898.29 History: 1864 c. 483 s. 20; R. S. 1878 s. 4334; Stats. 1898 s. 4334; 1925 c. 4; Stats. 1925 s. 336.29; 1965 c. 66 s. 4; Stats. 1965 s. 898.29.

898.30 History: 1864 c. 483 s. 21; R. S. 1878 s. 4335; Stats. 1898 s. 4335; 1925 c. 4; Stats. 1925 s. 336.30; 1965 c. 66 s. 4; Stats. 1965 s. 898.30.

898.31 History: 1864 c. 483 s. 22, 23; R. S. 1878 s. 4336; Stats. 1898 s. 4336; 1925 c. 4; Stats. 1925 s. 336.31; 1965 c. 66 s. 4; Stats. 1965 s. 898.31.

THE CRIMINAL CODE

Editor's Notes: (1) The criminal code enacted by ch. 696, Laws 1955, became effective July 1, 1956. Sec. 939.74, fixing time limitations on prosecutions, presumably applies to prosecutions for crimes defined in sections in force until July 1, 1956, as well as to prosecutions for crimes defined in the criminal code effective July 1, 1956.

(2) The criminal code enacted by ch. 696, Laws 1955, and subsequently amended does not cover all conduct made criminal by statute. Various chapters of Wis. Statutes, 1969, notably ch. 12 (on corrupt practices), ch. 29 (on fish and game), ch. 52 (on abandonment and failure to support dependents), ch. 71 (on income and franchise taxes), ch. 97 (on food regulation), ch. 133 (on trusts and monopolies), ch. 138 (on money and rates of interest), ch. 139 (on beverage and cigarette taxes), ch. 161 (on narcotics), ch. 164 (on machine guns), ch. 176 (on intoxicating liquors), ch. 221 (on state banks), ch. 245 (on marriage), chs. 340-350 (the vehicle code), and ch. 551 (on securities), contain sections which make specific kinds of acts (or omissions) punishable as misdemeanors or felonies.

(3) In a situation involving a "federal area" in respect to which the United States exercises jurisdiction (exclusive, concurrent or partial) over civil and criminal matters, see Jurisdiction Over Federal Areas Within The States: Report of the Interdepartmental Committee for the Study of Jurisdiction Over Federal Areas Within the States (U. S. Govt. Printing Office, Washington, D. C., 1956) and relevant statutes and cases of subsequent dates.

(4) In a situation involving an Indian reservation see 18 U. S. C., sec. 1162, and related sections. See also the advisory opinions published in 53 Atty. Gen. 222 and 56 Atty. Gen. 11. The decisions in State v. Rufus, 205 W 317, 237 NW 67, and United States v. Sosseur, 87 F Supp. 255, affirmed 181 F (2d) 873, both rendered prior to the adoption of Pub. Law 280 of Aug. 15, 1953, which created sec. 1162, are obsolete.

(5) Table I shows what happened to the sections of Wis. Statutes, 1953, repealed or renumbered by ch. 696, Laws 1955. It does not include statutory sections repealed and recreated, amended, or created by the act. Statutory sections repealed and recreated or amended are treated in numerical order in the act, beginning with section 5. Statutory sections created by the act (other than those in the criminal code) are also treated in numerical order beginning with section 2 of the act. In cases where new sections are derived from old sections, this table will show that fact.

(6) Please note that Table I is designed to assist in tracing 1953 statute sections into 1955 statute sections and does not indicate the technical bill-drafting process, e. g., repeal of the old section and separate creation of the new section. Wherever the word "None" appears in Table I it denotes that the substance of the 1953 section has no counterpart in the 1955 law but this does not necessarily mean that the conduct prohibited by the 1953 section would not be criminal under the 1955 law.

(7) Table II shows the sources of the 1955 criminal code sections. This table takes each section of the criminal code created by ch. 696, Laws 1955, and indicates its counterpart in the 1953 statutes. This table is designed to assist tracing 1955 statute sections into 1953 statute sections.

(8) For the legislative histories of sections of Wis. Statutes, 1953, listed in the tables it is necessary to consult Wis. Annotations, 1950, and Wis. Statutes, 1953.

CONVERSION TABLE I

1953 Stats.	*1955 Stats.*
13.20	13.20 (1)
29.63 (3) (e)	29.63 (3) (d)
56.07 (4)	946.42
85.08 (36)	946.32
85.30	85.30 (1)
86.03 (5)	86.03 (6)
86.17	86.17 (1)
94.34	943.20
133.21	133.21 (1)
159.14 (1)	946.31 or
	946.32
175.03	173.31
175.04	None
175.05	134.35
175.06	196.625
175.10	134.50
175.12	134.51
213.095 (2), (3)	941.12
215.385	946.31
221.20	946.31
325.26	325.34
340.01	None
340.02	940.01
340.03	940.02
340.04	940.01 or
	940.02 or
	940.03 or
	940.05 or
	940.06 or
	940.07
340.05	939.05
340.06	940.01 or
	940.02 or
	940.06 or
	941.03
340.07	940.01 or
	940.02 or
	940.03 or
	940.06
340.08	940.02
340.09	940.03
340.095	940.04
340.10	None
340.11	940.04

1953 Stats.	*1955 Stats.*
340.12	940.12
340.13	None
340.14	940.05
340.15	940.05
340.17	940.05
340.18	940.05
340.19	None
340.20	940.07
340.21	940.02 or 940.06
340.22	940.02 or 940.06 or 940.08
340.23	None
340.24	None
340.25	940.05
340.26	940.06
340.27	None
340.271 (1)	940.09 939.65
340.271 (2), (3)	940.08
340.28	None
340.29	939.45 939.48
340.30	None
340.31	None
340.32	947.07 939.30
340.33	939.05 939.30
340.34	None
340.35	940.21
340.36	939.32
340.37	939.32
340.38	940.23
340.39	943.32
340.40	939.32
340.41	939.32
340.42	941.20
340.43	943.32
340.44	939.32
340.445	939.66
340.45	943.30
340.46	944.01
340.47	944.10
340.48	939.32
340.485	959.15
340.49	939.32
340.50	941.32
340.51	939.30 939.32
340.52	939.30 939.32
340.53	941.03 943.01
340.535	941.04
340.54	940.31 946.71 940.30 956.01 (10)
340.55 (1)	940.32
340.55 (2)	944.12
340.56	940.31
340.57	940.20
340.58	940.29
340.59	None
340.60	941.20 939.45
340.605 (1)	940.24
340.605 (2)	941.20 29.63 (3) (d)
340.607	29.221
340.608	29.222
340.61	167.30
340.62	943.01 or 943.02
340.63	192.295
340.64	192.291
340.65	167.25
340.66	941.20
340.67	167.26
340.68	167.18
340.69	941.20 941.22 941.23
340.70	167.10
340.71	192.321
340.72	940.20 947.01
340.73	940.31
340.74	939.05
340.75	942.04
340.76	None
340.77	940.02 or 940.03 or 940.06 or 941.03
340.79	167.151
340.80	947.01
340.85	941.33
340.86	167.27
343.01	943.02 939.05
343.02	943.02 939.05
343.03	943.03 939.05
343.04	943.04 939.05
343.05 (1)	939.32
343.05 (2)	943.05
343.06	943.02 (2) 939.22 (28)
343.07	941.10 85.30 (2) 192.355
343.08	160.07
343.09	943.10
343.10	943.10
343.11	943.10 943.11
343.12	943.10 943.11
343.121	943.10
343.122	943.10 943.32
343.13	None
343.131	943.12
343.14	943.20
343.15	943.20
343.16	943.20
343.17	943.20
343.172	943.20
343.173	943.20
343.174	943.20
343.175	943.20 939.32
343.18	943.23
343.183	943.37
343.185	85.01 (9a)
343.19	943.34
343.20	943.20 956.01 (8)

1953 Stats.	*1955 Stats.*
343.21	943.20
343.22	None
343.23	None
343.24	943.20
343.241	None
343.25	943.20
	943.39
343.251	132.17
343.252	946.70
343.253	943.20
	939.30
	939.32
343.254	21.145
343.26	134.20
343.27	943.01 or
	943.03 or
	943.04
343.28	939.05
343.29	120.44
	120.45
343.30	943.38
	943.39
343.31	943.20
343.315	943.26
343.32	943.20
343.321	943.25
343.322	147.225
343.33	132.18
343.331	134.25
343.332	134.26
343.333	134.27
343.334	134.28
343.335	134.29
343.336	134.30
343.337	134.31
343.338	134.32
343.339	134.33
343.341 (1)	None
343.341 (2)	943.22
343.35	943.20
	939.32
343.36	None
343.37	943.39
	943.40
	943.20
	943.34
343.38	943.38
343.39	943.20
343.40	None
343.401 (1), (2), (3)	943.24
343.401 (2m)	118.66
343.402	943.21
343.405	943.20
	939.05
	939.32
343.406	943.39
343.407	134.19
343.41	943.20
	943.39
343.412	209.14
343.42	943.01
	947.01
343.421	29.582
343.422	943.02
343.424	943.01
343.43	943.01
	947.01
343.431	943.01
	947.01
343.432	943.01
	947.01
343.44	943.01
	947.01
343.442	29.546
343.443	943.01
	947.01
343.45	943.01
	943.20
343.451	943.01
343.452	943.01
	943.37
343.453	27.012
343.454	943.01
	62.18 (15) (c)
343.455	943.01
	947.01
343.46	943.01
	15.92
343.462	15.93
343.463	946.73
	947.01
	939.65
343.47	947.10
343.471	947.10
343.472	947.10
343.473	174.025
343.474	947.10
343.48	30.065
343.481	86.192
343.482	86.191
343.483	86.021
343.484	86.022
343.485	86.025
343.486	86.03
343.487	192.292
343.488	134.52
343.49	None
343.50	943.20
343.51 (1)	943.20
343.51 (2)	30.083
343.53	943.01
343.54	943.01
343.55	943.01
343.551	None
343.56	943.38
343.561	943.38
343.57	943.38
343.571	943.20
	943.38
	943.39
343.58	None
343.59	943.38
343.60	943.38
343.61	943.38
343.62	943.38
343.63	None
343.64	943.40
343.65	943.38
343.651	132.19
343.655	28.06 (4)
343.66	132.20
343.661	943.38
343.662	943.38
343.663	943.38
343.664	943.38
343.665	943.38
343.666	943.38
343.67	946.72
343.68	943.38
343.681	134.01
343.682	134.02
343.683	134.03
343.69	943.25
343.70	21.155

1953 Stats.	*1955 Stats.*
343.707	86.17 (2)
343.71	None
343.72	942.05
343.721	134.21
343.722	134.17
343.723	134.18
343.724	134.41
343.729	45.48
343.74 (1)	175.05 (1)
343.74 (2), (3)	946.02
343.74 (4)	939.32
343.74 (5)	939.31
343.74 (6)	325.34
343.74 (7) to (11a)	175.05 (2) to (7)
343.74 (13), (14)	None
346.01	946.31
	939.05
346.02	946.32
346.03	939.30
346.06	946.10
	325.34
346.07	946.10
346.08	946.10
346.09	12.50
346.10	12.51
346.11	12.54
346.12	12.56 (1)
346.13	12.56 (2)
346.14	12.56 (3)
346.15	939.05
346.16	12.56 (4)
346.17	12.52
346.18	17.03
346.19	13.60
346.20	13.61
346.205	13.62
346.21	13.63
346.22	13.64
346.23	13.65
346.24	13.66
346.245	13.67
346.25	13.68
346.26	13.69
346.27	13.70
346.28	13.71
346.29	13.70 (3)
346.295	13.72
346.30	13.73
346.31	13.74
346.32	13.75
346.33	946.44
346.34 (1)	946.44
346.34 (2)	946.46
346.35	946.44
346.36	946.45
346.37	946.12
346.38	946.40
346.39	946.41
346.40	946.42
346.41	946.44
346.42	53.105
346.43	53.095
346.44	946.42
346.45	946.42
346.46	946.42
346.47	53.375
346.48	946.40
346.49	946.69
346.50	946.41
346.51	946.67
346.52	255.031
346.53	255.13 (3)
346.54	255.095
346.55	255.041
346.56	13.20 (2)
346.57	256.335
346.58	310.031
346.59	173.07
346.60	946.69
346.61	946.15
346.62	946.16
	331.057
346.63	946.72
346.64	180.88
347.01	946.01
347.02	947.06
347.03	None
347.04	947.06
347.05	946.40
347.06	946.12
347.07	21.11
	59.24
347.08	None
347.09	None
347.10	943.01
347.11	None
347.12	None
347.13	None
347.14	946.03
347.15	946.03
347.16	None
347.17	946.03
347.18	946.03
348.01	945.03
	945.04
348.02	945.03
	945.05
	939.05
348.03	945.03
	945.05
348.04	945.05
348.05	None
348.06	945.10
348.07	945.03
	945.05
348.08	945.02
348.085	280.20
	945.01
	945.02
348.09	945.04
348.091	963.02
348.092	945.01 (4)
	945.02
	280.20
348.10	331.056
348.11	945.04
	280.20
348.12	325.34
348.13	945.02
348.14	945.02
	192.16
	956.01 (11)
348.16	331.055
348.17	963.021
	963.04
348.171	945.02
	945.03
	325.34
348.172	945.03
	945.04
	939.05
348.173	945.03
	945.04
348.174	945.02

1953 Stats.	*1955 Stats.*
348.175	945.03
348.176	945.03
348.177	939.05
348.178	100.12
348.179	112.05
348.18	134.15 (1)
348.19	134.16
348.20	134.15 (2)
348.201 (1)	5.012 (3)
348.201 (2)	943.38
348.201 (3)	5.05 (8m)
348.21	12.59
348.211	12.60
348.213	12.58 (1)
348.214	12.58 (2)
348.215	12.58 (3)
348.216	12.58 (4)
348.217	12.61
348.218	6.591
348.219	946.12
348.22	10.071
348.221	6.048
348.222	946.12
348.223	11.18
348.224	11.19
348.225	11.20
348.226	12.70
348.23	12.69
348.231	12.62
348.232	946.12
348.233	12.63
348.234	12.64
348.235	12.65
348.236	6.592
348.237	6.593
348.24	12.66
348.241	12.71
348.25	12.67
348.26	12.68
348.261	946.10
348.262	946.10
348.263	946.10
348.264	70.501
348.265	70.502
348.266	70.503
348.267	16.301
348.268	12.57
348.269	16.302
348.27	16.303
348.271	12.53
348.272	16.441
348.273	16.761
348.28	946.12
	946.13
348.281	946.12
348.29	946.12
	946.14
348.291	946.12
348.30	946.13
348.301	946.12
348.31	946.10
	17.03
348.311	946.11
	12.55
348.312	196.675
348.313	946.11
	12.55
348.32	18.04
348.325	256.295
348.33	946.12
348.34	29.61 (5)
348.35	947.01

1953 Stats.	*1955 Stats.*
348.351	947.02
348.352	None
348.353	66.112
348.355	66.112
348.36	134.36
348.361	134.37
348.362	134.38
348.37	134.39
348.38	134.40
348.381	29.641
348.382	29.643
348.383	29.642
348.384	29.644
348.386 (1), (1a), (2)	943.13
348.386 (3)	134.60
348.387	943.13
348.388	29.515
348.389	29.515
348.39	29.515
348.40	939.31
348.401	133.01 (3)
	133.21 (2)
348.402	943.20
348.403	None
348.41	942.01
348.411	942.01
348.412	942.02
348.42	31.025
348.421	29.29 (3)
348.422	30.082
348.423	29.29 (3)
348.424	30.06 (5a)
348.425	23.095
348.426	75.375
348.427	175.25
348.43	None
348.44	947.01
348.46	None
348.47	None
348.471	161.271
348.472	134.58
348.473	208.36
348.474	208.37
348.475	208.38
348.476	215.40
348.477	943.35
348.478	943.35
348.479	946.06
348.48	946.05
348.481	946.06
348.482	946.05
348.483	946.05
	946.06
348.484	None
348.485	946.04
348.486	134.05
348.487	134.06
348.488	209.15
348.49	134.57
348.52	None
348.53	134.45
348.54	134.04
348.55	36.50
348.56	175.10
348.57 (1) (a), (1) (b), (2)	945.08
348.57 (1) (c)	945.07
348.57 (3)	325.34
348.58	942.03
348.60	946.68
348.61	None
351.01	944.16

1953 Stats.	*1955 Stats.*
	939.74
351.02	944.05
351.03	944.05
351.04	944.20
351.05	944.15
	944.10
351.06	944.02
	944.06
	944.15
	944.16
351.07	944.15
351.08	944.32
	939.05
351.09	944.32
	939.05
351.10	944.32
	939.05
351.11	944.32 or
	940.30 or
	941.31
351.12	944.34
351.13	944.32
	939.05
351.14	944.35
351.15	325.34
351.16	944.33
351.17	939.03
	956.01
351.18	325.18 (4)
351.19	944.30
	944.31
	944.33
	944.35
	325.34
351.21	944.06
351.22	940.04
	939.30
	939.32
351.23	940.04
	939.32
351.235	151.15
351.24	946.63
351.25	939.65
351.27	940.28
351.29	946.71
351.32	940.20
351.33	944.20
	947.01
351.34	944.11
351.35	944.34
	944.30
	944.31
	280.16
351.36	963.021
351.37	None
351.38	944.21
	944.22
	944.23
351.39	143.075
351.40	944.17
351.41	944.11
351.42	155.10
351.43	157.60
351.50	103.85
351.51	331.275
351.52	None
351.53	947.01
351.54	176.05 (9m)
351.55	947.01
	945.02
	954.47
351.56	None
351.57	175.20
351.59	947.03
	66.051
351.60	947.04
351.62	947.04
351.63	947.04
351.64	947.01
351.65	941.13
351.66	None
352.20	143.10 or
	940.20 or
	940.22
352.21	None
352.22	939.32
352.48	175.15
352.50 (2) to (5)	134.65
352.50 (6)	None
352.67	176.405
353.01	939.73
	957.25
	959.01
353.05	939.05
	939.66
353.08	946.47
353.13	955.395
353.15	939.05
353.16	954.021
353.17	954.021
353.20	939.74
353.21	939.74
353.22	939.74
353.23	939.74
353.25	959.055
353.27 (1)	939.61
353.27 (2)	959.044
353.28	939.03
353.29	939.03
353.31	939.60
353.33	939.46
355.32	955.31
359.12 (1)	939.62 (2)
359.12 (2)	959.12 (1)
359.12 (3)	939.62 (1)
359.12 (4)	959.12 (2)
359.17	946.62

CONVERSION TABLE II

1955 Code	*1953 Statutes*
939.01	None
939.03	353.28
	353.29
939.05	353.05
939.10	None
939.12	None
939.14	None
939.20	None
939.22	None
939.23	None
939.30	340.51
	340.52
939.31	348.40
939.32	340.51
	340.52
939.42	None
939.43	None
939.45	340.29
	340.30
939.46	353.33
939.47	None
939.48	340.29 (2)
939.49	None

1955 Code	*1953 Statutes*
939.60	353.31
939.61	353.27 (1)
939.62	359.12 (1), (3)
939.65	None
939.66	357.09
	340.445
939.70	None
939.71	None
939.72	None
939.73	353.01
939.74	353.20
	353.21
	353.22
	353.23
	351.01
940.01	340.02
940.02	340.03
	340.06
	340.07
940.03	340.09
940.04	340.095
	351.22
	351.23
940.05	340.14
	340.15
	340.18
	340.25
940.06	340.26
	340.06
	340.07
	340.20
	340.21
	340.22
	340.23
940.07	340.20
940.08	340.271 (2), (3)
940.09	340.271 (1)
940.12	340.12
940.20	340.57
940.21	340.35
940.22	340.35
	340.41
940.23	340.38
940.24	340.605 (1)
940.28	351.27
940.29	340.58
940.30	None
940.31	340.54
	340.56
940.32	340.55
941.01	None
941.03	340.53
	340.77
941.04	340.535
941.10	343.07
941.11	343.01
	343.02
941.12	213.095
941.13	351.65
941.20	340.42
	340.60
	340.605
	340.66
	340.69
941.22	340.69
941.23	340.69
941.30	None
941.31	340.73
941.32	340.50
941.33	340.85
942.01	348.41
	348.411

1955 Code	*1953 Statutes*
942.02	348.412
942.03	348.58
942.04	340.75
942.05	343.72
943.01	343.42
	343.43
	343.431
	343.44
	343.443
	343.451
	343.454
	343.455
	343.53
	347.10
943.02	343.01
	343.02
	343.22
943.03	343.03
943.04	343.04
943.05	343.05 (2)
943.10	343.09
	343.10
	343.11
	343.12
	343.121
	343.122
943.11	343.11
943.12	343.131
943.13	348.386 (1), (1a), (2)
	348.387
943.14	None
943.20	343.14
	343.15
	343.17
	343.175
	343.172
	343.173
	343.174
	343.20
	343.21
	343.24
	343.31
	343.32
	343.341
	343.35
	343.37
	343.405
	343.41
	343.45
	343.50
	343.51
	343.571
	348.402
943.21	343.402
943.22	343.341 (2)
943.23	343.18
943.24	343.401
943.25	343.321
	343.69
943.26	343.315
943.30	340.45
943.31	None
943.32	340.39
	340.43
943.34	343.19
943.35	348.477
	348.478
943.37	343.183
	343.452
	343.54
943.38	343.38
	343.54

1955 Code	*1953 Statutes*
943.38	343.56
	343.561
	343.57
	343.59
	343.60
	343.65
	343.661
	343.662
	343.663
	343.664
	343.665
	343.666
	343.68
	348.201 (2)
943.39	343.25
	343.30
	343.37
	343.406
943.40	343.37
	343.64
944.01	340.46
944.02	340.46
	351.06
944.05	351.02
	351.03
944.06	351.21
944.10	340.47
944.11	351.34
	351.40
	351.41
944.12	340.55 (2)
944.15	351.05
944.16	351.01
944.17	351.40
944.20	351.04
944.21	351.38
944.22	351.38 (1)
944.23	351.38 (2)
944.30	351.19 (3), (4)
	351.35
944.31	351.19 (3)
944.32	351.08
	351.09
	351.10
	351.13
944.33	351.16
	351.19 (1), (2)
944.34	351.35 (1)
944.35	351.15
945.01	348.092 (2)
	348.175
945.02	348.08
	348.092 (3)
	348.13
	348.171
	348.174
945.03	348.01
	348.02
	348.03
	348.07
	348.171
	348.172
	348.173
945.04	348.01
	348.09
	348.11
	348.172
945.05	348.04
	348.07 (2)
945.07	348.57 (1) (c)
945.08	348.57
945.10	348.06

1955 Code	*1953 Statutes*
946.01	347.01
946.02	343.74 (2) to (6) & (11)
946.03	347.14
	347.15
	347.16
	347.17
	347.18
946.04	348.485
946.05	348.48
	348.482
	348.483 (2)
946.06	348.479
	348.481
	348.483 (1)
946.10	346.06
	346.07
	346.08
	348.261
	348.262
	348.263
946.11	348.311
	348.313
946.12	348.28
	348.29
	346.36
	346.37
	348.281
	348.301
	348.33
	348.291
	348.219
	348.22
	348.232
946.13	348.28
	348.30
946.14	348.29
946.15	346.61
946.16	346.62
946.18	None
946.31	346.01
946.32	346.02
946.40	346.38
	346.48
946.41	346.39
946.42	346.40
	346.44
	346.45
	346.46
	346.33
	346.34
946.43	346.40 (1), (2)
946.44	346.33
	346.35
	346.41
946.45	346.36
946.46	346.34 (2)
946.47	353.08
946.61	None
946.62	359.17
946.63	351.24
946.64	None
946.67	346.51
946.68	348.60
946.69	346.49
	346.60
946.70	343.252
946.71	340.54 (2)
	351.29
946.72	343.67
	346.63
946.73	343.463
947.01	348.35

1955 Code	*1953 Statutes*
947.01	348.44
	351.55
	351.64
	343.463
	340.72
947.02	348.351
947.03	351.59
	348.351
947.04	351.60
	351.62
	351.63
947.06	347.02
	347.04
947.07	340.32
947.10	343.47
	343.471
	343.472

On exercises of police power see notes to sec. 1, art. I; on the prohibition of slavery see notes to sec. 2, art. I; on the right of free speech see notes to sec. 3, art. I; on the right to assemble and petition see notes to sec. 4, art. I; on cruel punishments see notes to sec. 6, art. I; on ex post facto laws see notes to sec. 12, art. I; on the state boundary see notes to sec. 1, art. II; on jurisdiction on rivers and lakes see notes to sec. 1, art. IX; on the common law continued in force see notes to sec. 13, art. XIV; and on state sovereignty and jurisdiction see notes to 1.01.

The criminal code. Platz, 1956 WLR 350.

Liability-without-fault criminal statutes — their relation to major developments in contemporary economics and social policy. Remington, Robinson and Zick, 1956 WLR 625.

Games with guns and statistics. Zimring, 1968 WLR 1113.

Punishment and deterrence: the educative, moralizing and habituative effects. Hawkins, 1969 WLR 550.

CHAPTER 939.

General Provisions.

939.01 History: 1955 c. 696; Stats. 1955 s. 939.01.

939.03 History: 1955 c. 696; Stats. 1955 s. 939.03.

On place of trial see notes to 971.19.

"It is elementary that a court may act only upon crimes committed within the territorial jurisdiction of the sovereignty seeking to try the offense." Hotzel v. Simmons, 258 W 234, 240, 45 NW (2d) 683, 686.

While as a general rule the laws of a state have no extraterritorial effect, yet the state may in the regulation of its own internal affairs pass laws in regard to its own citizens which will be binding and obligatory on them when they are without its territorial limits, and for violation of which they may be punished in its courts when they return within its jurisdiction. State v. Mueller, 44 W (2d) 387, 171 NW (2d) 414.

Under the provisions of secs. 4635a and 4635b, Stats. 1923, a prosecution under a complaint charging the obtaining of money by false pretenses (under sec. 4423) and obtaining money by means of a confidence game (under sec. 4568m) may be maintained in the county where part of the alleged crime was committed, even though part was committed in the state of Minnesota. 13 Atty. Gen. 314.

Jurisdiction over crimes—the territorial applicability of Wisconsin's criminal code. Howard, 1956 WLR 496.

939.05 History: 1955 c. 696; Stats. 1955 s. 939.05.

Where a person is charged as a party to a crime he may be convicted if evidence shows that he was present and aided and abetted the one who committed the crime. Vogel v. State, 138 W 315, 119 NW 190.

Those present assisting one who personally commits a felony are parties to the crime. Krueger v. State, 171 W 566, 177 NW 917.

One aiding or abetting in the commission of a felony is guilty as a party to the crime. In re Carlson, 176 W 538, 186 NW 722.

Five men concocted the general scheme of a holdup and each assisted therein by performing his allotted part. They were all principals. Fifer v. State, 189 W 50, 206 NW 861.

In order for one to escape responsibility for a crime on the ground of his abandonment of the criminal enterprise in which he was one of the conspirators, there must be some appreciable interval between the alleged abandonment and the criminal act for which he seeks to escape responsibility, and there must be evidence that he had wholly and effectively detached himself from the criminal enterprise before the act charged was in the process of consummation, or had become so inevitable that it could not reasonably be stayed. Pollack v. State, 215 W 200, 253 NW 560, 254 NW 471.

Where B and L conspired to rob a third person and both went to the place of the holdup together, and L fatally shot the victim, B was an aider in the commission of murder, and a party to the crime of murder. State v. Bachmeyer, 247 W 294, 19 NW (2d) 261.

An instruction "every person who counsels with, aids, abets or assists another in the commission of a crime is guilty the same as a principal, and may be charged, tried, and, if the evidence warrants, be convicted the same as a principal" is good. State v. Smith, 251 W 68, 27 NW 773.

The evidence as to a plan agreed on by all defendants, and as to 2 defendants breaking and entering while the other returned to their car, warranted a conviction of all defendants, as parties to the crimes, for the offense of breaking into and entering an office in the nighttime with the intention to commit the crime of larceny. State v. Kopacka, 260 W 505, 50 NW (2d) 917.

Penal statutes are to be interpreted strictly against the state and liberally in favor of the accused. State v. Bronston, 7 W (2d) 627, 97 NW (2d) 504, 508.

It is error to instruct the jury that if they fail to find a defendant insane or if they have reasonable doubt of the defendant's sanity then they cannot find the defendant not guilty because insane. Kwosek v. State, 8 W (2d) 640, 100 NW (2d) 339.

On the distinction between aiding and abetting and conspiracy see State v. Nutley, 24 W (2d) 527, 129 NW (2d) 155.

A person can be convicted of a crime which he has caused another to commit even though the other was acquitted on grounds of insanity. Fritz v. State, 25 W (2d) 91, 130 NW (2d) 279.

A contention that there was a fatal variance between pleading and proof in that defendant was charged with the substantive crime violated rather than as aider and abettor or coconspirator was devoid of merit, since under both case law and the clear language of 939.05 defendant could be so charged and convicted as a principal. La Vigne v. State, 32 W (2d) 190, 145 NW (2d) 175.

939.10 History: 1955 c. 696; Stats. 1955 s. 939.10.

See note to sec. 1, art. IV, on legislative power generally, citing Huebner v. State, 33 W (2d) 505, 147 NW (2d) 646.

Notwithstanding 939.10, the supreme court has power to develop the rule in insanity in criminal cases. State v. Esser, 16 W (2d) 567, 115 NW (2d) 505.

The distinction between accessories and principals at common law and common-law crimes have been abolished in this state by 939.10. Carter v. State, 27 W (2d) 451, 134 NW (2d) 444, 136 NW (2d) 561.

939.12 History: 1955 c. 696; Stats. 1955 s. 939.12.

939.14 History: 1955 c. 696; Stats. 1955 s. 939.14.

939.20 History: 1955 c. 696; Stats. 1955 s. 939.20.

939.22 History: 1955 c. 696; Stats. 1955 s. 939.22.

See note to 939.32, citing State v. Vinson, 269 W 305, 68 NW (2d) 712, 70 NW (2d) 1.

See note to 940.22, citing State v. Bronston, 7 W (2d) 627, 97 NW (2d) 504.

See note to 943.32, citing Rafferty v. State, 29 W (2d) 470, 138 NW (2d) 741.

939.23 History: 1955 c. 696; Stats. 1955 s. 939.23.

The intent of a defendant in a criminal prosecution can seldom be established by direct and positive proof. State v. Schlueter, 262 W 602, 55 NW (2d) 878.

The presumption that a person intends the natural and probable consequences of his acts applies in criminal cases. A proper instruction does not remove the presumption of innocence. State v. Vinson, 269 W 305, 68 NW (2d) 712, 70 NW (2d) 1.

Belief that the goods received were stolen is the equivalent of knowledge that they were stolen. Heyroth v. State, 275 W 104, 81 NW (2d) 56.

The jury was not bound to believe the statements of the defendant that he tried to extinguish the fire in an inner tube before leaving the scene of the fire, and that both the tube and a paper bag were ignited accidentally as the result of innocent, even if negligent, acts in lighting matches and candles. The law presumes that a person intends the natural and probable consequences of his own acts, but the presumption may be rebutted, and the jury must be informed of the rebuttable character of the presumption. State v. Carlson, 5 W (2d) 595, 93 NW (2d) 354.

The general rule applicable to all criminal cases, including those where specific intent is an element of the crime, is that the accused, if sane, is presumed to intend the necessary or the natural and probable consequences of his unlawful voluntary acts, knowingly performed. The rule is applicable to a charge of first-degree murder, where death ensues as a natural and probable consequence of an unlawful and voluntary act knowingly performed, and in such a case the law will presume that the actor intended the consequences were to cause the death of the victim. State v. McCarter, 36 W (2d) 608, 153 NW (2d) 527.

The state of mind of an alleged offender may be read from his acts, conduct, and inferences fairly deducible from all the circumstances. Strait v. State, 41 W (2d) 552, 164 NW (2d) 505. See also State v. Robbins, 43 W (2d) 478, 168 NW (2d) 544.

Common-law crimes having been abolished in Wisconsin, the element of criminal intent is governed by the relevant statute. Flowers v. State, 43 W (2d) 352, 168 NW (2d) 843.

939.30 History: 1955 c. 696; Stats. 1955 s. 939.30.

Where a public officer solicits a bribe for influence of his official action, a crime is committed although the person solicited refused to give the bribe. Asking for a certain sum as condition for voting on the allowance of a claim and urging the claimant to pay an additional sum to other members of a council and the offering to have favorable action secured were overt acts sufficient to justify a conviction. Rudolph v. State, 128 W 222, 107 NW 466.

Sodomy being punishable by imprisonment in the state prison is a "felony," constituting it an offense for any person to advise the commission of or attempt to commit any felony. Garrad v. State, 194 W 391, 216 NW 496.

Defendant was subject to prosecution under 340.52, Stats. 1929, for an attempt to take improper liberties with the person of a minor, the crime of improper liberties being a felony. Ambrose v. Reichenbach, 201 W 17, 229 NW 35.

A candidate for office advising a printer to commit a felony by wrongly printing the official ballots, with intent to change the result of the election as to such candidate, in violation of 348.231, Stats. 1927, commits a felony under 340.52 and 353.21, though the ballot be not changed. Wood v. Placky, 202 W 247, 232 NW 564.

A person might be guilty of counseling or advising another to resist an officer in violation of 346.39, Stats. 1949, even though such other refused to follow such counsel or advice. To "counsel or advise," it is not necessary to participate by any physical act in the resistance itself. Teske v. State, 256 W 440, 41 NW (2d) 642.

Under evidence which would support charges against pickets of resisting an officer as well as charges against another defendant of counseling and advising the pickets to resist, the jury could find such defendant guilty of the charge of counseling or advising to resist even though acquitting the pickets of the charge of resisting, logical consistency in ver-

dicts in criminal cases not being required. Teske v. State, 256 W 440, 41 NW (2d) 642.

939.31 History: 1955 c. 696; Stats. 1955 s. 939.31.

See note to 134.01, citing Trade Press Pub. Co. v. Milwaukee Typo. Union, 180 W 449, 193 NW 507, and other cases.

To constitute the declarations of any of the 3 defendants evidence against any and all of the other defendants, it is not necessary that a conspiracy be charged in the information, but is sufficient if it is proved on the trial. State v. Vincent, 202 W 47, 231 NW 263.

An indictment charging conspiracy to maintain gambling devices sufficiently charged common-law conspiracy notwithstanding that the offense of setting up and maintaining gambling devices was merely statutory. State v. Martin, 229 W 644, 282 NW 107.

One who tacitly consents to the object of a conspiracy and goes along with the other conspirators is guilty even though he intends to take no active part in the crime but stands by while they put the conspiracy into effect. O'Neil v. State, 237 W 391, 296 NW 96.

In cases involving criminal abortions, the woman and the person performing the abortion are co-conspirators, and in a prosecution of the latter for causing the death of the woman the declarations of the deceased are admissible against him, within the limits of the rules relating to the admission of declarations of one co-conspirator against another. State v. Timm, 244 W 508, 12 NW (2d) 670. See also Tingley v. Hanley, 248 W 578, 22 NW (2d) 510.

A contention of each defendant, predicated upon the provisions of 939.31, that if his liability was based upon his role as a conspirator, then his life sentence was excessive as a matter of law, had no merit, since it ignored the distinction between conspiracy as a substantive inchoate crime, and conspiracy as a theory of prosecution as a principal for a substantive consummated crime. State v. Nutley, 24 W (2d) 527, 129 NW (2d) 155.

A conviction of conspiracy to commit armed robbery in violation of 939.31, Stats. 1963, could not be successfully challenged as invalid because the proof establishing defendant's complicity was based upon the uncorroborated testimony of an accomplice, where such testimony fully made out all the elements of the offense charged. State v. Yancey, 32 W (2d) 104, 145 NW (2d) 145.

A combination of dealers in ice to maintain a fixed price is a punishable conspiracy at common law. Parties so combining may be punished under sec. 4568, Stats. 1898. An overt act must be alleged and proved. 1908 Atty. Gen. 267.

Defendant may be charged in the same complaint in separate counts with conspiracy under the statute, and with the common-law crime of spiriting away witnesses. 14 Atty. Gen. 355.

See note to 441.06, citing 30 Atty. Gen. 95.

939.32 History: 1955 c. 696; Stats. 1955 s. 939.32; 1967 c. 216.

Assault upon a female with intent maliciously to maim, disfigure or disable her internal organs is an offense under sec. 32, ch. 133, R. S. 1849. Moore v. State, 3 Pin. 373.

The crime of assault is not restricted by the specifications contained in the crime of mayhem, as regards an assault with intent to murder. State v. Crane, 4 W 400.

An indictment charging assault with intent to murder by one armed with a dangerous weapon is good under the statute. State v. Fee, 19 W 562; McKinney v. State, 25 W 378.

An indictment sufficiently charged assault with intent to commit rape. Fizell v. State, 25 W 364.

Proof of a woman's consent is always fatal to the charge of assault with intent to commit rape. Hull v. State, 25 W 580.

A charge of assault with intent to murder will not support a conviction of an assault with intent to maim or disfigure, the latter intent not being included in the former. Kilkelly v. State, 43 W 604; State v. Yanta, 71 W 669, 38 NW 333.

Putting a string attached to an explosive bomb in a private driveway, intending that the owner of the way by driving against or over the string should explode the bomb and be thereby killed, is an attempt to commit murder by means not constituting an assault. Jambor v. State, 75 W 664, 44 NW 963.

Evidence of a custom to give a newly-married couple a charivari unless there had been a public wedding to which all the people of the neighborhood were invited is inadmissible, on the trial of a person who had just been married, on the charge of assault with intent to kill, he having fired into and wounded one of a charivari party. Minaghan v. State, 77 W 643, 46 NW 894.

A charge of attempt to commit adultery is not within the statute. State v. Goodrich, 84 W 359, 54 NW 577.

The crime of larceny from the person is covered by the statute. State v. Lewis, 113 W 391, 89 NW 143.

The evidence was sufficient to sustain a conviction for assault with intent to commit rape. Bannen v. State, 115 W 317, 91 NW 107 and 965.

The assault referred to in the statute is committed if the intent to commit the crime be entertained at any time during its continuance, although the intent be abandoned from fear or from the degree of resistance. A purpose to overcome resistance is essential. Skulhus v. State, 159 W 475, 150 NW 503; Taylor v. State, 180 W 577, 193 NW 353.

Use of instruments with intent to cause a miscarriage is a violation of sec. 4583, Stats. 1917, whether a miscarriage is produced or not. Rodermund v. State, 167 W 577, 168 NW 390.

The evidence in a prosecution under 351.22, Stats. 1925, sustained a conviction of using an instrument with intent to produce an abortion on a pregnant woman, as against the contention that the fact of pregnancy was not established. Werner v. State, 189 W 26, 206 NW 898.

As to degree of resistance sufficient to sustain conviction, see Johnson v. State, 192 W 22, 211 NW 668.

See notes to 939.30, citing Ambrose v. Reich-

enbach, 201 W 17, 229 NW 35, and Garrad v. State, 194 W 391, 216 NW 496.

The evidence in this case was sufficient to support a conviction of a physician for procuring a miscarriage. State v. Henderson, 226 W 154, 274 NW 266.

An information charging in the words of the statute that the defendant assaulted a female with intent to commit the crime of rape, charged a criminal offense under which the court had jurisdiction, and the failure of the information to include the name of the female assaulted was a defect as to form only, which will not be inquired into in a habeas corpus proceeding brought after a plea of guilty, conviction thereon, and confinement in the state prison. State ex rel. Wenzlaff v. Burke, 250 W 525, 27 NW (2d) 475.

To establish the offense of assault with a dangerous weapon with intent to murder under 340.40, Stats. 1953, it was not incumbent on the state to establish that the assault was made with a steel-headed hammer, as alleged in the information, the testimony as to the victim's suffering a skull fracture caused by a blunt instrument being sufficient to show that whatever instrument was used was a dangerous weapon, and it being immaterial whether that weapon was in fact the hammer found at the scene of the assault, or some other object. The evidence of the defendant's intent to murder was sufficient to support the verdict, such intent being inferable from the fact that the blow was sufficient to cause a skull fracture, and testimony of the victim that her assailant said, "Not dead yet, eh," as he assaulted her a second time. State v. Johnson, 261 W 77, 51 NW (2d) 491.

In a prosecution under 340.41, Stats. 1953, the burden was on the prosecution to prove that the accused had an intent to do great bodily harm or to show facts from which it may be presumed. Evidence of the violence of the defendant's attack on the victim, the continuation of the attack by kicking while the victim lay helpless on the floor, the serious injuries inflicted, and the disproportion in size and age of the 2 men, and the inferences which it was the province of the jury to draw from the evidence, established beyond a reasonable doubt that the assault was made with the intent to inflict great bodily harm. State v. Vinson, 269 W 305, 68 NW (2d) 712, 70 NW (2d) 1.

Where the evidence established that a woman was struck on the head by defendant with a ratchet-type wrench, suffered a two-inch scalp laceration and remained in the hospital but a few hours, and for some time thereafter suffered headaches, but no further pain after awhile, there was sufficient evidence to sustain a conviction for attempted aggravated battery. State v. Bronston, 7 W (2d) 627, 97 NW (2d) 504.

A conviction for attempted first-degree murder will be sustained although, because the gun was not loaded, it was impossible for the accused to have committed murder. State v. Damms, 9 W (2d) 183, 100 NW (2d) 592.

The general attempt statute, 939.32, Stats. 1963, sets forth 2 requirements which must be met in order for conduct to be deemed a criminal attempt: (1) Intent on the part of the actor to commit the crime allegedly attempted; and (2) some acts in furtherance of this intent, which acts must "demonstrate unequivocally, under all the circumstances, that he formed that intent and would commit the crime except for the intervention of another person or some other extraneous factor". Oakley v. State, 22 W (2d) 298, 125 NW (2d) 657.

Under the circumstances of this case the proof was insufficient to support a conviction of attempted rape. Oakley v. State, 22 W (2d) 298, 125 NW (2d) 657.

Where defendant by overt acts indicated an intent to rape, he could be convicted of an attempt even though he desisted when he learned of the woman's pregnancy. Her condition was not an extraneous factor under 939.32 (2). Le Barron v. State, 32 W (2d) 294, 145 NW (2d) 79.

An attempt to violate 944.12 (enticement for immoral purposes) is complete when defendant takes action in furtherance of his intent. The refusal of the child to co-operate is an extraneous factor which prevents completion of the offense. Huebner v. State, 33 W (2d) 505, 147 NW (2d) 646.

The offense of attempted intercourse with a child does not bear with it the element of injury; hence it was immaterial that at trial she exhibited no injuries to her person. Grayson v. State, 35 W (2d) 360, 151 NW (2d) 100.

An unequivocal act accompanied by intent is sufficient to constitute a criminal attempt; insofar as the actor knows he has done everything necessary to ensure the commission of the crime intended, and he cannot escape punishment because of the fortuitous circumstance that by reason of some fact unknown to him it was impossible to effectuate the intended result. Berg v. State, 41 W (2d) 729, 165 NW (2d) 189.

In a prosecution for the attempted murder of his estranged wife, which occurred when defendant pursued her by car an extended period of time, waved a pistol in her face, fired at her 4 times from a distance of 5 feet, and seriously wounded her, the trial court did not err in limiting jury instructions to attempted murder and endangering safety by conduct regardless of life, rejecting requested instructions on attempted second-degree murder, attempted third-degree murder, and attempted manslaughter on the ground that the language of 940.02, 940.03 and 940.05 is not recognizable with the concept of attempt. State v. Carter, 44 W (2d) 151, 170 NW (2d) 681.

Arrest without warrant for attempt crimes. Boyle, 46 MLR 227.

Requirements for conviction of attempt to commit crime. 1960 WLR 516.

Withdrawal as a defense to relational crimes. Rotenberg, 1962 WLR 596.

939.42 History: 1955 c. 696; Stats. 1955 s. 939.42.

Where defendant was charged with murder and the defendant pleaded intoxication it is correct to instruct the jury that "the question simply is, in short, was he at the time in such a condition mentally as to be incapable

of forming this * * * design to effect the death * * *." Bernhardt v. State, 82 W 23. See also Terrill v. State, 74 W 278, 42 NW 243.

See note to 940.02, citing Lasecki v. State, 190 W 274, 208 NW 868.

Defendant's claim at trial that intoxication deprived her of capability to formulate an intent to kill was dispelled by her own clear and precise account of the events leading up to and following the stabbing as reflected in the record. Gelhaar v. State, 41 W (2d) 230, 163 NW (2d) 909.

In a prosecution for first-degree murder defendant could not successfully invoke 939.42 (1), Stats. 1965, as a defense based on his claim that involuntary intoxication rendered him incapable of distinguishing right from wrong, the record being devoid of evidence that when he shot the victim he was involuntarily intoxicated by reason of chronic alcoholism which compelled involuntary drinking to satisfy a psychological or physiological dependence thereon. Roberts v. State, 41 W (2d) 537, 164 NW (2d) 525.

939.43 History: 1955 c. 696; Stats. 1955 s. 939.43.

939.45 History: 1955 c. 696; Stats. 1955 s. 939.45.

Editor's Note: On the subject of entrapment, which is governed by the common law, the following cases are relevant: Topolewski v. State, 130 W 244, 109 NW 1037; Koscak v. State, 160 W 255, 152 NW 181; State ex rel. Kowaleski v. Kubiak, 256 W 518, 41 NW (2d) 605; State v. Hochman, 2 W (2d) 410, 86 NW (2d) 446; State v. Rice, 37 W (2d) 392, 155 NW (2d) 116; and Hawthorne v. State, 43 W (2d) 82, 168 NW (2d) 85. See also note, published in 52 MLR 406, on the entrapment doctrine as a defense in Wisconsin.

The statute cannot be extended by construction or by other language, and a trial court cannot do better than to instruct the jury in the precise language of the statute. Clifford v. State, 58 W 477, 17 NW 304.

Mere restraint of personal liberty or imprisonment without warrant will not support a plea that a homicide was committed in self-defense. If A points a loaded pistol at B and B grapples with him to prevent his shooting, A cannot then shoot and allege that he did it in self-defense. Clifford v. State, 58 W 477, 17 NW 304.

An assaulted person is not bound to call upon bystanders to restrain his assailant from making a threatened attack before personally resisting such attack. Bird v. State, 77 W 276, 45 NW 1126.

It is error to instruct that the taking of human life is not justified "by anything short of an actual, present and urgent danger, which makes the taking of life necessary"; and also to charge that "it will not justify the killing, if the necessity of the killing can be avoided by retreat," the conditions under which a retreat is necessary not being stated. Perkins v. State, 78 W 551, 47 NW 827.

Where an injured rioter sought to recover damages against the defendant who shot into a charivari party, it was proper to instruct the jury that "a riot is regarded in law, always, as a dangerous occurrence, because when rioters have convened in a tumultuous and disorderly manner, and have actually begun to accomplish an unlawful act, to the terror or disturbance of others, the prompting of one rioter is contagion to another, and it is impossible to conjecture or ascertain beforehand to what extremities of lawlessness or crime the excitement and confusion may lead. * * * A private person who cannot otherwise suppress them or defend himself from them may justify or excuse the use of firearms or other deadly weapons, because it is both a right and a duty to protect one's self and family and to aid in preserving the peace." Higgins v. Minaghan, 78 W 602, 47 NW 941.

The charge to the jury on the subject of self-defense, taken as a whole, was correct and not misleading, although a sentence which supplemented the language of sec. 4366, R. S. 1878, had it stood alone, would have been erroneous. Richards v. State, 82 W 172, 51 NW 652.

There is no reasonable ground for apprehending a design to do great personal injury because the deceased took out a knife when the defendant came out of his house with a gun and approached him. Odette v. State, 90 W 258, 62 NW 1054.

The evidence supported the contention that defendant was the assailant. Frank v. State, 94 W 211, 68 NW 657.

A charge as to justifiable homicide conformed to the statute. Sullivan v. State, 100 W 283, 75 NW 956.

The evidence was such as to demand a submission of the question of excusable homicide to the jury. Campbell v. State, 111 W 152, 86 NW 855.

There was evidence that the defendant had just before the shooting stopped the deceased from violently advancing upon him by drawing his revolver and that when the deceased was in the act of making another violent and threatening assault defendant repeated the experiment by drawing his revolver a second time in hopes of deterring the deceased from advancing further. Not knowing that the revolver was cocked, and without taking aim he leveled it at the deceased who was about 8 feet from him at the time and told him to stop or he would shoot but he had no intention of shooting and the revolver was discharged. The court erred in not submitting to the jury the question of whether the homicide was committed by accident and misfortune in doing a lawful act by lawful means with usual and ordinary caution and without any unlawful intent. Ryan v. State, 115 W 488, 92 NW 271.

Sec. 4367, Stats. 1898, excludes the use of a dangerous weapon in the case of a homicide. Justifiable homicide under this section involves some elements of self-defense or the enforcement of a duty and does not cover the acts of insanity or heat of passion. Duthey v. State, 131 W 178, 111 NW 222.

The evidence was insufficient to allow an acquittal under sec. 4366, Stats. 1898. Anderson v. State, 133 W 601, 114 NW 112.

An officer is not justified in shooting at one, under arrest on a civil warrant, who is attempting to escape. Shooting by an officer

in such a case with no intent to hit constitutes an assault and if the person be hit and injured the officer is liable. Gosczinski v. Carlson, 157 W 551, 147 NW 1018.

Where draft evaders resisted arrest by a deputy U.S. marshal who held proper warrants therefor and carried such resistance to the point of taking life, the marshal had a right to overcome such resistance and any necessary taking of life by the marshal in doing so was justifiable homicide, even though the offense charged in the warrant was a misdemeanor. Krueger v. State, 171 W 566, 177 NW 917.

An instruction which contained no element of justifiable homicide was favorable rather than prejudicial to the defendant, where the evidence was such that if the jury believed the defendant's version of the occurrence they could find the killing was done by accident or misfortune, while the defendant was performing a lawful act by lawful means with usual and ordinary caution and without unlawful intent. The instruction, however, made the defense of excusable homicide applicable to every phase of the evidence, and, instead of combining the instructions in a way which required all of the enumerated facts to exist, it quite distinctly set out each set of facts to which the defense of excusable homicide was applicable. Eckman v. State, 191 W 63, 209 NW 715.

In a murder prosecution, instructions to the effect that defendant was justified in shooting in order to prevent commission of the crime of adultery was properly refused, since killing is not justified in such case. Where the evidence would have justified a verdict of first-degree murder, defendant cannot complain that the jury found him guilty of second-degree murder. State v. Payne, 199 W 615, 227 NW 258.

939.46 History: 1955 c. 696; Stats. 1955 s. 939.46.

939.47 History: 1955 c. 696; Stats. 1955 s. 939.47.

939.48 History: 1955 c. 696; Stats. 1955 s. 939.48.

On privileged conduct see notes to 939.45.

Model instruction 805, Wis. J I—Criminal, Part I (prescribed where self-defense is an issue), is consistent with the legislative standard of self-defense and is a correct statement of the legal principles applicable thereto. The portions of the instruction which qualify the the privilege of self-defense to the standard of "what a person of ordinary intelligence and prudence would have done in the position of the defendant under the circumstances existing at the time of the alleged offense" correctly enunciate the controlling criterion by directing the jury to apply the objective standard of the ordinary intelligent and prudent person, limited to one in the position of the defendant under the circumstances existing at the time of the alleged offense—thus giving the jury sufficient latitude to consider all of the motivating factors at the time and place. State v. Kanzelberger, 28 W (2d) 652, 137 NW (2d) 419.

939.49 History: 1955 c. 696; Stats. 1955 s. 939.49; 1957 c. 415.

939.60 History: 1955 c. 696; Stats. 1955 s. 939.60.

939.60 distinguishes felonies from misdemeanors on the basis of punishability, but does not necessarily control or determine the place where the actual confinement is to be served. The section must be considered as a general statute defining felonies and misdemeanors, but not applicable to a specific case when the crime is expressly designated to be a misdemeanor. Pruitt v. State, 16 W (2d) 169, 114 NW (2d) 148. See also Harms v. State, 36 W (2d) 282, 153 NW (2d) 78.

The classification of crimes in Wisconsin. Lipton, 50 MLR 346.

939.61 History: 1955 c. 696; Stats. 1955 s. 939.61.

939.62 History: 1955 c. 696; Stats. 1955 s. 939.62; 1957 c. 97, 672.

See note to sec. 6, art. I, on cruel punishments, citing State v. Sullivan, 241 W 276, 5 NW (2d) 798.

A misdemeanor remains a misdemeanor even though the repeater statute is invoked at the time of sentencing. Harms v. State, 36 W (2d) 282, 153 NW (2d) 78.

A defendant charged as a repeater may not be heard to profess his innocence of misdemeanors for which he has previously been convicted, or reversible error in those convictions, absent actual reversal or pardon on the ground of innocence, and likewise he cannot be heard to allege collaterally constitutional errors, if any, which in no way affect his guilt of the prior misdemeanor offenses. State ex rel. Plutshack v. H. S. and S. Dept. 37 W (2d) 713, 157 NW (2d) 567.

939.62, Stats. 1965, does not define an offense but is treated as part of the criminal law regulating the sentence and judgment in cases where persons are guilty of successive repeated offenses. Wells v. State, 40 W (2d) 724, 162 NW (2d) 634.

While 939.62, Stats. 1967, provides that prior convictions of record and unreversed are a basis for a finding of habitual criminality, and that pardon may be shown if it was granted on the ground of innocence, the section does not change the burden of proof which is on the defendant to establish as a defense the existence of a pardon or vacation or reversal of the conviction. Block v. State, 41 W (2d) 205, 163 NW (2d) 396.

A court which has criminal jurisdiction only of offenses not punishable by imprisonment in the state prison cannot impose a repeater sentence under 359.12 (3), Stats. 1949. 39 Atty. Gen. 340.

939.65 History: 1955 c. 696; Stats. 1955 s. 939.65.

A single act may be an offense against 2 statutes; and if each statute requires proof of an additional fact which the other does not, an acquittal or conviction under either statute does not exempt the defendant from prosecution and punishment under the other. Schroeder v. State, 222 W 251, 267 NW 899.

In a prosecution under 340.271, Stats. 1951,

if 2 counts are submitted to the jury, (1) whether the defendant operated a motor vehicle while under the influence of liquor, causing the death, and (2) whether the defendant operated a motor vehicle in such a reckless and negligent manner as to cause the death, the court should instruct the jury that if it finds the defendant guilty on the first count, it should make no finding on the second. State v. Resler, 262 W 285, 55 NW (2d) 35.

939.65 does not mean the same crime; it means different crimes having some similar but not identical elements. State v. Roggensack, 15 W (2d) 625, 113 NW (2d) 389, 114 NW (2d) 459.

Charging, convicting and sentencing the multiple criminal offender. Remington and Joseph, 1961 WLR 528.

939.66 History: 1955 c. 696; Stats. 1955 s. 939.66.

Under an indictment for rape, which unnecessarily alleges that the crime was committed upon a married woman, the defendant cannot be convicted of adultery. State v. Hooks, 69 W 182, 33 NW 57.

An assault with intent to do great bodily harm is not an assault with intent to commit a felony within sec. 4696, R. S. 1878; and where the defendant is found guilty of assault, but not guilty of the intent, he cannot be punished under this section, but for a simple assault under sec. 4398. Vosburgh v. State, 82 W 168, 51 NW 1092.

Under an indictment for rape there may be a conviction for an assault with intent to commit rape. State v. Mueller, 85 W 203, 55 NW 165.

An assault with intent to murder must, from the very nature of the acts constituting the offense, embrace an intent to do great bodily harm. Information for assault with intent to kill and murder will sustain a verdict of assault with intent to do great bodily harm. Birker v. State, 118 W 108, 94 NW 643.

Where the court charged separately and correctly with reference to various types of assault, it was proper to tell the jury that simple assault might be found where the specified intent was lacking. Mainville v. State, 173 W 12, 179 NW 764.

An information charged defendant (1) with robbery while armed with intent to kill, (2) assault with a dangerous weapon with intent to rob, and (3) assault with a dangerous weapon. The court did not charge, and neither party requested him to charge, that the jury might convict of assault, in case they did not find the felonious intent. There was no error as the jury found defendant guilty under the second, which involved intent, and therefore he could not be found guilty of simple assault. Bogan v. State, 191 W 199, 210 NW 412.

In a prosecution under 340.41, Stats. 1953, it is not error if the court does not submit a question on assault and battery as an alternative verdict to assault with intent to do great bodily harm. Nor is it error to submit a question on "simple assault," particularly where defendant requested such submission. State v. Vinson, 269 W 305, 68 NW (2d) 712, 70 NW (2d) 1.

939.66, Stats. 1961, which prescribes that upon prosecution for a crime the actor may be convicted of either the crime charged or the lesser "included crime," but not both, is inapplicable to prosecution for both burglary and theft although arising out of the same transaction, for while it may be that the theft supplies the felonious intent for burglary, the theft is not an "included crime" of the burglary. Cullen v. State, 26 W (2d) 652, 133 NW (2d) 284.

The rule is that there must be a reasonable ground for a conviction on the lesser charge and an acquittal of the greater charge before the trial court will be justified in submitting lesser degrees of homicide than that charged in the information. If the evidence in such a case warrants submission of lesser degrees of the offense, failure to do so results in undeniable prejudice to the defendant. Weston v. State, 28 W (2d) 136, 135 NW (2d) 820.

It is not error to refuse to submit included crimes unless there is reasonable ground on the evidence, in the judgment of the court, for a conviction of the lesser offense and not the greater. Commodore v. State, 33 W (2d) 373, 147 NW (2d) 283.

Under the statutory definition of lesser included offenses, a misdemeanor crime of contributing to the delinquency of a minor (947.15 (1), Stats. 1965) is not an included crime within the felony charge of sexual intercourse with a child (944.10 (1), Stats. 1965), for the former offense requires proof of an additional fact that defendant was a person 18 years or older, while the latter is applicable to any male person. La Fond v. State, 37 W (2d) 137, 154 NW (2d) 304.

When it is impossible to commit a higher offense without committing a lesser one, and where both spring from the same transaction and are of the same nature, merely differing in degree, one is a lesser included offense of the other. 939.66, Stats. 1965, comprehends inclusion of lesser offenses factually embraced within the issues, so as to meet the test set forth above. Holesome v. State, 40 W (2d) 95, 161 NW (2d) 283.

939.70 History: 1955 c. 696; Stats. 1955 s. 939.70.

The burden of proof is the same whether the trial is to the court or the jury. The test is "whether the evidence adduced, believed and rationally considered by the jury, was sufficient to prove the defendant's guilt beyond a reasonable doubt". Gauthier v. State, 28 W 412, 137 NW (2d) 101. See also: Finger v. State, 40 W (2d) 103, 161 NW (2d) 272; State v. Laabs, 40 W (2d) 162, 161 NW (2d) 249; and State v. Harris, 40 W (2d) 200, 161 NW (2d) 385.

939.71 History: 1955 c. 696; Stats. 1955 s. 939.71.

On prosecutions (double jeopardy) see notes to sec. 8, art. I.

Defendant could not successfully maintain that action by the trial court placed him in double jeopardy, for the misdemeanor crime of contributing to the delinquency of a minor is not an included crime within the felony charge of sexual intercourse with a child, and hence the instant situation constituted

an exception to the limitation of 939.71, Stats. 1965. La Fond v. State, 37 W (2d) 137, 154 NW (2d) 304.

939.72 History: 1955 c. 696; Stats. 1955 s. 939.72.

939.73 History: 1955 c. 696; Stats. 1955 s. 939.73.

939.74 History: 1955 c. 696; Stats. 1955 s. 939.74.

See note to sec. 8, art. I, on limitations imposed by the Fourteenth Amendment, citing State v. Midell, 40 W (2d) 516, 162 NW (2d) 54.

CHAPTER 940.

Crimes Against Life and Bodily Security.

940.01 History: 1955 c. 696; Stats. 1955 s. 940.01.

Murder at common law must be committed with some degree of deliberation and intelligence, and with the intention of doing great bodily harm. Rowan v. State, 30 W 129.

The words "premeditated design" in sec. 2, ch. 164, R. S. 1858, signify merely an intent to kill; sudden intent not excluded. Murder in the first degree requires actual malice, which includes cases of general as well as particular malice, where the other conditions of the crime are present; the intent to kill need not be an intent to kill any particular person. Hogan v. State, 36 W 226.

Every killing not justifiable, done with deliberation and with an intent or design sufficiently fixed and settled in the mind, is murder in the first degree, even though the killing followed immediately upon the formation of the design. (Terrill v. State, 95 W 276, 70 NW 356, and Sullivan v. State, 100 W 283, 75 NW 956, overruled.) Perugi v. State, 104 W 230, 80 NW 593.

An indictment charging murder of a person named is sufficient, although it does not allege that the person murdered was a "person" or a "human being." Bowers v. State, 122 W 163, 99 NW 447.

The evidence was sufficient to sustain a verdict of murder in the first degree. Schwantes v. State, 127 W 160, 106 NW 237.

In a prosecution for the murder of defendant's illegitimate child, the evidence was sufficient to show that the child was born alive and had an independent existence with respiration and circulation before the act was committed. Heubner v. State, 131 W 162, 111 NW 63.

The words "premeditated design" signify merely an intent to kill. Sudden intent is not excluded. A conviction of murder in the first degree, which was reversed upon appeal, did not amount to an acquittal by the jury of manslaughter in the second degree. Montgomery v. State, 136 W 119, 116 NW 876.

An instruction that the law presumes that the person intends the consequences of his acts is erroneous and the true rule is that only the ordinary and natural consequences are presumed to be intended. Beauregard v. State, 146 W 280, 131 NW 347.

The evidence was sufficient to sustain a conviction under the statute for murder in the first degree. Dietz v. State, 149 W 462, 136 NW 166.

"Premeditated design" is no more nor less than mental purpose to take human life, which may be formed on the instant preceding the fatal act or at some time prior thereto, it being sufficient that there was such precedent purpose persisted in to the consummation of the crime. Radej v. State, 152 W 504, 140 NW 21.

Where the accused disclaimed all knowledge of the crime, leaving no question of accident, heat of passion, or other inadvertence, he was guilty of murder in the first degree or not guilty. Meyer v. State, 176 W 184, 185 NW 520.

See note to 940.02, citing Lasecki v. State, 190 W 274, 208 NW 868.

The fact that the jury upon returning a verdict of murder in the first degree presented a written request to the court that the defendant be given a sentence for less than life does not render the verdict erroneous. Tendrup v. State, 193 W 482, 214 NW 356.

The evidence was sufficient to sustain a conviction for murder in the first degree. Ortiz v. State, 198 W 176, 223 NW 416.

The evidence was sufficient to sustain a conviction of murder in the first degree. Moore v. State, 220 W 404, 265 NW 101.

Evidence that the one defendant conspired with 2 others to stage holdups, urged the holdup at which the murder occurred, and was present participating in such holdup, was sufficient to support such defendant's conviction of murder in the first degree, although the death occurred as the result of shots fired by one of the others while such defendant remained in an automobile. State v. Henger, 220 W 410, 264 NW 922.

If there was no request on behalf of the defendant for the submission of lesser degrees of homicide, the trial court's omission in that respect does not constitute error of which the defendant can complain on appeal. Van Rite v. State, 237 W 212, 295 NW 688.

In a prosecution for murder against a defendant who killed his wife the refusal of the trial court to submit to the jury a question of guilty of manslaughter in the third degree was not error, where the evidence would not in any view support a finding that the killing was merely "in the heat of passion without a design to effect death," but instead established a premeditated design to kill, making the crime murder in the first degree. State v. Genova, 242 W 555, 8 NW (2d) 260.

Circumstantial evidence will sustain a conviction only where all the incidents are satisfactorily established and are consistent with the happening of some particular event, and inconsistent with any other reasonable theory than that they tell the correct story of how such event happened to take place. Le Fevre v. State, 242 W 416, 8 NW (2d) 288.

From the evidence that the defendant bought a revolver, which he claimed was solely for protection of funds which he intended to carry on a contemplated elopement with the victim's sister, and that he carried the gun fully loaded to a secluded meeting