the laws of this state to conduct investigations of or to make arrests for offenses enumerated in ss. 968.28 to 968.37, and any attorney authorized by law to prosecute or participate in the prosecution of those offenses.

(11) "Judge" means the judge sitting at the time an application is made under s. 968.30 or his or her successor.

(12) "Oral communication" means any oral communication uttered by a person exhibiting an expectation that the communication is not subject to interception under circumstances justifying the expectation. "Oral communication" does not include any electronic communication.

(13) "Pen register" means a device that records or decodes electronic or other impulses that identify the numbers dialed or otherwise transmitted on the telephone line to which the device is attached. "Pen register" does not include any device used by a provider or customer of a wire or electronic communication service for billing, or recording as an incident to billing, for communications services provided by the provider or any device used by a provider or customer of a wire communication service for cost accounting or other like purposes in the ordinary course of its business.

(14) "Readily accessible to the general public" means, with respect to a radio communication, that the communication is not any of the following:

(a) Scrambled or encrypted.

(b) Transmitted using modulation techniques whose essential parameters have been withheld from the public with the intention of preserving the privacy of the communication.

(c) Carried on a subcarrier or other signal subsidiary to a radio transmission.

(d) Transmitted over a communication system provided by a common carrier, including a commercial mobile radio service provider, as defined in s. 196.01 (2g), unless the communication is a tone-only paging system communication.

(e) Transmitted on frequencies allocated under 47 CFR part 25, subpart D, E or F of part 74, or part 94, unless in the case of a communication transmitted on a frequency allocated under 47 CFR part 74 that is not exclusively allocated to broadcast auxiliary services, the communication is a 2-way voice communication by radio.

(14g) "Remote computing service" means computer storage or processing that is provided to the public by means of an electronic communications system.

(15) "Trap and trace device" means a device that captures the incoming electronic or other impulses that identify the originating number of an instrument or device from which a wire or electronic communication was transmitted.

(16) "User" means any person who or entity that:

(a) Uses an electronic communication service; and

(b) Is duly authorized by the provider of the service to engage in that use.

(17) "Wire communication" means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception, including the use of the connection in any switching station, furnished or operated by any person in providing or operating the facilities for the transmission of intrastate, interstate or foreign communications. "Wire communication" includes the electronic storage of any such aural transfer.

History: 1971 c. 40 s. 93; 1987 a. 399; 1991 a. 39; 1997 a. 218; 2009 a. 349.

The constitutionality of ss. 968.27 to 968.30 is upheld. State ex rel. Hussong v. Froelich, 62 Wis. 2d 577, 215 N.W.2d 390.

An informant who is party to a tape recorded telephone conversation also acquired the conversation in his mind, regardless of the use of tape recorder; that acquisition is not an "intercept." The informant may testify to the conversation without use of the recording. State v. Maloney, 161 Wis. 2d 127, 467 N.W.2d 215 (Ct. App. 1991).

An "oral communication" under sub. (12) is a statement uttered under circumstances in which the speaker has a reasonable expectation of privacy. An individual has a reasonable expectation of privacy when he or she has both an actual subjective expectation of privacy in the speech, and a subjective expectation that is one that society is willing to recognize as reasonable, which requires examination of the totality of the circumstances. State v. Duchow, 2008 WI 57, 310 Wis. 2d 1, 749 N.W.2d 913, 05-2175.

Courts have identified a non-exclusive list of factors to discern whether an individual's expectation of privacy in his or her oral statements is objectively reasonable, including: 1) the volume of the statements; 2) the proximity of other individuals to the speaker; 3) the potential for the communications to be reported; 4) the actions taken by the speaker to ensure his or her privacy; 5) the need to employ technological enhancements for one to hear the speaker's statements; and 6) the place or location where the statements are made. State v. Duchow, 2008 WI 57, 310 Wis. 2d 1, 749 N.W.2d 913, 05-2175.

That a global positioning system (GPS) tracking device did not emit any signal but rather received signals and stored data that could be retrieved later did not take it outside the meaning of a tracking device under sub. (4) (d). It is not rational to limit the admission of tracking information based on whether it is obtained in real time by a signal or at a later time by direct access to the device. State v. Sveum, 2009 WI App 81, 319 Wis. 2d 498, 769 N.W.2d 53, 08-0658. Affirmed on other grounds. 2010 WI 92, 328 Wis. 2d 369; 787 N.W.2d 317, 08-0658.

968.28 Application for court order to intercept communications. The attorney general together with the district attorney of any county may approve a request of an investigative or law enforcement officer to apply to the chief judge of the judicial administrative district for the county where the interception is to take place for an order authorizing or approving the interception of wire, electronic or oral communications. The chief judge may under s. 968.30 grant an order authorizing or approving the interception of wire, electronic or oral communications by investigative or law enforcement officers having responsibility for the investigation of the offense for which the application is made. The authorization shall be permitted only if the interception may provide or has provided evidence of the commission of the offense of homicide, felony murder, kidnapping, commercial gambling, bribery, extortion, dealing in controlled substances or controlled substance analogs, a computer crime that is a felony under s. 943.70, sexual exploitation of a child under s. 948.05, trafficking of a child under s. 948.051, child enticement under s. 948.07, use of a computer to facilitate a child sex crime under s. 948.075, or soliciting a child for prostitution under s. 948.08, or any conspiracy to commit any of the foregoing offenses.

History: 1971 c. 219; 1977 c. 449; 1983 a. 438; 1987 a. 399; 1995 a. 448; 2011 a. 271.

The authorization of a wiretap for offenses not enumerated in this section did not warrant suppression of the evidence obtained from the wiretap when the order included both enumerated and non-enumerated offenses and contained sufficient probable cause for the enumerated offenses, the evidence obtained by wiretap was for enumerated offenses, and charges were brought only for enumerated offenses. State v. House, 2007 WI 79, 302 Wis. 2d 1, 734 N.W.2d 140, 05-2202.

968.29 Authorization for disclosure and use of intercepted wire, electronic or oral communications. **(1)** Any investigative or law enforcement officer who, by any means authorized by ss. 968.28 to 968.37 or 18 USC 2510 to 2520, has obtained knowledge of the contents of any wire, electronic or oral communication, or evidence derived therefrom, may disclose the contents to another investigative or law enforcement officer only to the extent that the disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.

(2) Any investigative or law enforcement officer who, by any means authorized by ss. 968.28 to 968.37 or 18 USC 2510 to 2520, has obtained knowledge of the contents of any wire, electronic or oral communication or evidence derived therefrom may use the contents only to the extent the use is appropriate to the proper performance of the officer's official duties.

(3) (a) Any person who has received, by any means authorized by ss. 968.28 to 968.37 or 18 USC 2510 to 2520 or by a like statute of any other state, any information concerning a wire, electronic or oral communication or evidence derived therefrom intercepted in accordance with ss. 968.28 to 968.37, may disclose the contents of that communication or that derivative evidence only while giving testimony under oath or affirmation in any proceeding in any court or before any magistrate or grand jury in this state, or in any court of the United States or of any state, or in any federal or state grand jury proceeding.

(b) In addition to the disclosure provisions of par. (a), any person who has received, in the manner described under s. 968.31 (2) (b), any information concerning a wire, electronic or oral communication or evidence derived therefrom, may disclose the contents of that communication or that derivative evidence while giving testimony under oath or affirmation in any proceeding described in par. (a) in which a person is accused of any act constituting a felony, and only if the party

who consented to the interception is available to testify at the proceeding or if another witness is available to authenticate the recording.

(4) No otherwise privileged wire, electronic or oral communication intercepted in accordance with, or in violation of, ss. 968.28 to 968.37 or 18 USC 2510 to 2520, may lose its privileged character.

(5) When an investigative or law enforcement officer, while engaged in intercepting wire, electronic or oral communications in the manner authorized, intercepts wire, electronic or oral communications relating to offenses other than those specified in the order of authorization or approval, the contents thereof, and evidence derived therefrom, may be disclosed or used as provided in subs. (1) and (2). The contents and any evidence derived therefrom may be used under sub. (3) when authorized or approved by the judge who acted on the original application where the judge finds on subsequent application, made as soon as practicable but no later than 48 hours, that the contents were otherwise intercepted in accordance with ss. 968.28 to 968.37 or 18 USC 2510 to 2520 or by a like statute.

History: 1971 c. 40 ss. 91, 93; 1987 a. 399; 1989 a. 121, 359; 1993 a. 98; 1995 a. 30.

Evidence of intercepted oral or wire communications can be introduced only if the interception was authorized under s. 968.30; consent by one party to the communication is not sufficient. State ex rel. Arnold v. County Court, 51 Wis. 2d 434, 187 N.W.2d 354 (1971).

Although one-party consent tapes are lawful, they are not authorized by ss. 968.28 to 968.33 and therefore the contents cannot be admitted as evidence in chief, but s. 968.29 (3) does not prohibit giving such tapes to the state. State v. Waste Management of Wisconsin, Inc. 81 Wis. 2d 555, 261 N.W.2d 147 (1977).

Although a taped telephone conversation was obtained without a court order, the defendant opened the door to the tape's admission by extensive reference to the tape transcript during his case-in-chief. State v. Albrecht, 184 Wis. 2d 287, 516 N.W.2d 776 (Ct. App. 1994).

Sub. (2) authorizes prosecutors to include intercepted communications in a criminal complaint. A prosecutor is a law enforcement officer under sub. (2), and preparation of complaints is within the prosecutor's official duties. State v. Gilmore, 193 Wis. 2d 403, 535 N.W.2d 21 (Ct. App. 1995).

The state may incorporate intercepted communications in a criminal complaint if the complaint is filed under seal. Unilateral public disclosure of such communications in a complaint while not authorized does not subject the communication to suppression, but may entitle the defendant to remedies under s. 968.31. State v. Gilmore, 201 Wis. 2d 820, 549 N.W.2d 401 (1996), 94-0123.

The state may use one-party consent recordings of criminal activity, the disclosure of which is not authorized under sub. (3) (b), if the evidence inadvertently falls within the "plain hearing" of law enforcement officers conducting authorized surveillance. State v. Gil, 208 Wis. 2d 531, 561 N.W.2d 760 (Ct. App. 1997), 95-3347.

Since interception by government agents of an informant's telephone call was exclusively done by federal agents and was lawful under federal law, Wisconsin law did not govern its admissibility into evidence in a federal prosecution, notwithstanding that the telephone call may have been a privileged communication under Wisconsin law. United States v. Beni, 397 F. Supp. 1086.

968.30 Procedure for interception of wire, electronic or oral communications. (1) Each application for an order authorizing or approving the interception of a wire, electronic or oral communication shall be made in writing upon oath or affirmation to the court and shall state the applicant's authority to make the application and may be upon personal knowledge or information and belief. Each application shall include the following information:

(a) The identity of the investigative or law enforcement officer making the application, and the officers authorizing the application.

(b) A full and complete statement of the facts and circumstances relied upon by the applicant, to justify the applicant's belief that an order should be issued, including:

1. Details of the particular offense that has been, is being, or is about to be committed;

2. A particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted;

3. A particular description of the type of communications sought to be intercepted; and

4. The identity of the person, if known, committing the offense and whose communications are to be intercepted.

(c) A full and complete statement whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous.

(d) A statement of the period of time for which the interception is required to be maintained. If the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been obtained, a particular description of facts establishing probable cause to believe that additional communications for the same type will occur thereafter.

(e) A full and complete statement of the facts concerning all previous applications known to the individual authorizing and making the application, made to any court for authorization to intercept, or for approval of interceptions of, wire, electronic or oral communications involving any of the same persons, facilities or places specified in the application, and the action taken by the court on each such application; and

(f) Where the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results.

(2) The court may require the applicant to furnish additional testimony or documentary evidence under oath or affirmation in support of the application. Oral testimony shall be reduced to writing.

(3) Upon the application the court may enter an ex parte order, as requested or as modified, authorizing or approving interception of wire, electronic or oral communications, if the court determines on the basis of the facts submitted by the applicant that all of the following exist:

(a) There is probable cause for belief that an individual is committing, has committed, or is about to commit a particular offense enumerated in s. 968.28.

(b) There is probable cause for belief that particular communications concerning that offense will be obtained through such interception.

(c) Other investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous.

(d) There is probable cause for belief that the facilities from which, or the place where, the wire, electronic or oral communications are to be intercepted are being used, or are about to be used, in connection with the commission of the offense, or are leased to, listed in the name of, or commonly used by the person.

(4) Each order authorizing or approving the interception of any wire, electronic or oral communication shall specify:

(a) The identity of the person, if known, whose communications are to be intercepted;

(b) The nature and location of the communications facilities which, or the place where authority to intercept is granted and the means by which such interceptions shall be made;

(c) A particular description of the type of communication sought to be intercepted and a statement of the particular offense to which it relates;

(d) The identity of the agency authorized to intercept the communications and of the person authorizing the application; and

(e) The period of time during which such interception is authorized, including a statement whether or not the interception shall automatically terminate when the described communication has been first obtained.

(5) No order entered under this section may authorize or approve the interception of any wire, electronic or oral communication for any period longer than is necessary to achieve the objective of the authorization, nor in any event longer than 30 days. The 30-day period begins on the earlier of the day on which the investigative or law enforcement officer first begins to conduct an interception under the order or 10 days after the order is entered. Extensions of an order may be granted, but only upon application for an extension made in accordance with sub. (1) and the court making the findings required by sub. (3). The period of extension shall be no longer than the authorizing judge deems necessary to achieve the purposes for which it was granted and in no event be for longer than 30 days. Every order and extension thereof shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this chapter, and must terminate upon attainment of the authorized objective, or in any event in 30 days. In the event the intercepted communication is in a code or foreign language, and an expert in that foreign language or code is not reasonably available during the interception period, minimization may be accomplished as soon as practicable after the interception.

(6) Whenever an order authorizing interception is entered pursuant to ss. 968.28 to 968.33, the order may require reports to be made to the court which issued the order showing what progress has been made toward achievement of the authorized objective and the need for continued interception. Such reports shall be made at such intervals as the court requires.

(7) (a) The contents of any wire, electronic or oral communication intercepted by any means authorized by ss. 968.28 to 968.37 shall, if possible, be recorded on tape or wire or other comparable device. The recording of the contents of any wire, electronic or oral communication under this subsection shall be done in such way as will protect the recording from editing or other alterations. Immediately upon the expiration of the period of the order or extensions thereof all such recordings and records of an intercepted wire, electronic or oral communication shall be filed with the court issuing the order and the court shall order the same to be sealed. Custody of the recordings and records shall be wherever the judge handling the application shall order. They shall not be destroyed except upon an order of the issuing or denying judge and in any event shall be properly kept and preserved for 10 years. Duplicate recordings and other records may be made for use or disclosure pursuant to the provisions for investigations under s. 968.29 (1) and (2). The presence of the seal provided for by this subsection, or a satisfactory explanation for the absence thereof, shall be a prerequisite for the use or disclosure of the contents of any wire, electronic or oral communication or evidence derived therefrom under s. 968.29 (3).

(b) Applications made and orders granted under ss. 968.28 to 968.33 together with all other papers and records in connection therewith shall be ordered sealed by the court. Custody of the applications, orders and other papers and records shall be wherever the judge shall order. Such applications and orders shall be disclosed only upon a showing of good cause before the judge and shall not be destroyed except on order of the issuing or denying judge, and in any event shall be kept for 10 years.

(c) Any violation of this subsection may be punished as contempt of court.

(d) Within a reasonable time but not later than 90 days after the filing of an application for an order of approval under par. (b) which is denied or the termination of the period of an order or extensions thereof, the issuing or denying judge shall cause to be served on the persons named in the order or the application and such other parties to intercepted communications as the judge determines is in the interest of justice, an inventory which shall include notice of:

1. The fact of the entry of the order or the application.

2. The date of the entry and the period of authorized, approved or disapproved interception, or the denial of the application.

3. The fact that during the period wire, electronic or oral communications were or were not intercepted.

(e) The judge may, upon the filing of a motion, make available to such person or the person's counsel for inspection in the manner provided in ss. 19.35 and 19.36 such portions of the intercepted communications, applications and orders as the judge determines to be in the interest of justice. On an ex parte showing of good cause to the issuing judge the serving of the inventory required by this subsection may be postponed. The judge shall review such postponement at the end of 60 days and good cause shall be shown prior to further postponement.

(8) The contents of any intercepted wire, electronic or oral communication or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing or other proceeding in any court of this state unless each party, not less than 10 days before the trial, hearing or proceeding, has been furnished with a copy of the court order, and accompanying application, under which the interception was authorized or approved. This 10-day period may be waived by the judge if he or she finds that it was not possible to furnish the party with the above information 10 days before the trial, hearing or proceeding and that the party will not be prejudiced by the delay in receiving the information.

(9) (a) Any aggrieved person in any trial, hearing or proceeding in or before any court, department, officer, agency, regulatory body or other authority of this state, or a political subdivision thereof, may move before the trial court or the court granting the original warrant to suppress the contents of any intercepted wire, electronic or oral communication, or evidence derived therefrom, on the grounds that the communication was unlawfully intercepted; the order of authorization or approval under which it was intercepted is insufficient on its face; or the

interception was not made in conformity with the order of authorization or approval. The motion shall be made before the trial, hearing or proceeding unless there was no opportunity to make the motion or the person was not aware of the grounds of the motion. If the motion is granted, the contents of the intercepted wire, electronic or oral communication, or evidence derived therefrom, shall be treated as having been obtained in violation of ss. 968.28 to 968.37. The judge may, upon the filing of the motion by the aggrieved person, make available to the aggrieved person or his or her counsel for inspection such portions of the intercepted communication or evidence derived therefrom as the judge determines to be in the interest of justice.

(b) In addition to any other right to appeal, the state shall have the right to appeal:

1. From an order granting a motion to suppress made under par. (a) if the attorney general or district attorney certifies to the judge or other official granting such motion that the appeal is not entered for purposes of delay and shall be diligently prosecuted as in the case of other interlocutory appeals or under such rules as the supreme court adopts; or

2. From an order denying an application for an order of authorization or approval, and such an appeal shall be ex parte and shall be in camera in preference to all other pending appeals in accordance with rules promulgated by the supreme court.

(10) Nothing in ss. 968.28 to 968.375 shall be construed to allow the interception of any wire, electronic, or oral communication between an attorney and a client.

History: 1971 c. 40 s. 93; 1981 c. 335 s. 26; 1987 a. 399; 1993 a. 486; 2009 a. 349.

Although a taped telephone conversation was obtained without a court order, the defendant opened the door to the tape's admission by extensive reference to the tape transcript during his case-in-chief. State v. Albrecht, 184 Wis. 2d 287, 516 N.W.2d 776 (Ct. App. 1994).

The state may incorporate intercepted communications in a criminal complaint if the complaint is filed under seal. Unilateral public disclosure of such communications in a complaint while not authorized does not subject the communication to suppression, but may entitle the defendant to remedies under s. 968.31. State v. Gilmore, 201 Wis. 2d 820, 549 N.W.2d 401 (1996), 94-0123.

Suppression of wire communications is reserved for those that are illegally intercepted and does not apply to legally intercepted communications that are improperly disclosed. State v. Gilmore, 201 Wis. 2d 820, 549 N.W.2d 401 (1996), 94-0123.

Not every failure to follow wiretapping statutes makes an interception unlawful such that suppression is required. Whether a violation of the wiretapping statutes requires suppression depends upon whether the statutory purpose has been achieved despite the violation. The authorization of a wiretap for offenses not enumerated in this section did not warrant suppression of the evidence obtained from the wiretap when the order included both enumerated and non-enumerated offenses, it contained sufficient probable cause for the enumerated offenses, the evidence obtained by wiretap was for enumerated offenses, and charges were brought only for enumerated offenses. State v. House, 2007 WI 79, 302 Wis. 2d 1, 734 N.W.2d 140, 05-2202.

Sub. (10) does not require that all intercepts by a county jail are unlawful because the telephone intercept system has the potential to record inmates' calls to their attorneys. State v. Christensen, 2007 WI App 170, 304 Wis. 2d 147, 737 N.W.2d 38, 06-1565.

Communications privacy: A legislative perspective. Kastenmeier, Leavy & Beier. 1989 WLR 715 (1989).

968.31 Interception and disclosure of wire, electronic or oral communications prohibited. (1) Except as otherwise specifically provided in ss. 196.63 or 968.28 to 968.30, whoever commits any of the acts enumerated in this section is guilty of a Class H felony:

(a) Intentionally intercepts, attempts to intercept or procures any other person to intercept or attempt to intercept, any wire, electronic or oral communication.

(b) Intentionally uses, attempts to use or procures any other person to use or attempt to use any electronic, mechanical or other device to intercept any oral communication.

(c) Discloses, or attempts to disclose, to any other person the contents of any wire, electronic or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire, electronic or oral communication in violation of this section or under circumstances constituting violation of this section.

(d) Uses, or attempts to use, the contents of any wire, electronic or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire, electronic or oral communication in violation of this section or under circumstances constituting violation of this section.

(e) Intentionally discloses the contents of any oral, electronic or wire communication obtained by authority of ss. 968.28, 968.29 and 968.30, except as therein provided.

(f) Intentionally alters any wire, electronic or oral communication intercepted on tape, wire or other device.

(2) It is not unlawful under ss. 968.28 to 968.37:

(a) For an operator of a switchboard, or an officer, employee or agent of any provider of a wire or electronic communication service, whose facilities are used in the transmission of a wire or electronic communication to intercept, disclose or use that communication in the normal course of his or her employment while engaged in any activity which is a necessary incident to the rendition of his or her service or to the protection of the rights or property of the provider of that service, except that a provider of a wire or electronic communication service shall not utilize service observing or random monitoring except for mechanical or service quality control checks.

(b) For a person acting under color of law to intercept a wire, electronic or oral communication, where the person is a party to the communication or one of the parties to the communication has given prior consent to the interception.

(c) For a person not acting under color of law to intercept a wire, electronic or oral communication where the person is a party to the communication or where one of the parties to the communication has given prior consent to the interception unless the communication is intercepted for the purpose of committing any criminal or tortious act in violation of the constitution or laws of the United States or of any state or for the purpose of committing any other injurious act.

(d) For any person to intercept or access an electronic communication made through an electronic communication system that is configured so that the electronic communication is readily accessible to the general public.

(e) For any person to intercept any radio communication that is transmitted:

1. By any station for the use of the general public, or that relates to ships, aircraft, vehicles or persons in distress;

2. By any governmental, law enforcement, civil defense, private land mobile or public safety communications system, including police and fire, readily accessible to the general public;

3. By a station operating on an authorized frequency within the bands allocated to the amateur, citizens band or general mobile radio services; or

4. By any marine or aeronautical communications system.

(f) For any person to engage in any conduct that:

1. Is prohibited by section 633 of the communications act of 1934; or

2. Is excepted from the application of section 705 (a) of the communications act of 1934 by section 705 (b) of that act.

(g) For any person to intercept any wire or electronic communication the transmission of which is causing harmful interference to any lawfully operating station or consumer electronic equipment, to the extent necessary to identify the source of the interference.

(h) For users of the same frequency to intercept any radio communication made through a system that utilizes frequencies monitored by individuals engaged in the provision or the use of the system, if the communication is not scrambled or encrypted.

(i) To use a pen register or a trap and trace device as authorized under ss. 968.34 to 968.37; or

(j) For a provider of electronic communication service to record the fact that a wire or electronic communication was initiated or completed in order to protect the provider, another provider furnishing service toward the completion of the wire or electronic communication, or a user of that service, from fraudulent, unlawful or abusive use of the service.

(2m) Any person whose wire, electronic or oral communication is intercepted, disclosed or used in violation of ss. 968.28 to 968.37 shall have a civil cause of action against any person who intercepts, discloses or uses, or procures any other person to intercept, disclose, or use, the communication, and shall be entitled to recover from any such person:

(a) Actual damages, but not less than liquidated damages computed at the rate of $100 a day for each day of violation or $1,000, whichever is higher;

(b) Punitive damages; and

(c) A reasonable attorney's fee and other litigation costs reasonably incurred.

(3) Good faith reliance on a court order or on s. 968.30 (7) shall constitute a complete defense to any civil or criminal action brought under ss. 968.28 to 968.37.

History: 1971 c. 40 ss. 92, 93; 1977 c. 272; 1985 a. 297; 1987 a. 399; 1989 a. 56; 1991 a. 294; 1997 a. 283; 2001 a. 109.

The testimony of an undercover police officer who was carrying a concealed eavesdropping device under sub. (2) is not the product of the eavesdropping and is admissible even assuming the eavesdropping was unconstitutional. State v. Smith, 72 Wis. 2d 711, 242 N.W.2d 184 (1976).

An individual, who volunteers to aid the authorities in a lawful, albeit surreptitious, investigation does not commit an injury against the investigated party under sub. (2) (c) simply by participation. Undercover informants must surely realize that evidence they receive may be potentially harmful to the target of the investigation, but this is not the type of injurious act contemplated by the statute. State v. Maloney, 2005 WI 74, 281 Wis. 2d 595, 698 N.W.2d 583, 03-2180.

Consent under sub. (2) (b) may be express or implied in fact from surrounding circumstances indicating that the person knowingly agreed to the surveillance. In the prison setting, an inmate has given implied consent to electronic surveillance when he or she has meaningful notice that a telephone call is subject to monitoring and recording and nonetheless proceeds with the call. State v. Riley, 2005 WI App 203, 287 Wis. 2d 244, 704 N.W.2d 635, 04-2321.

If a warrantless intercept complies with sub. (2) (b), commonly referred to as the one-party consent exception, the contents of the intercept may be disclosed in a felony proceeding. The phrase "person acting under color of law" does not exclude law enforcement officers. State v. Ohlinger, 2009 WI App 44, 317 Wis. 2d 445, 767 N.W.2d 336, 08-0135.

The use of the "called party control device" by the communications common carrier to trace bomb scares and other harassing telephone calls would not violate any law if used with the consent of the receiving party. 60 Atty. Gen. 90.

968.32 Forfeiture of contraband devices. Any electronic, mechanical, or other intercepting device used in violation of s. 968.31 (1) may be seized as contraband by any peace officer and forfeited to this state in an action by the department of justice under ch. 778.

History: 1979 c. 32 s. 92 (8).

968.33 Reports concerning intercepted wire or oral communications. In January of each year, the department of justice shall report to the administrative office of the United States courts such information as is required to be filed by 18 USC 2519. A duplicate copy of the reports shall be filed, at the same time, with the office of the director of state courts.

History: 1973 c. 12 s. 37; 1977 c. 187 s. 135; Sup. Ct. Order, 88 Wis. 2d xiii (1979).

968.34 Use of pen register or trap and trace device restricted. (1) Except as provided in this section, no person may install or use a pen register or a trap and trace device without first obtaining a court order under s. 968.36 or 18 USC 3123 or 50 USC 1801 to 1811.

(2) The prohibition of sub. (1) does not apply with respect to the use of a pen register or a trap and trace device by a provider of electronic or wire communication service:

(a) Relating to the operation, maintenance and testing of a wire or electronic communication service or to the protection of the rights or property of the provider, or to the protection of users of that service from abuse of service or unlawful use of service;

(b) To record the fact that a wire or electronic communication was initiated or completed in order to protect the provider, another provider furnishing service toward the completion of the wire communication, or a user of that service, from fraudulent, unlawful or abusive use of service; or

(c) Where the consent of the user of that service has been obtained.

(2m) The prohibition of sub. (1) does not apply to a telephone caller identification service authorized under s. 196.207 (2).

(3) Whoever knowingly violates sub. (1) may be fined not more than $10,000 or imprisoned for not more than 9 months or both.

History: 1987 a. 399; 1991 a. 268, 269; 1997 a. 283; 2001 a. 109.

968.35 Application for an order for a pen register or a trap and trace device. (1) The attorney general or a district attorney may make application for an order or an extension of an order under s. 968.36 authorizing or approving the installation and use of a pen register or a trap and trace device, in writing under oath or equivalent affirmation, to a circuit court for the county where the device is to be located.

(2) An application under sub. (1) shall include all of the following:

(a) The identity of the person making the application and the identity of the law enforcement agency conducting the investigation.

(b) A certification by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by that agency.

History: 1987 a. 399.

968.36 Issuance of an order for a pen register or a trap and trace device. (1) Upon an application made under s. 968.35, the court shall enter an ex parte order authorizing the installation and use of a pen register or a trap and trace device within the jurisdiction of the court if the court finds that the applicant has certified to the court that the information likely to be obtained by the installation and use is relevant to an ongoing criminal investigation.

(2) An order issued under this section shall do all of the following:

(a) Specify the identity, if known, of the person to whom is leased or in whose name is listed the telephone line to which the pen register or trap and trace device is to be attached.

(b) Specify the identity, if known, of the person who is the subject of the criminal investigation.

(c) Specify the number and, if known, the physical location of the telephone line to which the pen register or trap and trace device is to be attached and, in the case of a trap and trace device, the geographic limits of the trap and trace order.

(d) Provide a statement of the offense to which the information likely to be obtained by the pen register or trap and trace device relates.

(e) Direct, upon the request of the applicant, the furnishing of information, facilities and technical assistance necessary to accomplish the installation of the pen register or trap and trace device under s. 968.37.

(3) An order issued under this section shall authorize the installation and use of a pen register or a trap and trace device for a period not to exceed 60 days.

(4) Extensions of the order may be granted, but only upon an application for an order under s. 968.35 and upon the judicial finding required by sub. (1). The period of extension shall be for a period not to exceed 60 days.

(5) An order authorizing or approving the installation and use of a pen register or a trap and trace device shall direct that:

(a) The order be sealed until otherwise ordered by the court; and

(b) The person owning or leasing the line to which the pen register or a trap and trace device is attached, or who has been ordered by the court to provide assistance to the applicant, not disclose the existence of the pen register or trap and trace device or the existence of the investigation to the listed subscriber, or to any other person, unless or until otherwise ordered by the court.

History: 1987 a. 399.

968.37 Assistance in the installation and use of a pen register or trap and trace device. (1) Upon the request of the attorney general, a district attorney or an officer of a law enforcement agency authorized to install and use a pen register under ss. 968.28 to 968.37, a provider of wire or electronic communication service, landlord, custodian or other person shall furnish the investigative or law enforcement officer forthwith all information, facilities and technical assistance necessary to accomplish the installation of the pen register unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place, if the assistance is directed by a court order under s. 968.36 (5) (b).

(2) Upon the request of the attorney general, a district attorney or an officer of a law enforcement agency authorized to receive the results of a trap and trace device under ss. 968.28 to 968.37, a provider of a wire or electronic communication service, landlord, custodian or other person shall install the device forthwith on the appropriate line and shall furnish the investigative or law enforcement officer all additional information, facilities and technical assistance including installation and operation of the device unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place, if the installation and assistance is directed by a court order under s. 968.36 (5) (b). Unless otherwise ordered by the court, the results of the trap and trace device shall be furnished to the officer of a law enforcement agency, designated by the court, at reasonable intervals during regular business hours for the duration of the order.

(3) A provider of a wire or electronic communication service, landlord, custodian or other person who furnishes facilities or technical assistance under this section shall be reasonably compensated for the reasonable expenses incurred in providing the facilities and assistance.

(4) No cause of action may lie in any court against any provider of a wire or electronic communication service, its officers, employees or agents or other specified persons for providing information, facilities or assistance in accordance with the terms of a court order under s. 968.36.

(5) A good faith reliance on a court order, a legislative authorization or a statutory authorization is a complete defense against any civil or criminal action brought under ss. 968.28 to 968.37.

History: 1987 a. 399.

968.375 Subpoenas and warrants for records or communications of customers of an electronic communication service or remote computing service provider. (2) JURISDICTION. For purposes of this section, a person is considered to be doing business in this state and is subject to service and execution of process from this state, if the person makes a contract with or engages in a terms of service agreement with any other person, whether or not the other person is a resident of this state, and any part of the performance of the contract or provision of service takes place within this state on any occasion.

(3) SUBPOENA. (a) Upon the request of the attorney general or a district attorney and upon a showing of probable cause, a judge may issue a subpoena requiring a person who provides electronic communication service or remote computing service to disclose within a reasonable time that is established in the subpoena a record or other information pertaining to a subscriber or customer of the service, including any of the following relating to the subscriber or customer:

1. Name.

2. Address.

3. Local and long distance telephone connection records, or records of session times and durations.

4. Length of service, including start date, and types of service utilized.

5. Telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address.

6. Means and source of payment for the electronic communication service or remote computing service, including any credit card or bank account number.

(b) A subpoena under this subsection may not require disclosure of the contents of communications.

(4) WARRANT. Upon the request of the attorney general or a district attorney and upon a showing of probable cause, a judge may issue a warrant requiring a person who provides electronic communication service or remote computing service to disclose within a reasonable time that is established in the warrant any of the following:

(a) The content of a wire or electronic communication that is in electronic storage in an electronic communications system or held or maintained by a provider of remote computing service.

(b) A record or information described under sub. (3) (a).

(5) BASIS, APPLICATION FOR, AND ISSUANCE OF SUBPOENA OR WARRANT. Section 968.12 (2) and (3) applies to the basis and application for, and issuance of, a subpoena under sub. (3) or a warrant under sub. (4) as it applies to the basis and application for, and issuance of, a search warrant under s. 968.12.

(6) MANNER OF SERVICE. A subpoena or warrant issued under this section may be served in the manner provided for serving a summons under s. 801.11 (5) or, if delivery can reasonably be proved, by United States mail, delivery service, telephone facsimile, or electronic transmission.

(7) TIME FOR SERVICE. A subpoena or warrant issued under this section shall be served not more than 5 days after the date of issuance.

(9) MOTION TO QUASH. The person on whom a subpoena or warrant issued under this section is served may file a motion to quash the subpoena or warrant with the judge who issued the subpoena or warrant. If the person files the motion within the time for production of records or information, the judge shall hear and decide the motion within 8 days after the motion is filed.

(10) LAW ENFORCEMENT PRESENCE NOT REQUIRED. The presence of a law enforcement officer is not required for service or execution of a subpoena or warrant issued under this section.

(11) RETURN. A subpoena or warrant issued under this section shall be returned to the court not later than 5 days after the records or information described in the subpoena or warrant are received by the attorney general, district attorney, or law enforcement agency, whichever is designated in the subpoena or warrant.

(12) SECRECY. A subpoena or warrant issued under this section shall be issued with all practicable secrecy and the request, complaint, affidavit, or testimony upon which it is based may not be filed with the clerk or made public until the subpoena or warrant has been executed and returned to the court. The judge may issue an order sealing the subpoena or warrant and the request, complaint, affidavit, or testimony upon which it is based. The judge may issue an order prohibiting the person on whom the subpoena or warrant is served from disclosing the existence of the subpoena or warrant to the customer or subscriber unless the judge subsequently authorizes such disclosure.

(13) IMMUNITY. A person on whom a subpoena or warrant issued under this section is served is immune from civil liability for acts or omissions in providing records or information, facilities, or assistance in accordance with the terms of the subpoena or warrant.

(14) TECHNICAL IRREGULARITIES. Evidence disclosed under a subpoena or warrant issued under this section shall not be suppressed because of technical irregularities or errors not affecting the substantial rights of the defendant.

(15) DISCLOSURE WITHOUT SUBPOENA OR WARRANT. A provider of electronic communication or remote computing service may disclose records or information described under sub. (3) (a) of a customer or subscriber or the content of communications of a customer or subscriber described under sub. (4) without a subpoena or warrant if any of the following applies:

(a) The customer or subscriber provides consent for the particular disclosure.

(b) The provider of electronic communication or remote computing service believes in good faith that an emergency involving the danger of death or serious physical injury to any person exists and that disclosure of the information is required to prevent the death or injury or to mitigate the injury.

History: 2009 a. 349; 2011 a. 260 s. 81.

968.38 Testing for HIV infection and certain diseases. (1) In this section:

(a) "Health care professional" means a physician or a registered nurse or licensed practical nurse who is licensed under ch. 441.

(b) "HIV" means any strain of human immunodeficiency virus, which causes acquired immunodeficiency syndrome.

(bc) "HIV test" has the meaning given in s. 252.01 (2m).

(bm) "Physician" has the meaning given in s. 448.01 (5).

(c) "Sexually transmitted disease" has the meaning given in s. 252.11 (1).

(d) "Significant exposure" has the meaning given in s. 252.15 (1) (em).

(2) In a criminal action under s. 940.225, 948.02, 948.025, 948.05, 948.06, 948.085, or 948.095, if all of the following apply, the district attorney shall apply to the circuit court for his or her county to order the defendant to submit to an HIV test and to a test or a series of tests to detect the presence of a sexually transmitted disease, each of which tests shall be administered by a health care professional, and to disclose the results of the test or tests as specified in sub. (4) (a) to (c):

(a) The district attorney has probable cause to believe that the alleged victim or victim has had contact with body fluid of the defendant that constitutes a significant exposure. If the defendant is convicted or found not guilty by reason of mental disease or defect, this paragraph does not apply.

(b) The alleged victim or victim who is not a minor or the parent or guardian of the alleged victim or victim who is a minor requests the district attorney to so apply for an order.

(2m) In a criminal action under s. 946.43 (2m), the district attorney shall apply to the circuit court for his or her county for an order requiring the defendant to submit to a test or a series of tests administered by a health care professional to detect the presence of communicable diseases and to disclose the results

of the test or tests as specified in sub. (5) (a) to (c), if all of the following apply:

(a) The district attorney has probable cause to believe that the act or alleged act of the defendant that constitutes a violation of s. 946.43 (2m) carried a potential for transmitting a communicable disease to the victim or alleged victim and involved the defendant's blood, semen, vomit, saliva, urine or feces or other bodily substance of the defendant.

(b) The alleged victim or victim who is not a minor or the parent or guardian of the alleged victim or victim who is a minor requests the district attorney to apply for an order.

(3) The district attorney may apply under sub. (2) or (2m) for an order at any of the following times, and, within those times, shall do so as soon as possible so as to enable the court to provide timely notice:

(a) At or after the initial appearance and prior to the preliminary examination.

(b) If the defendant waives the preliminary examination, at any time after the court binds the defendant over for trial and before a verdict is rendered.

(c) At any time after the defendant is convicted or is found not guilty by reason of mental disease or defect.

(d) If the court has determined that the defendant is not competent to proceed under s. 971.14 (4) and suspended the criminal proceedings, at any time after the determination that the defendant is not competent to proceed.

(4) The court shall set a time for a hearing on the matter under sub. (2) during the preliminary examination, if sub. (3) (a) applies; after the defendant is bound over for trial and before a verdict is rendered, if sub. (3) (b) applies; after conviction or a finding of not guilty by reason of mental disease or defect, if sub. (3) (c) applies; or, subject to s. 971.13 (4), after the determination that the defendant is not competent, if sub. (3) (d) applies. The court shall give the district attorney and the defendant notice of the hearing at least 72 hours prior to the hearing. The defendant may have counsel at the hearing, and counsel may examine and cross-examine witnesses. If the court finds probable cause to believe that the victim or alleged victim has had contact with body fluid of the defendant that constitutes a significant exposure, the court shall order the defendant to submit to an HIV test and to a test or a series of tests to detect the presence of a sexually transmitted disease. The tests shall be performed by a health care professional. The court shall require the health care professional who performs the test to disclose the test results to the defendant, to refrain from making the test results part of the defendant's permanent medical record, and to disclose the results of the test to any of the following:

(a) The alleged victim or victim, if the alleged victim or victim is not a minor.

(b) The parent or guardian of the alleged victim or victim, if the alleged victim or victim is a minor.

(c) The health care professional who provides care to the alleged victim or victim, upon request by the alleged victim or victim or, if the alleged victim or victim is a minor, by the parent or guardian of the alleged victim or victim.

(5) The court shall set a time for a hearing on the matter under sub. (2m) during the preliminary examination, if sub. (3) (a) applies; after the defendant is bound over for trial and before a verdict is rendered, if sub. (3) (b) applies; after conviction or a finding of not guilty by reason of mental disease or defect, if sub. (3) (c) applies; or, subject to s. 971.13 (4), after the determination that the defendant is not competent, if sub. (3) (d) applies. The court shall give the district attorney and the defendant notice of the hearing at least 72 hours prior to the hearing. The defendant may have counsel at the hearing, and counsel may examine and cross-examine witnesses. If the court finds probable cause to believe that the act or alleged act of the defendant that constitutes a violation of s. 946.43 (2m) carried a potential for transmitting a communicable disease to the victim or alleged victim and involved the defendant's blood, semen, vomit, saliva, urine or feces or other bodily substance of the defendant, the court shall order the defendant to submit to a test or a series of tests administered by a health care professional to detect the presence of any communicable disease that was potentially transmitted by the act or alleged act of the defendant. The court shall require the health care professional who performs the test to disclose the test results to the defendant. The court shall require the health care professional who performs the test to refrain from making the test results part of the defendant's permanent medical record and to disclose the results of the test to any of the following:

(a) The alleged victim or victim, if the alleged victim or victim is not a minor.

(b) The parent or guardian of the alleged victim or victim, if the alleged victim or victim is a minor.

(c) The health care professional who provides care to the alleged victim or victim, upon request by the alleged victim or victim or, if the alleged victim or victim is a minor, by the parent or guardian of the alleged victim or victim.

History: 1991 a. 269; 1993 a. 27, 32, 183, 227, 495; 1995 a. 456; 1997 a. 182; 1999 a. 188; 2005 a. 277; 2009 a. 209.

Acquittal on a charge of sexual intercourse with a minor did not prevent an order for HIV testing following a conviction for sexual assault; the test is probable cause and is not governed by the outcome of the trial. State v. Parr, 182 Wis. 2d 349, 513 N.W.2d 647 (Ct. App. 1994).

968.40 Grand jury. (1) SELECTION OF GRAND JURY LIST. Any judge may, in writing, order the clerk of circuit court to select a grand jury list within a specified reasonable time. The clerk shall select from the prospective juror list for the county the names of not fewer than 75 nor more than 150 persons to constitute the prospective grand juror list. The list shall be kept secret.

(3) EXAMINATION OF PROSPECTIVE JURORS. At the time set for the prospective grand jurors to appear, the judge shall and the district attorney or other prosecuting officer may examine the prospective jurors under oath or affirmation relative to their qualifications to serve as grand jurors and the judge shall excuse those who are disqualified, and may excuse others for any reason which seems proper to the judge.

(4) ADDITIONAL GRAND JURORS. If after such examination fewer than 17 grand jurors remain, additional prospective jurors shall be selected, summoned and examined until there are at least 17 qualified jurors on the grand jury.

(6) TIME GRAND JURORS TO SERVE. Grand jurors shall serve for a period of 31 consecutive days unless more days are necessary to complete service in a particular proceeding. The judge may discharge the grand jury at any time.

(7) ORDERS FILED WITH CLERK. All orders mentioned in this section shall be filed with the clerk of court.

(8) INTERCOUNTY RACKETEERING AND CRIME. When a grand jury is convened pursuant to this section to investigate unlawful activity under s. 165.70, and such activity involves more than one county, including the county where the petition for such grand jury is filed, then if the attorney general approves, all expenses of such proceeding shall be charged to the appropriation under s. 20.455 (1) (d).

History: 1971 c. 125 s. 522 (1); 1977 c. 29 s. 1656 (27); 1977 c. 187 ss. 95, 135; 1977 c. 318; 1977 c. 447 s. 210; 1977 c. 449; Stats. 1977 s. 756.10; 1991 a. 39; Sup. Ct. Order No. 96-08, 207 Wis. 2d xv (1997); Stats. 1997 s. 968.40.

A claim of grand jury discrimination necessitates federal habeas corpus review. Rose v. Mitchell, 443 U.S. 545 (1979).

The grand jury in Wisconsin. Coffey, Richards, 58 MLR 518.

CHAPTER 969

BAIL AND OTHER CONDITIONS OF RELEASE

Cross-reference: See definitions in s. 967.02.

969.001 Definitions. In this chapter:

(1) "Bail" means monetary conditions of release.

(2) "Serious bodily harm" means bodily injury which causes or contributes to the death of a human being or which creates a substantial risk of death or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury.

History: 1981 c. 183; 1987 a. 399.

969.01 Eligibility for release. (1) BEFORE CONVICTION. Before conviction, except as provided in ss. 969.035 and 971.14 (1r), a defendant arrested for a criminal offense is eligible for release under reasonable conditions designed to assure his or her appearance in court, protect members of the community from serious bodily harm, or prevent the intimidation of witnesses. Bail may be imposed at or after the initial appearance only upon a finding by the court that there is a reasonable basis to believe that bail is necessary to assure appearance in court. In determining whether any conditions of release are appropriate, the judge shall first consider the likelihood of the defendant appearing for trial if released on his or her own recognizance.

(2) AFTER CONVICTION. (a) Release pursuant to s. 969.02 or 969.03 may be allowed in the discretion of the trial court after conviction and prior to sentencing or the granting of probation. This paragraph does not apply to a conviction for a 3rd or subsequent violation that is counted as a suspension, revocation, or conviction under s. 343.307, or under s. 940.09 (1) or 940.25 in the person's lifetime, or a combination thereof.

(b) In misdemeanors, release may be allowed upon appeal in the discretion of the trial court.

(c) In felonies, release may be allowed upon appeal in the discretion of the trial court.

(d) The supreme court or a justice thereof or the court of appeals or a judge thereof may allow release after conviction.

(e) Any court or judge or any justice authorized to grant release after conviction for a misdemeanor or felony may, in addition to the powers granted in s. 969.08, revoke the order releasing a defendant.

(3) BAIL FOR WITNESS. If it appears by affidavit that the testimony of a person is material in any felony criminal proceeding and that it may become impracticable to secure the person's presence by subpoena, the judge may require such person to give bail for the person's appearance as a witness. If the witness is not in court, a warrant for the person's arrest may be issued and upon return thereof the court may require the person to give bail as provided in s. 969.03 for the person's appearance as a witness. If the person fails to give bail, the person may be committed to the custody of the sheriff for a period not to exceed 15 days within which time the person's deposition shall be taken as provided in s. 967.04.

(4) CONSIDERATIONS IN SETTING CONDITIONS OF RELEASE. If bail is imposed, it shall be only in the amount found necessary to assure the appearance of the defendant. Conditions of release, other than monetary conditions, may be imposed for the purpose of protecting members of the community from serious bodily harm or preventing intimidation of witnesses. Proper considerations in determining whether to release the defendant without bail, fixing a reasonable amount of bail or imposing other reasonable conditions of release are: the ability of the arrested person to give bail, the nature, number and gravity of the offenses and the potential penalty the defendant faces, whether the alleged acts were violent in nature, the defendant's prior record of criminal convictions and delinquency adjudications, if any, the character, health, residence and reputation of the defendant, the character and strength of the evidence which has been presented to the judge, whether the defendant is currently on probation, extended supervision or parole, whether the defendant is already on bail or subject to other release conditions in other pending cases, whether the defendant has been bound over for trial after a preliminary examination, whether the defendant has in the past forfeited bail or violated a condition of release or was a fugitive from justice at the time of arrest, and the policy against unnecessary detention of the defendant's pending trial.

History: 1977 c. 187; 1979 c. 112; 1981 c. 183; 1993 a. 486; 1995 a. 77; 1997 a. 232, 283; 2009 a. 100, 214.

The trial court exceeded its authority in granting bail to a revoked probationer pending review of a probation revocation. State ex rel. Shock v. DHSS, 77 Wis. 2d 362, 253 N.W.2d 55 (1977).

Habeas corpus is available to persons released on personal recognizance bonds. State ex rel. Wohlfahrt v. Bodette, 95 Wis. 2d 130, 289 N.W.2d 366 (Ct. App. 1980).

The court may impose a monetary condition of release under sub. (2) (b). State v. Barnes, 127 Wis. 2d 34, 377 N.W.2d 624 (Ct. App. 1985).

A warrant under sub. (3) must be supported by probable cause to believe that the testimony of the person is material and that it may become impractical to secure the person's presence by subpoena. State v. Brady, 130 Wis. 2d 443, 388 N.W.2d 151 (1986).

Indigency under this section relates to current economic status and does not involve consideration of whether the defendant is shirking unless the shirking relates to another statutory factor. Cash bail is not prohibited against an indigent convicted misdemeanant who takes an appeal. However, where there is no risk that the indigent misdemeanant will not appear, cash bail is inappropriate. State v. Taylor, 205 Wis. 2d 664, 556 N.W.2d 779 (Ct. App. 1996), 96-0857.

The conditions that a court is authorized to impose under ss. 969.01 and 969.03 govern the release of a defendant from custody and do not apply if the defendant cannot post bond and is not released. A court may impose pretrial, no-contact provisions on incarcerated defendants under s. 940.47 if the terms of that statute are met. State v. Orlik, 226 Wis. 2d 527, 595 N.W.2d 468 (Ct. App. 1999), 98-2826.

Under sub. (1), judges and court commissioners have the power, prior to the filing of a complaint, to release on bail persons arrested for the commission of a felony. 65 Atty. Gen. 102.

The public defender may represent indigent material witnesses subject to s. 969.01 (3) bail provisions so long as there is no conflict of interest with another client, but may not represent indigents in civil forfeiture actions unless that action is reasonably related to one for which an indigent is entitled to counsel. 72 Atty. Gen. 61.

Pretrial release; Wisconsin bail reform. 1971 WLR 594.

The presumption of release in bail decisions. Adelman and Schulenburg. Wis. Law. July 1989.

969.02 Release of defendants charged with misdemeanors. (1) A judge may release a defendant charged with a misdemeanor without bail or may permit the defendant to execute an unsecured appearance bond in an amount specified by the judge.

(2) In lieu of release pursuant to sub. (1), the judge may require the execution of an appearance bond with sufficient solvent sureties, or the deposit of cash in lieu of sureties. If the judge requires a deposit of cash in lieu of sureties, the person making the cash deposit shall be given written notice of the requirements of sub. (6).

(2m) The clerk of circuit court may accept a credit card or debit card, as defined in s. 59.40 (5) (a) and 1. and 2., instead of cash under sub. (2).

(3) In addition to or in lieu of the alternatives under subs. (1) and (2), the judge may:

(a) Place the person in the custody of a designated person or organization agreeing to supervise him or her.

(b) Place restrictions on the travel, association or place of abode of the defendant during the period of release.

(c) Prohibit the defendant from possessing any dangerous weapon.

(d) Impose any other condition deemed reasonably necessary to assure appearance as required or any nonmonetary condition deemed reasonably necessary to protect members of the community from serious bodily harm or prevent intimidation of witnesses, including a condition that the defendant return to custody after specified hours. The charges authorized by s. 303.08 (4) and (5) shall not apply under this section.

(e) If the person is charged with violating a restraining order or injunction issued under s. 813.12 or 813.125, may require the person to participate in mental health treatment, a batterer's intervention program, or individual counseling. The judge shall consider a request by the district attorney or the petitioner, as defined in s. 301.49 (1) (c), in determining whether to issue an order under this paragraph.

NOTE: Par. (e) is created eff. 1-1-14 by 2011 Wis. Act 266.

(4) As a condition of release in all cases, a person released under this section shall not commit any crime.

(4m) Any person who is charged with a misdemeanor and released under this section shall comply with s. 940.49. The person shall be given written notice of this requirement.

(5) Once bail has been given and a charge is pending or is thereafter filed or transferred to another court, the latter court shall continue the original bail in that court subject to s. 969.08.

(6) When a judgment of conviction is entered in a prosecution in which a deposit had been made in accordance with sub. (2), the balance of such deposit, after deduction of the bond costs, shall be applied first to the payment of any restitution ordered under s. 973.20 and then, if ordered restitution is satisfied in full, to the payment of the judgment.

(7) If the complaint against the defendant has been dismissed or if the defendant has been acquitted, the entire sum deposited shall be returned. A deposit under sub. (2) shall be returned to the person who made the deposit, his or her heirs or assigns, subject to sub. (6).

(7m) The restrictions on the application of cash deposits under subs. (6) and (7) do not apply if bail is forfeited under s. 969.13.

(8) In all misdemeanors, bail shall not exceed the maximum fine provided for the offense.

History: 1971 c. 298 ss. 10, 13; 1979 c. 111, 112; 1981 c. 118, 183; 1989 a. 31; 1991 a. 63, 315; 1993 a. 486; 1999 a. 85; 2005 a. 59, 447; 2011 a. 266.

Chapter 969 provides no penalty for the violation of this section. Section 946.49 provides a penalty for failing to comply with the terms of a bond, but there is no penalty where no bond is required. State v. Dawson, 195 Wis. 2d 161, 536 N.W.2d 119 (Ct. App. 1995), 94-2570.

The plain language of sub. (6) requires the circuit court to order the application of the balance of any bond deposit toward the satisfaction of court costs. When the statutes under which costs were assessed provided no authority to waive the costs or to satisfy them by other means, the circuit court erred when it applied pre-sentence incarceration time toward satisfaction of the defendant's court costs. State v. Baker, 2005 WI App 45, 280 Wis. 2d 181, 694 N.W.2d 415, 04-0590.

"Release" refers to the defendant posting the bond, be it signature or cash, and need not be accompanied by the defendant's physical departure from the jailhouse. State v. Dewitt, 2008 WI App 134, 313 Wis. 2d 794, 758 N.W.2d 201, 07-2869.

969.03 Release of defendants charged with felonies. (1) A defendant charged with a felony may be released by the judge without bail or upon the execution of an unsecured appearance bond or the judge may in addition to requiring the execution of an appearance bond or in lieu thereof impose one or more of the following conditions which will assure appearance for trial:

(a) Place the person in the custody of a designated person or organization agreeing to supervise the person.

(b) Place restrictions on the travel, association or place of abode of the defendant during the period of release.

(c) Prohibit the defendant from possessing any dangerous weapon.

(d) Require the execution of an appearance bond with sufficient solvent sureties, or the deposit of cash in lieu of sureties. If the judge requires a deposit of cash in lieu of sureties, the person making the cash deposit shall be given written notice of the requirements of sub. (4).

(e) Impose any other condition deemed reasonably necessary to assure appearance as required or any nonmonetary condition deemed reasonably necessary to protect members of the community from serious bodily harm or prevent intimidation of witnesses, including a condition requiring that the defendant return to custody after specified hours. The charges authorized by s. 303.08 (4) and (5) shall not apply under this section.

(1m) The clerk of circuit court may accept a credit card or debit card, as defined in s. 59.40 (5) (a) 1. and 2., instead of cash under sub. (1) (d).

(2) As a condition of release in all cases, a person released under this section shall not commit any crime.

(2m) Any person who is charged with a felony and released under this section shall comply with s. 940.49. The person shall be given written notice of this requirement.

(3) Once bail has been given and a charge is pending or is thereafter filed or transferred to another court, the latter court shall continue the original bail in that court subject to s. 969.08. A single bond form shall be utilized for all stages of the proceedings through conviction and sentencing or the granting of probation.

(4) If a judgment of conviction is entered in a prosecution in which a deposit had been made in accordance with sub. (1) (d), the balance of the deposit, after deduction of the bond costs, shall be applied first to the payment of any restitution ordered under s. 973.20 and then, if ordered restitution is satisfied in full, to the payment of the judgment.

(5) If the complaint against the defendant has been dismissed or if the defendant has been acquitted, the entire sum deposited shall be returned. A deposit under sub. (1) (d) shall be returned to the person who made the deposit, his or her heirs or assigns, subject to sub. (4).

(6) The restriction on the application of cash deposits under subs. (4) and (5) do not apply if bail is forfeited under s. 969.13.

History: 1971 c. 298; 1979 c. 112; 1981 c. 118, 183; 1989 a. 31; 1991 a. 63; 1993 a. 486; 2005 a. 59, 447.

The trial court, not the accused, decides whether to require cash or securities for a bond under sub. (1) (d). State v. Gassen, 143 Wis. 2d 761, 422 N.W.2d 863 (Ct. App. 1988).

As used in this section, "crime" includes violations committed in another jurisdiction. State v. West, 181 Wis. 2d 792, 512 N.W.2d 207 (Ct. App. 1993).

The application of bail posted by 3rd parties to the defendant's fines under sub. (4) was not unconstitutional. State v. Iglesias, 185 Wis. 2d 118, 517 N.W.2d 175 (1994).

The conditions that a court is authorized to impose under ss. 969.01 and 969.03 govern the release of a defendant from custody and do not apply if the defendant cannot post bond and is not released. A court may impose pretrial, no-contact provisions on incarcerated defendants under s. 940.47 if the terms of that statute are met. State v. Orlik, 226 Wis. 2d 527, 595 N.W.2d 468 (Ct. App. 1999), 98-2826.

The state need not obtain a conviction for the underlying crime in order to prove that the defendant violated the bail jumping statute by committing a crime. If there is evidence sufficient for a reasonable jury to conclude beyond a reasonable doubt that a defendant intentionally violated a bond by committing a crime, that evidence is not required to be in the form of a conviction for the underlying crime. State v. Hauk, 2002 WI App 226, 257 Wis. 2d 579, 652 N.W.2d 393, 01-1668.

The retention of 10% of a partial bail deposit, with no penalty for release on recognizance or where full bail is given, does not violate equal protection requirements. Schilb v. Kuebel, 404 U.S. 357 (1971).

969.035 Pretrial detention; denial of release from custody. (1) In this section, "violent crime" means any crime specified in s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.07, 940.08, 940.10, 940.19 (5), 940.195 (5), 940.21, 940.225 (1), 940.23, 941.327, 948.02 (1) or (2), 948.025, 948.03, or 948.085.

(2) A circuit court may deny release from custody under this section to any of the following persons:

(a) A person accused of committing an offense under s. 940.01, 940.225 (1), 948.02 (1) or (2), 948.025, or 948.085.

(b) A person accused of committing or attempting to commit a violent crime and the person has a previous conviction for committing or attempting to commit a violent crime.

(3) A court may proceed under this section if the district attorney alleges to the court and provides the court with documents as follows:

(a) Alleges that the defendant is eligible for denial of release under sub. (2) (a) or (b).

(b) Provides a copy of the complaint charging the commission or attempted commission of the present offense specified in sub. (2) (a) or (b).

(c) Alleges that available conditions of release will not adequately protect members of the community from serious bodily harm or prevent the intimidation of witnesses.

(4) If the court determines that the district attorney has complied with sub. (3), the court may order that the detention of a person who is currently in custody be continued or may issue a warrant commanding any law enforcement officer to bring the defendant without unnecessary delay before the court. When the defendant is brought before the court, he or she shall be given a copy of the documents specified in sub. (3) and informed of his or her rights under this section and s. 970.02 (1) and (6).

(5) A pretrial detention hearing is a hearing before a court for the purpose of determining if the continued detention of the defendant is justified. A pretrial detention hearing may be held in conjunction with a preliminary examination under s. 970.03 or a conditional release revocation hearing under s. 969.08 (5) (b), but separate findings shall be made by the court relating to the pretrial detention, preliminary examination and conditional release revocation. The pretrial detention hearing shall be commenced within 10 days from the date the defendant is detained or brought before the court under sub. (4). The defendant may not be denied release from custody in accordance with s. 969.03 for more than 10 days prior to the hearing required by this subsection.

(6) During the pretrial detention hearing:

(a) The state has the burden of going forward and proving by clear and convincing evidence that the defendant committed an offense specified under sub. (2) (a), or that the defendant committed or attempted to commit a violent crime subsequent to a prior conviction for a violent crime.

(b) The state has the burden of going forward and proving by clear and convincing evidence that available conditions of release will not adequately protect members of the community from serious bodily harm or prevent the intimidation of witnesses.

(c) The evidence shall be presented in open court with the right of confrontation, right to call witnesses, right to cross-examination and right to representation by counsel. The rules of evidence applicable in criminal trials govern the admissibility of evidence at the hearing.

(d) The court may exclude witnesses until they are called to testify, may direct that persons who are expected to be called as witnesses be kept separate until called and may prevent them from communicating with one another until they have been examined.

(e) Testimony of the defendant given shall not be admissible on the issue of guilt in any other judicial proceeding, but the testimony shall be admissible in perjury proceedings and for impeachment purposes in any subsequent proceeding.

(7) If the court does not make the findings under sub. (6) (a) and (b) and the defendant is otherwise eligible, the defendant shall be released from custody with or without conditions in accordance with s. 969.03.

(8) If the court makes the findings under sub. (6) (a) and (b), the court may deny bail to the defendant for an additional period not to exceed 60 days following the hearing. If the time period passes and the defendant is otherwise eligible, he or she shall be released from custody with or without conditions in accordance with s. 969.03.

(9) In computing the 10-day periods under sub. (5) and the 60-day period under sub. (8), the court shall omit any period of time found by the court to result from a delay caused by the defendant or a continuance granted which was initiated by the defendant. Delay is caused by the defendant only if the delay is expressly requested by the defendant.

(10) The defendant may petition the court to be released from custody with or without conditions in accordance with s. 969.03 at any time.

(11) A person who has been detained under this section is entitled to placement of his or her case on an expedited trial calendar and his or her trial shall be given priority.

History: 1981 c. 183; 1987 a. 90; 1987 a. 332 ss. 58, 64; 1987 a. 399, 403; 1993 a. 227, 441, 491; 1997 a. 295; 2005 a. 277.

969.05 Endorsement of bail upon warrants. (1) In misdemeanor actions, the judge who issues a warrant may endorse upon the warrant the amount of bail.

(2) The amount and method of posting bail may be endorsed upon felony warrants.

History: 1981 c. 183.

969.065 Judicial conference; bail alternatives. The judicial conference shall develop guidelines for cash bail for persons accused of misdemeanors which the supreme court shall adopt by rule. The guidelines shall relate primarily to individuals. The guidelines may be revised from time to time under this section.

History: 1981 c. 183.

The constitutionality of s. 969.065 is upheld. Demmith v. Wisconsin Judicial Conference, 166 Wis. 2d 649, 480 N.W.2d 502 (1992).

969.07 Taking of bail by law enforcement officer. When bail has been set for a particular defendant, any law enforcement officer may take bail in accordance with s. 969.02 and release the defendant to appear in accordance with the conditions of the appearance bond. Bail shall not be required of a defendant who has been cited for commission of a misdemeanor in accordance with s. 968.085. The law enforcement officer shall give a receipt to the defendant for the bail so taken and within a reasonable time deposit the bail with the clerk of court before whom the defendant is to appear. Bail taken by a law enforcement officer may be taken only at a sheriff's office or police station. The receipts shall be numbered serially and shall be in triplicate, one copy for the defendant, one copy to be filed with the clerk and one copy to be filed with the police or sheriff's department which takes the bail. This section does not require the release of a defendant from custody when an officer is of the opinion that the defendant is not in a fit condition to care for his or her own safety or would constitute, because of his or her physical condition, a danger to the safety of others. If a defendant is not released under this section, s. 970.01 shall apply.

History: 1981 c. 183; 1983 a. 433.

Officers may validly deny bail to a misdemeanant under this section. 75 Atty. Gen. 209.

Law enforcement officers may be authorized by court rule to accept surety bonds for, or, under specified circumstances, 10% cash deposits of, the amount listed in a misdemeanor bail schedule when an accused cannot be promptly taken before a judge for bail determination. However, such rules may not afford officers discretion as to the amount or form of bail an accused individual must post. 63 Atty. Gen. 241.

Neither a county nor a county sheriff possesses statutory authority to use county funds to establish a revolving bail fund for the purpose of making loans to persons allowing them to post bail for certain kinds of offenses for which they are booked into the county jail. OAG 1-09.

969.08 Grant, reduction, increase or revocation of conditions of release. (1) Upon petition by the state or the defendant, the court before which the action is pending may increase or reduce the amount of bail or may alter other conditions of release or the bail bond or grant bail if it has been previously revoked. Except as provided in sub. (5), a defendant for whom conditions of release are imposed and who after 72 hours from the time of initial appearance before a judge continues to be detained in custody as a result of the defendant's inability to meet the conditions of release, upon application, is entitled to have the conditions reviewed by the judge of the court before whom the action against the defendant is pending. Unless the conditions of release are amended and the defendant is thereupon released, the judge shall set forth on the record the reasons for requiring the continuation of the conditions imposed. A defendant who is ordered released on a condition which requires that he or she return to custody after specified hours, upon application, is entitled to a review by the judge of the court before whom the action is pending. Unless the requirement is removed and the defendant thereupon released on another condition, the judge shall set forth on the record the reasons for continuing the requirement.

(2) Violation of the conditions of release or the bail bond constitutes grounds for the court to increase the amount of bail or otherwise alter the conditions of release or, if the alleged violation is the commission of a serious crime, revoke release under this section.

(3) Reasonable notice of petition under sub. (1) by the defendant shall be given to the state.

(4) Reasonable notice of petition under sub. (1) by the state shall be given to the defendant, except as provided in sub. (5).

(5) (a) A court shall proceed under par. (b) if the district attorney alleges to the court and provides the court with documents as follows:

1. Alleges that the defendant is released on conditions for the alleged commission of a serious crime;

2. Alleges that the defendant has violated the conditions of release by having committed a serious crime; and

3. Provides a copy of the complaint charging the commission of the serious crime specified in subd. 2.

(b) 1. If the court determines that the state has complied with par. (a), the court may issue a warrant commanding any law enforcement officer to bring the defendant without unnecessary delay before the court. When the defendant is brought before the court, he or she shall be given a copy of the documents specified in par. (a) and informed of his or her rights under s. 970.02 (1) and (6). The court may hold the defendant in custody and suspend the previously imposed conditions of release pending a hearing on the alleged breach. The hearing under this paragraph and the preliminary examination under s. 970.03, if required, shall be a combined hearing, with the court making the separate findings required under this paragraph and

s. 970.03 at the conclusion of the combined hearing. The hearing shall be commenced within 7 days from the date the defendant is taken into custody. The defendant may not be held without setting conditions of release for more than 7 days unless a hearing is held and the findings required by this paragraph are established.

2. At a hearing on the alleged violation the state has the burden of going forward and proving by clear and convincing evidence that the violation occurred while the defendant was on conditional release. The evidence shall be presented in open court with the right of confrontation, right to call witnesses, right of cross-examination and right to representation by counsel. The rules of evidence applicable in criminal trials govern the admissibility of evidence at the hearing.

3. Upon a finding by the court that the state has established by clear and convincing evidence that the defendant has committed a serious crime while on conditional release, the court may revoke the release of the defendant and hold the defendant for trial without setting conditions of release. No reference may be made during the trial of the offense to the court's finding in the hearing. No reference may be made in the trial to any testimony of the defendant at the hearing, except if the testimony is used for impeachment purposes. If the court does not find that the state has established by clear and convincing evidence that the defendant has committed a serious crime while on conditional release, the defendant shall be released on bail or other conditions deemed appropriate by the court.

4. If the release of any defendant is revoked under subd. 3., the defendant may demand and shall be entitled to be brought to trial on the offense with respect to which he or she was formerly released on conditions within 60 days after the date on which he or she appeared before the court under subd. 1. If the defendant is not brought to trial within the 60-day period he or she shall not be held longer without setting conditions of release and shall be released on bail or other conditions deemed appropriate by the court. In computing the 60-day period, the court shall omit any period of delay if the court finds that the delay results from a continuance granted at the exclusive request of the defendant.

5. The defendant may petition the court for reinstatement of conditions of release if any of the circumstances authorizing the revocation of release is altered. The altered conditions include, but are not limited to, the facts that the original complaint is dismissed, the defendant is found not guilty of that offense or the defendant is found guilty of a crime which is not a serious crime.

(6) If the judge before whom the action is pending, in which a person was released on conditions, is not available, any other circuit judge of the county may act under this section.

(7) If a person is charged with the commission of a serious crime in a county other than the county in which the person was released on conditions, the district attorney and court may proceed under sub. (6) and certify the findings to the circuit court for the county in which the person was released on conditions. That circuit court shall make the release revocation decision based on the certified findings.

(8) Information stated in, or offered in connection with, any order entered under this chapter setting bail or other conditions of release need not conform to the rules of evidence, except as provided under sub. (5) (b) 2. or s. 901.05.

(9) This section does not limit any other authority of a court to revoke the release of a defendant.

(9m) A person who has had bail revoked under this section is entitled to placement of his or her case on an expedited trial calendar and his or her trial shall be given priority.

(10) In this section:

(a) "Commission of a serious crime" includes a solicitation, conspiracy or attempt, under s. 948.35, 1999 stats., or s. 939.30, 939.31, or 939.32, to commit a serious crime.

(b) "Serious crime" means any crime specified in s. 943.23 (1m), 1999 stats., or s. 943.23 (1r), 1999 stats., or s. 346.62 (4), 940.01, 940.02, 940.03, 940.05, 940.06, 940.08, 940.09, 940.10, 940.19 (5), 940.195 (5), 940.20, 940.201, 940.203, 940.21, 940.225 (1) to (3), 940.23, 940.24, 940.25, 940.29, 940.295 (3) (b) 1g., 1m., 1r., 2. or 3., 940.302 (2), 940.31, 941.20 (2) or (3), 941.26, 941.30, 941.327, 943.01 (2) (c), 943.011, 943.013, 943.02, 943.03, 943.04, 943.06, 943.10, 943.23 (1g), 943.30, 943.32, 943.81, 943.82, 943.83, 943.85, 943.86, 943.87, 943.88, 943.89, 943.90, 946.01, 946.02, 946.43, 947.015, 948.02 (1) or (2), 948.025, 948.03, 948.04, 948.05, 948.051, 948.06, 948.07, 948.085, or 948.30 or, if the victim is a financial institution, as defined in s. 943.80 (2), a crime under s. 943.84 (1) or (2).

History: 1971 c. 298; 1977 c. 449; 1979 c. 112; 1981 c. 183; 1985 a. 293 s. 3; 1987 a. 90, 332, 399, 403; 1991 a. 153, 269; 1993 a. 50, 92, 94, 227, 441, 445, 491; 1997 a. 143, 180, 295; 1999 a. 32; 2001 a. 109; 2005 a. 212, 277; 2007 a. 97, 116.

969.09 Conditions of bond. (1) If a defendant is admitted to bail before sentencing the conditions of the bond shall include, without limitation, the requirements that the defendant will appear in the court having jurisdiction on a day certain and thereafter as ordered until discharged on final order of the court and that the defendant will submit to the orders and process of the court.

(2) If the defendant is admitted to bail upon appeal, the conditions of the bond shall be that the defendant will duly prosecute the defendant's appeal, that the defendant will appear at such time and place as the court directs, and that if the judgment is affirmed or reversed and remanded for a new trial or further proceedings upon notice after remittitur, the defendant will surrender to the sheriff of the county in which the defendant was tried.

(3) A defendant shall receive a copy of the bond which the defendant executes pursuant to this chapter.

History: 1993 a. 486; 1995 a. 225.

A petition for a writ of habeas corpus properly named the state department with custody of probationers, rather than the sheriff, as the respondent if the petitioner was released on bail pending appeal. Dreske v. DHSS, 483 F. Supp. 783 (1980).

969.11 Release upon arrest in another county. (1) If the defendant is arrested in a county other than the county in which the offense was committed, he or she shall, without unreasonable delay, either be brought before a judge of the county in which arrested for the purpose of setting bail or other conditions of release or be returned to the county in which the offense was committed. The judge shall release him or her on conditions imposed in accordance with this chapter to appear before a court in the county in which the offense was committed at a specified time and place.

(2) If the defendant is released on bail or other conditions pursuant to sub. (1), the judge shall make a record of the proceedings and shall certify his or her minutes thereof and shall forward the bond and bail to the court before whom the defendant is bound to appear.

History: 1981 c. 183.

969.13 Forfeiture. (1) If the conditions of the bond are not complied with, the court having jurisdiction over the defendant in the criminal action shall enter an order declaring the bail to be forfeited.

(2) This order may be set aside upon such conditions as the court imposes if it appears that justice does not require the enforcement of the forfeiture.

(3) By entering into a bond, the defendant and sureties submit to the jurisdiction of the court for the purposes of liability on the bond and irrevocably appoint the clerk as their agent upon whom any papers affecting their bond liability may be served. Their liability may be enforced without the necessity of an independent action.

(4) Notice of the order of forfeiture under sub. (1) shall be mailed forthwith by the clerk to the defendant and the defendant's sureties at their last addresses. If the defendant does not appear and surrender to the court within 30 days from the date of the forfeiture and within such period the defendant or the defendant's sureties do not satisfy the court that appearance and surrender by the defendant at the time scheduled for the defendant's appearance was impossible and without the defendant's fault, the court shall upon motion of the district attorney enter judgment for the state against the defendant and any surety for the amount of the bail and costs of the court proceeding. Proceeds of the judgment shall be paid to the county treasurer. The motion and such notice of motion as the court prescribes may be served on the clerk who shall forthwith mail copies to the defendant and the defendant's sureties at their last addresses.

(5) (a) A cash deposit made with the clerk pursuant to this chapter shall be applied first to the payment of any recompense determined under par. (b) and then, if the recompense is paid in full, to the payment of costs. If any amount of such deposit remains after the payment of costs, it shall be applied to payment of the judgment of forfeiture. The person making the cash deposit shall be given written notice of the requirements of this paragraph.

(b) The court shall determine a recompense amount for any victim, or if the victim is deceased, for his or her estate, of the crime for which the bond was entered into unless the court finds substantial reason not to do so and states the reason on the record. The court shall determine the recompense amount in the same manner as the court would have determined the restitution amount under s. 973.20 (2), (3), (4), (4m), (5), and (7) had the person been convicted.

History: 1971 c. 298; 1993 a. 486; 2005 a. 447.

Forfeiture proceedings are a part of an underlying criminal case. State v. Givens, 88 Wis. 2d 457, 276 N.W.2d 790 (1979).

The trial court abused its discretion in refusing to modify an order under sub. (2) when partial remission of a bond was appropriate. State v. Ascencio, 92 Wis. 2d 822, 285 N.W.2d 910 (Ct. App. 1979).

Forfeiture proceedings are civil in nature; appeals are governed by s. 808.04. State v. Wickstrom, 134 Wis. 2d 158, 396 N.W.2d 188 (1986).

Sub. (1) mandates bail forfeiture for any bond condition violation. State v. Badzmierowski, 171 Wis. 2d 260, 490 N.W.2d 784 (Ct. App. 1992).

A circuit court has discretion to enter a judgment on an order forfeiting bail absent a motion by the district attorney when the defendant appears within 30 days of the forfeiture. State v. Achterberg, 201 Wis. 2d 291, 548 N.W.2d 515 (1996), 94-3360.

The trial court's decision under sub. (2) requires the exercise of discretion. Refusing all requests for the return of bail money is not an exercise of discretion. The standard "that justice requires" cannot be parlayed into an all-inclusive list, but is essentially an appeal to the conscience of the court. Melone v. State, 2001 WI App 13, 240 Wis. 2d 451, 623 N.W.2d 179, 00-0969.

Forfeited cash bond may not be used to pay restitution to a victim of the crime. 68 Atty. Gen. 71.

CHAPTER 970

CRIMINAL PROCEDURE — PRELIMINARY PROCEEDINGS

Cross-reference: See definitions in s. 967.02.

970.01 Initial appearance before a judge. (1) Any person who is arrested shall be taken within a reasonable time before a judge in the county in which the offense was alleged to have been committed. The initial appearance may be conducted on the record by telephone or live audiovisual means under s. 967.08. If the initial appearance is conducted by telephone or live audiovisual means, the person may waive physical appearance. Waiver of physical appearance shall be placed on the record of the initial appearance and does not waive other grounds for challenging the court's personal jurisdiction. If the person does not waive physical appearance, conducting the initial appearance by telephone or live audiovisual means under s. 967.08 does not waive any grounds that the person has for challenging the court's personal jurisdiction.

(2) When a person is arrested without a warrant and brought before a judge, a complaint shall be filed forthwith.

History: Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1987 a. 403; 1995 a. 27.

Judicial Council Note, 1988: Sub. (1) is amended to authorize the arrested person to waive physical appearance and request that the initial appearance be conducted on the record by telephone or live audio-visual means. [Re Order effective Jan. 1, 1988]

The interval between an arrest and an initial appearance is never unreasonable when the arrested suspect is already in the lawful physical custody of the state. State v. Harris, 174 Wis. 2d 367, 497 N.W.2d 742 (Ct. App. 1993).

The rule that a judicial determination of probable cause must be made within 48 hours of a warrantless arrest applies to Wisconsin; failure to comply did not require suppression of evidence not obtained because of the delay when probable cause for arrest was present. State v. Koch, 175 Wis. 2d 684, 499 N.W.2d 153 (1993).

Failure to conduct a probable cause hearing within 48 hours of arrest is not a jurisdictional defect and not grounds for dismissal with prejudice or voiding of a subsequent conviction unless the delay prejudiced the defendant's right to present a defense. State v. Golden, 185 Wis. 2d 763, 519 N.W.2d 659 (Ct. App. 1994).

A person taken into custody on a probation hold while an investigation is made to determine if a probation violation has occurred is not under arrest and not subject to the requirement of a probable cause hearing within 48 hours of a warrantless arrest. State v. Martinez, 198 Wis. 2d 222, 542 N.W.2d 215 (Ct. App. 1995), 94-3006.

A determination of probable cause made within 48 hours of a warrantless arrest generally meets the promptness requirement; if a hearing is held more than 48 hours following an arrest the burden shifts to the government to demonstrate an emergency or extraordinary circumstances. County of Riverside v. McLaughlin, 500 U.S. 44, 114 L. Ed. 2d 49 (1991).

970.02 Duty of a judge at the initial appearance. (1) At the initial appearance the judge shall inform the defendant:

(a) Of the charge against the defendant and shall furnish the defendant with a copy of the complaint which shall contain the possible penalties for the offenses set forth therein. In the case of a felony, the judge shall also inform the defendant of the penalties for the felony with which the defendant is charged.

(b) Of his or her right to counsel and, in any case required by the U.S. or Wisconsin constitution, that an attorney will be appointed to represent him or her if he or she is financially unable to employ counsel.

(c) That the defendant is entitled to a preliminary examination if charged with a felony in any complaint, including a complaint issued under s. 968.26, or when the defendant has been returned to this state for prosecution through extradition proceedings under ch. 976, or any indictment, unless waived in writing or in open court, or unless the defendant is a corporation or limited liability company.

(2) The judge shall admit the defendant to bail in accordance with ch. 969.

(3) Upon request of a defendant charged with a misdemeanor, the judge shall immediately set a date for the trial.

(4) A defendant charged with a felony may waive preliminary examination, and upon the waiver, the judge shall bind the defendant over for trial.

(5) If the defendant does not waive preliminary examination, the judge shall forthwith set the action for a preliminary examination under s. 970.03.

(6) In all cases in which the defendant is entitled to legal representation under the constitution or laws of the United States or this state, the judge or magistrate shall inform the defendant of his or her right to counsel and, if the defendant claims or appears to be indigent, shall refer the person to the authority for indigency determinations specified under s. 977.07 (1).

(7) If the offense charged is one specified under s. 165.83 (2) (a), the judge shall determine if the defendant's fingerprints, photographs and other identifying data have been taken and, if not, the judge shall direct that this information be obtained.

History: 1973 c. 45; 1975 c. 39; 1977 c. 29, 449; 1979 c. 356; 1981 c. 144; 1987 a. 151; 1993 a. 112, 486.

970.03 Preliminary examination. (1) A preliminary examination is a hearing before a court for the purpose of determining if there is probable cause to believe a felony has been committed by the defendant. A preliminary examination may be held in conjunction with a bail revocation hearing under s. 969.08 (5) (b), but separate findings shall be made by the judge relating to the preliminary examination and to the bail revocation.

(2) The preliminary examination shall be commenced within 20 days after the initial appearance of the defendant if the defendant has been released from custody or within 10 days if the defendant is in custody and bail has been fixed in excess of $500. On stipulation of the parties or on motion and for cause, the court may extend such time.

(3) A plea shall not be accepted in any case in which a preliminary examination is required until the defendant has

been bound over following preliminary examination or waiver thereof.

(4) (a) If the defendant is accused of a crime under s. 940.225, 948.02, 948.025, 948.05, 948.051, 948.06, 948.085, or 948.095, or under s. 940.302 (2), if the court finds that the crime was sexually motivated, as defined in s. 980.01 (5), the court may exclude from the hearing all persons who are not officers of the court, members of the complainant's or defendant's families or others considered by the court to be supportive of the complainant or defendant, the service representative, as defined in s. 895.45 (1) (c), or other persons required to attend, if the court finds that the state or the defendant has established a compelling interest that would likely be prejudiced if the persons were not excluded. The court may consider as a compelling interest, among others, the need to protect a complainant from undue embarrassment and emotional trauma.

(b) In making its order under this subsection, the court shall set forth specific findings sufficient to support the closure order. In making these findings, the court shall consider, and give substantial weight to, the desires, if any, of the complainant. Additional factors that the court may consider in making these findings include, but are not limited to, the complainant's age, psychological maturity and understanding; the nature of the crime; and the desires of the complainant's family.

(c) The court shall make its closure order under this subsection no broader than is necessary to protect the compelling interest under par. (a) and shall consider any reasonable alternatives to full closure of the entire hearing.

(5) All witnesses shall be sworn and their testimony reported by a phonographic reporter. The defendant may cross-examine witnesses against the defendant, and may call witnesses on the defendant's own behalf who then are subject to cross-examination.

(6) During the preliminary examination, the court may exclude witnesses until they are called to testify, may direct that persons who are expected to be called as witnesses be kept separate until called and may prevent them from communicating with one another until they have been examined.

(7) If the court finds probable cause to believe that a felony has been committed by the defendant, it shall bind the defendant over for trial.

(8) If the court finds that it is probable that only a misdemeanor has been committed by the defendant, it shall amend the complaint to conform to the evidence. The action shall then proceed as though it had originated as a misdemeanor action.

(9) If the court does not find probable cause to believe that a crime has been committed by the defendant, it shall order the defendant discharged forthwith.

(10) In multiple count complaints, the court shall order dismissed any count for which it finds there is no probable cause. The facts arising out of any count ordered dismissed shall not be the basis for a count in any information filed pursuant to ch. 971. Section 970.04 shall apply to any dismissed count.

(12) (a) In this subsection:

1. "Hospital" has the meaning designated in s. 50.33 (2).

2. "Local health department" has the meaning given in s. 250.01 (4).

(b) At any preliminary examination, a report of one of the crime laboratory's, the state laboratory of hygiene's, a federal bureau of investigation laboratory's, a hospital laboratory's or a local health department's findings with reference to all or any part of the evidence submitted, certified as correct by the attorney general, the director of the state laboratory of hygiene, the director of the federal bureau of investigation, the chief hospital administrator, the local health officer, as defined in s. 250.01 (5), or a person designated by any of them, shall, when offered by the state or the accused, be received as evidence of the facts and findings stated, if relevant. The expert who made the findings need not be called as a witness.

(c) At any preliminary examination in Milwaukee County, a latent fingerprint report of the city of Milwaukee police department bureau of identification division's latent fingerprint identification unit, certified as correct by the police chief or a person designated by the police chief, shall, when offered by the state or the accused, be received as evidence of the facts and findings stated, if relevant. The expert who made the findings need not be called as a witness.

(13) Testimony may be received into the record of a preliminary examination by telephone or live audiovisual means if the proponent shows good cause or if the testimony is used to prove an element of an offense under s. 943.201 (2) or 943.203 (2).

(14) (a) In this subsection, "child" means a person who is younger than 16 years old when the preliminary examination commences.

(b) At any preliminary examination, the court shall admit an audiovisual recording of a statement under s. 908.08 upon making the findings required under s. 908.08 (3). The child who makes the statement need not be called as a witness and, under the circumstances specified in s. 908.08 (5) (b), may not be compelled to undergo cross-examination.

History: 1975 c. 184; 1977 c. 449; 1979 c. 112, 332; 1985 a. 267; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1987 a. 332 s. 64; 1987 a. 403; Sup. Ct. Order, 158 Wis. 2d xvii (1990); 1991 a. 193, 276; 1993 a. 27, 98, 227, 486; 1995 a. 456; 1997 a. 252; 1999 a. 111; 2001 a. 103; 2003 a. 36; 2005 a. 42, 155, 277; 2007 a. 97, 116; 2011 a. 285.

Judicial Council Note, 1990:: [Re amendment of (13)] The right to confront one's accusers does not apply to the preliminary examination, and since credibility is not an issue, demeanor evidence is of less significance than at trial. For these reasons, a party should not be permitted to prevent the admission of telephone testimony, although the proponent of such evidence should bear the burden of showing good cause for its admission. [Re Order eff. 1-1-91]

While hearsay relied upon in support of a criminal complaint requires some basis for crediting its reliability, whether the informants are named or not, that requirement is satisfied if the hearsay is based upon observation of the informants. State ex rel. Cullen v. Ceci, 45 Wis. 2d 432, 173 N.W.2d 175 (1970).

There is no obligation on a magistrate to conduct an investigation to verify the contents of a criminal complaint. That is the duty of the state, and if it fails to put sufficient facts before the magistrate to show probable cause, the complaint must fail even though clues and leads that could provide that information are revealed in the complaint. State ex rel. Cullen v. Ceci, 45 Wis. 2d 432, 173 N.W.2d 175 (1970).

At the preliminary hearing, a defendant is entitled to cross-examine witnesses who identified him at the hearing and who also identified him at a lineup, because if the lineup was unfair, the identification evidence might be suppressed. Hayes v. State, 46 Wis. 2d 93, 175 N.W.2d 625 (1970).

A ruling on admissibility of evidence at a preliminary hearing is not res adjudicata at the trial. Meunier v. State, 46 Wis. 2d 271, 174 N.W.2d 277 (1970).

It was not error for the magistrate and trial court to fail to sequester witnesses without motion by the defendant, especially in the absence of a showing of prejudice. Abraham v. State, 47 Wis. 2d 44, 176 N.W.2d 349 (1970).

A bind over was not invalid because the judge stated that it was "for the purpose of accepting a plea." Dolan v. State, 48 Wis. 2d 696, 180 N.W.2d 623 (1970).

A defendant is not entitled to call witnesses for pretrial discovery or to shake the credibility of the state's witness. State v. Knudson, 51 Wis. 2d 270, 187 N.W.2d 321 (1971).

A defendant who has been indicted by a grand jury is not entitled to a preliminary examination. State ex rel. Welch v. Waukesha County Circuit Court, 52 Wis. 2d 221, 189 N.W.2d 417 (1971).

When the preliminary examination is not timely held, personal jurisdiction is lost, but when the defendant on arraignment enters a plea, the defense is waived. Armstrong v. State, 55 Wis. 2d 282, 198 N.W.2d 357 (1972).

Defense counsel should be allowed to cross-examine a state's witness to determine the plausability of the witness, but not to attack the witness's general trustworthiness. Wilson v. State, 59 Wis. 2d 269, 208 N.W.2d 134 (1973).

The purpose of a hearing under sub. (1) is to determine whether a felony, whether charged or not, probably was committed. After bind over the prosecutor may charge any crime not wholly unrelated to transactions and facts adduced at the preliminary examination. Wittke v. State ex rel. Smith, 80 Wis. 2d 332, 259 N.W.2d 515 (1973).

Appellate review of a preliminary hearing is limited to determining whether the record contains competent evidence to support the examining magistrate's exercise of judgment. Although motive is not an element of any crime and does not of itself establish guilt or innocence, evidence of motive may be given as much weight as the fact finder deems it is entitled to at the preliminary hearing or trial. State v. Berby, 81 Wis. 2d 677, 260 N.W.2d 798 (1978).

Section 970.03 (8) neither limits a prosecutor's discretion to prosecute criminal actions nor prohibits a second examination under s. 970.04. State v. Kenyon, 85 Wis. 2d 36, 270 N.W.2d 160 (1978).

This section does not require that proof of the exact time of an offense be shown. State v. Sirisun, 90 Wis. 2d 58, 279 N.W.2d 484 (Ct. App. 1979).

In finding probable cause, the court properly took judicial notice of the fact that rapid consumption of 1/2 quart of liquor probably caused a young girl's death. State ex rel. Cholka v. Johnson, 96 Wis. 2d 704, 292 N.W.2d 835 (1980).

An accused does not have a constitutional right to make a closing argument at a preliminary examination. State ex rel. Funmaker v. Klamm, 106 Wis. 2d 624, 317 N.W.2d 458 (1982).

If any reasonable inference supports a conclusion that the defendant probably committed a crime, the magistrate must bind over the defendant. State v. Dunn, 117 Wis. 2d 487, 345 N.W.2d 69 (Ct. App. 1984); aff'd. 121 Wis. 2d 389, 359 N.W.2d 151 (1984).

The state has the right to appeal a dismissal when it believes an error of law was committed. An uncorroborated confession alone was sufficient to support a probable cause finding. State v. Fry, 129 Wis. 2d 301, 385 N.W.2d 196 (Ct. App. 1985).

Mandatory closure of a hearing solely at the request of a complaining witness over the objection of the defendant violates the right to a public trial. Stevens v. Manitowoc Cir. Ct., 141 Wis. 2d 239, 414 N.W.2d 832 (1987).

If an appellate court stays the trial court proceedings on an interlocutory appeal, sub. (2) does not set a mandatory time limit for the preliminary hearing upon remittitur. State v. Horton, 151 Wis. 2d 250, 445 N.W.2d 46 (Ct. App. 1989).

An unconstitutionally obtained confession may be admitted and serve as the sole basis for bindover at a preliminary examination. State v. Moats, 156 Wis. 2d 74, 457 Wis.2d 299 (1990).

A defendant claiming error at a preliminary examination may obtain relief only prior to trial; the defendant may seek interlocutory review from the court of appeals under s. 809.50. State v. Webb, 160 Wis. 2d 622, 467 N.W.2d 108 (1991).

Adjourning a preliminary examination for cause is within the court's discretion. State v. Selders, 163 Wis. 2d 607, 472 N.W.2d 526 (Ct. App. 1991).

A court commissioner's determinations of admissibility of evidence will be upheld absent an erroneous exercise of discretion; the reviewing court then determines whether, if believed, the evidence would permit a reasonable magistrate to conclude that the defendant probably committed the crime. State v. Lindberg, 175 Wis. 2d 332, 500 N.W.2d 322 (Ct. App. 1993).

If a bindover decision is made by a court commissioner or circuit judge, review must be by a motion to dismiss brought in circuit court. Habeas corpus is not available to review a bindover. Dowe v. Waukesha County Circuit Ct. 184 Wis. 2d 724, 516 N.W.2d 714 (1994).

Single count complaints under sub. (7) and multiple count complaints under sub. (10) are to receive the same procedural treatment. In multiple count complaints a court must dismiss any count for which it believes there is not probable cause to believe a felony has been committed by the defendant. The specific felony charged need not be proved and it is inadvisable for the court to opine as to what felony was probably committed. Evidence that is not transactionally related to a count for which bind over is considered proper may not form the basis for a count in an ensuing information, but the information may include any count that is transactionally related to a count on which the defendant is bound over. State v. Williams, 198 Wis. 2d 516, 544 N.W.2d 406 (1996), 93-2444. See also State v. Williams, 198 Wis. 2d 479, 544 N.W.2d 400 (1996), 93-2517 and State v. Akins, 198 Wis. 2d 495, 544 N.W.2d 392 (1996), 94-1872.

Following a bindover at a preliminary hearing, the proper test for reviewing a challenge to an information that alleges wholly new charges not accompanied by the original charge is the sufficiency of evidence test. State v. Cotton, 2003 WI App 154, 266 Wis. 2d 308, 668 N.W.2d 346, 02-2923.

The purpose of a preliminary examination is limited to an expeditious determination of whether probable cause exists for the state to proceed with felony charges against a defendant. This limited purpose does not permit a criminal defendant to compel discovery in anticipation of the hearing. There is no 6th Amendment right, based on effective assistance of counsel, and no compulsory process right to subpoena police reports and other non-privileged materials prior to the examination. State v. Schaefer, 2008 WI 25, 308 Wis. 2d 279, 746 N.W.2d 457, 06-1826.

It was not proper to dismiss a criminal charge added in the information because the prosecutor successfully objected at the preliminary hearing to questions that were relevant to that crime but not to the crime charged in the complaint. State v. White, 2008 WI App 96, 312 Wis. 2d 799, 754 N.W.2d 214, 07-2061.

970.038 Preliminary examination; hearsay exception.

(1) Notwithstanding s. 908.02, hearsay is admissible in a preliminary examination under ss. 970.03, 970.032, and 970.035.

(2) A court may base its finding of probable cause under s. 970.03 (7) or (8), 970.032 (2), or 970.035 in whole or in part on hearsay admitted under sub. (1).

History: 2011 a. 285.