TITLE XXXII.

Crimes and the Punishment Thereof.

CHAPTER 340.

OFFENSES AGAINST LIVES AND PERSONS.

340.01 Homicide. The killing of a human being, without the authority of law, by poison, shooting, stabbing, or any other means or in any other manner is either murder, manslaughter, negligent homicide, or excusable or justifiable homicide, according to the facts and circumstances of each case. [*1941 c. 294*]

Note: If there was no request on behalf of the defendant for the submission of lesser degrees of the offense, 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.

340.02 Murder, first degree. Such killing, when perpetrated from premeditated design to effect the death of the person killed or of any human being, shall be murder in the first degree; and the person who shall be convicted of the same shall be punished by imprisonment in the state prison during the life of the person so convicted.

Note: The evidence is held to sustain a conviction of murder in the first degree, in view, among other things, of the position of the body after the shooting and the location of the bullet wounds, as against the contention that the defendant had called on the deceased for the purpose of collecting a debt and that the shooting had occurred during an altercation. Moore v. State, 220 W 404, 265 NW 101.

Evidence that the one defendant conspired with two 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.

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.

340.03 **Murder, second degree.** Such killing, when perpetrated by any act imminently dangerous to others and evincing a depraved mind, regardless of human life, without any premeditated design to effect the death of the person killed or of any human being, shall be murder in the second degree.

Note: The term "depraved mind," as used in defining second degree murder, carries the suggestion of an induced or self-created condition of mind, which is to be distinguished from a state of mind generally described as insanity or feeble-mindedness resulting from some disease or defect existing from birth or early childhood. State v. Johnson, 233 W 668, 290 NW 159.

340.04 **Same.** Any person who shall, by previous engagement or appointment, fight a duel within the jurisdiction of this state, and in so doing shall inflict a wound whereof the person so injured shall die shall be deemed guilty of murder in the second degree.

340.05 **Accessory.** Any person who shall be the second of either party in such duel as is mentioned in section 340.04 and shall be present when such wound shall be inflicted, whereof death shall ensue, shall be deemed to be an accessory before the fact of murder in the second degree.

340.06 **Causing death by injury to railroad.** Any person who shall wilfully and maliciously place any obstruction upon the track of any railroad in this state, or take up or displace a rail, switch or signal, or remove a spike or otherwise injure, break down or destroy any bridge, roadbed or other structure of any such railroad, whereby the death of any person shall be caused, shall be punished by imprisonment in the state prison during life.

340.07 **Murder, second degree.** Any person who shall wilfully and maliciously burn, in the nighttime, the dwelling house of another or of which he is a lessee or a tenant, whereby the life of any person shall be destroyed, or shall in the nighttime wilfully and maliciously set fire to any other building, owned by himself or another, by the burning whereof such dwelling house shall be burnt in the nighttime, whereby the life of any person shall be destroyed, shall be deemed guilty of murder in the second degree.

340.08 **Penalty.** Any person guilty of murder in the second degree or as an accessory thereto before the fact shall be punished by imprisonment in the state prison not more than twenty-five years nor less than fourteen years.

340.09 **Murder, third degree.** The killing of a human being without any design to effect death by a person engaged in the commission of any felony shall be murder in the third degree and shall be punished by imprisonment in the state prison not more than fourteen years nor less than seven.

Note: In a prosecution for a homicide which occurred when the defendant, while searching for a person whom he avowedly intended to kill, fatally shot another person who had ordered him off the premises, wherein the trial court submitted to the jury the questions of murder in the first degree, murder in the second degree, and not guilty, the evidence supported a conviction for murder in the first degree, but would not support a conviction for murder in the third degree, as defined in 340.09, nor for manslaughter in the second degree, as defined in 340.15, and hence the court did not err in refusing to submit instructions on murder in the third degree or on manslaughter in the second degree. Lee v. State, 236 W 181, 294 NW 513.

340.095 **Same.** Any person who shall administer to any woman pregnant with a child any medicine, drug or substance whatever, or shall use or employ any instrument or other means with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother or shall have been advised by 2 physicians to be necessary for such purpose, shall, in case the death of such child or of such mother be thereby produced, be deemed guilty of murder in the third degree. In case the death of the mother is thereby produced it is unnecessary to prove that the fetus was alive when the act so causing her death was committed. [*1947 c. 447*]

Note: In a prosecution for causing death by abortion the state must prove beyond a reasonable doubt that the deceased was pregnant. The weight of the evidence is for the jury. Parke v. State, 204 W 443, 235 NW 775.

In cases involving criminal abortions, the woman and the person performing the abortion are coconspirators, and in a prosecution of the latter for causng the death of the woman the declarations of the deceased are admissible against him, within the limits of rules relating to the admission of declarations of one coconspirator against another. The declarations of one coconspirator will not be received against another until a prima facie case of a conspiracy has first been made. State v. Timm, 244 W 508, 12 NW (2d) 670.

In a prosecution [prior to the amendment of this section by chapter 447, laws of 1947] for causing the death of a pregnant woman by using an instrument with intent to "destroy the child," where there was evidence which, if believed, would warrant at least a reasonable doubt that the child was not alive when the defendant operated, the burden was on the state to prove that the child was alive when the defendant operated. State v. Timm, 244 W 508, 12 NW (2d) 670.

On preliminary examination on a charge of producing an abortion causing death, in violation of 340.16 [later renumbered 340.095

and amended by ch. 447, laws of 1947], testimony as to statements of the deceased woman that she was pregnant and was going to do something about it because she would not go through with it, that she was going to see a doctor, mentioning the defendant's name, and that she "just got rid of something," was admissible as relating to declarations made by a coconspirator during the pendency of the conspiracy. State ex rel. Tingley v. Hanley, 248 W 578, 22 NW (2d) 510.

Attempt to commit abortion or cause miscarriage in one county which results in death of expectant mother in another county may be prosecuted in either county. 26 Atty. Gen. 601.

340.10 Manslaughter, first degree. The killing of a human being, without a design to effect death, by the act, procurement or culpable negligence of any other, while such other is engaged in the perpetration of any crime or misdemeanor not amounting to a felony, or in an attempt to perpetrate any such crime or misdemeanor, in cases where such killing would be murder at the common law, shall be deemed manslaughter in the first degree.

Note: Acquittal of manslaughter in first degree does not entitle accused to acquittal of manslaughter in fourth degree. Evidence justified conviction for manslaughter in fourth degree for death of companion killed when automobile ran into ditch because of gross negligence of accused who drove while intoxicated. Christie v. State, 212 W 136, 248 NW 920.

Where there was nothing in the evidence on preliminary examination to indicate any wanton or reckless disregard of human life or bodily harm in the conduct of the defendant motorist in striking the girl, such as was necessary to constitute murder at common law, the defendant could not be held for trial on a charge of manslaughter in the first degree. State ex rel. Shields v. Portman, 242 W 5, 6 NW (2d) 713.

Under this section, defining manslaughter in the first degree, the evidence to sustain a conviction must show beyond a reasonable doubt that the killing would be murder at the common law, and mere assault and battery with death following is not enough. State v. Scherr, 243 W 65, 9 NW (2d) 117.

340.11 Same. The wilful killing of an unborn child, by an injury to the mother of such child, which would be murder if it resulted in the death of such mother, shall be deemed manslaughter in the first degree.

340.12 Same. Any person who shall deliberately assist another in the commission of self-murder shall be deemed guilty of manslaughter in the first degree.

340.13 Penalty. Any person who shall be guilty of manslaughter in the first degree shall be punished by imprisonment in the state prison not more than ten years nor less than five years.

340.14 Manslaughter, second degree. The killing of a human being, without design to effect death, in a heat of passion, but in a cruel and unusual manner, unless it be committed under such circumstances as to constitute excusable or justifiable homicide, shall be deemed manslaughter in the second degree.

340.15 Same. Any person who shall unnecessarily kill another either while resisting an attempt by such other person to commit any felony or to do any other unlawful act, or after such attempt shall have failed, shall be deemed guilty of manslaughter in the second degree.

[*340.16 Stats. 1945 renumbered section 340.095 by 1947 c. 447*]

340.17 Penalty. Any person guilty of manslaughter in the second degree shall be punished by imprisonment in the state prison not more than seven years nor less than four years.

340.18 Manslaughter, third degree. Any person who shall kill another in the heat of passion without a design to effect death, by a dangerous weapon, in any case except such wherein the killing of another is herein declared to be justifiable or excusable, shall be deemed guilty of manslaughter in the third degree.

Note: The "heat of passion" to reduce what would otherwise be murder to manslaughter in the third degree is such mental disturbance, caused by reasonable, adequate provocation, as to overcome and dominate or suspend one's judgment and render his mind for the time being deaf to reason. Balthazor v. State, 207 W 172, 240 NW 776.

Where there was testimony that officers had searched the quarters where the defendant lived against his protest and his demand for the production of a search warrant, an instruction that the fact that the officers had no search warrant had no bearing on the case except as relating to their credibility, constituted prejudicial error, since such fact had a bearing in the circumstances on the question of "heat of passion" as an element in determining the degree of homicide. Melli v. State, 220 W 419, 265 NW 79.

The "heat of passion" to reduce what would otherwise be murder to manslaughter in the third degree is such mental disturbance, caused by reasonable, adequate provocation, as would ordinarily so overcome and dominate or suspend the exercise of the judgment of an ordinary man as to render his mind for the time being deaf to the voice of reason. Devroy v. State, 239 W 466, 1 NW (2d) 875.

340.19 Same. The involuntary killing of a human being by the act, procurement or culpable negligence of another, while such other person is engaged in the commission of a trespass or other injury to private rights or property or engaged in an attempt to commit such injury, shall be deemed manslaughter in the third degree.

340.20 Same. Any person being the owner of a mischievous animal, knowing its propensities, who shall wilfully suffer it to go at large or shall keep it without ordinary care, and such animal, while so at large or not confined, shall kill any human being who shall

have taken all the precautions which the circumstances may permit to avoid such animal, such owner shall be deemed guilty of manslaughter in the third degree.

340.21 Same. Any person navigating any boat or vessel for gain, who shall wilfully or negligently receive so many passengers or such quantity of other lading that by means thereof such boat or vessel shall sink or overset, and thereby any human being shall be drowned or otherwise killed, shall be deemed guilty of manslaughter in the third degree.

340.22 Same. Any person having charge of any steamboat or railroad train for the conveyance of passengers, or any engineer or other person having charge of the boiler of such steamboat or locomotive of such railroad train or of any other apparatus for the generation of steam who shall, from ignorance or gross neglect, or for the purpose of excelling any other steamboat or railroad train in speed, cause a collision or wreck of such steamboat or railroad train, or create or allow to be created such an undue quantity of steam as to burst or break the boiler or other apparatus in which it shall be generated, or any apparatus or machinery connected therewith by which collision, wreck or bursting or breaking of such boiler any person shall be killed, shall be deemed guilty of manslaughter in the third degree.

340.23 Same. Any physician, while in a state of intoxication, who shall, without any design to effect death, administer any poison, drug or medicine or do any other act to another person which shall produce the death of such other person shall be deemed guilty of manslaughter in the third degree.

340.24 Penalty. Any person who shall be guilty of manslaughter in the third degree shall be punished by imprisonment in the state prison not more than four years nor less than two years.

340.25 Manslaughter, fourth degree. The involuntary killing of another by any weapon or by any means, neither cruel nor unusual, in the heat of passion, in any cases other than such as are herein declared to be justifiable or excusable homicides, shall be deemed manslaughter in the fourth degree.

340.26 Same. Every other killing of a human being by the act, procurement or gross negligence of another, except negligent homicide, where such killing is not justifiable or excusable, or is not declared in this chapter murder or manslaughter of some other degree, shall be deemed manslaughter in the fourth degree. [*1941 c. 294*]

Note: The state court has jurisdiction to try offenses committed by tribal Indians residing on reservation land when such offenses are committed on lands that are no part of the reservation, though within its exterior boundaries. State v. Johnson, 212 W 301, 249 NW 284.

The fourth degree manslaughter statute does not apply if the act involved constitutes homicide under some other statute. State v. Risjord, 228 W 535, 280 NW 680.

In a prosecution for manslaughter in the fourth degree evidence that the defendant motorist, after stopping for a stop light at a street intersection, started his automobile and increased his speed without observing traffic in front of him, and failed to observe an automobile being pushed by several persons on a well-lighted bridge, and, while talking to a companion, struck the pushed car, causing fatal injuries to one of the persons pushing, was insufficient to sustain a finding that the defendant was guilty of "gross negligence" necessary for conviction. Bussard v. State, 233 W 11, 288 NW 187.

340.27 Penalty. Any person who shall be guilty of manslaughter in the fourth degree shall be punished by imprisonment in the state prison not more than two years nor less than one year, or by imprisonment in the county jail not more than one year, or by fine not exceeding one thousand dollars, or by both such fine and imprisonment.

340.271 Negligent homicide. (1) Any person who by operation of any vehicle while under the influence of alcoholic beverages or narcotic drugs shall cause the death of another shall be deemed guilty of negligent homicide and upon conviction thereof shall be punished by imprisonment in the state prison not more than 5 years nor less than one year, or by imprisonment in the county jail not more than one year, or by fine of not more than $2,500, or by both such fine and imprisonment. This subsection shall not limit the right of criminal action against any person who by the operation of any vehicle while under the influence of alcoholic beverages or narcotic drugs shall cause the death of another, to proceedings under this section, but such person may be proceeded against under any appropriate homicide statute.

(2) Any person who, by the operation of any vehicle at an excessive rate of speed or in a careless, reckless or negligent manner constituting or amounting to a high degree of negligence, but not wilfully or wantonly, shall cause the death of another, shall be deemed guilty of negligent homicide and upon conviction thereof shall be punished by imprisonment in the county jail not more than one year or by a fine of not more than $1,000, or by both such fine and imprisonment.

(3) Any person who, by the operation or handling of a gun, pistol or other firearm or of a bow and arrow in a careless, reckless or negligent manner constituting or amounting to a high degree of negligence, but not wilfully or wantonly, shall cause the death of

another, shall be deemed guilty of negligent homicide and shall be punished as provided in subsection (2). [*1941 c. 294; 1947 c. 147*]

Note: The evidence on preliminary examination, sufficient to justify a finding of reasonable probability of the defendant's guilt of unlawful operation of his car on the highway in respect to driving carelessly and heedlessly or without due caution and circumspection, or so as to be likely to endanger life or limb, or without due regard to the traffic and other existing conditions, at the time of striking the girl, was sufficient to support holding the defendant for trial on a charge of negligent homicide. State ex rel. Shields v. Portman, 242 W 5, 6 NW (2d) 713.

Subsection (2) is sufficiently definite and certain to be valid, although it contains no definition of "high degree of negligence," and the jury's judgment as to the degree of negligence determines the guilt or innocence of the accused in any given case. It is not necessary to its validity that the negligent homicide statute be so definite that the offending operator of a vehicle may know with certainty just how negligent he may be in causing the death of another person before he becomes criminally liable thereunder, no operator of a vehicle having a legal right to be negligent in any degree. The court defines "high degree". State ex rel. Zent v. Yanny, 244 W 342, 12 NW (2d) 45.

The state court has no jurisdiction to try an enrolled Indian on the charge of having caused the death of another enrolled Indian upon the Menomonie Indian Reservation. The act occurred on a state highway. Exparte Konaha, 43 F Supp. 747.

340.28 Homicide and manslaughter defined. The killing of a human being by the act, procurement or omission of another in cases where such killing shall not be murder according to the provisions of this chapter is either justifiable or excusable homicide or manslaughter.

340.29 Homicide, when justified. Such homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance, either in obedience to any judgment of a competent court or where necessarily committed in overcoming actual resistance to the execution of some legal process, or to the discharge of any other legal duty, or when necessarily committed in retaking felons who have been rescued, or who have escaped, or when necessarily committed in arresting felons fleeing from justice, or when committed by any person in either of the following cases:

(1) When resisting any attempt to murder such person, or to commit any felony upon him or upon or in any dwelling house in which such person may be; or

(2) When committed in the lawful defense of such person or of his or her husband, wife, parent, child, master, mistress, or servant, guardian or ward, when there shall be reasonable ground to apprehend a design to commit a felony or to do some great personal injury, and there shall be reasonable cause for believing that there is imminent danger of such design being accomplished; or

(3) When necessarily committed in attempting by lawful ways and means to apprehend any person for any felony committed, or in lawfully suppressing any riot or in lawfully keeping and preserving the peace.

340.30 Excusable homicide. Such homicide is excusable when committed by accident and misfortune in lawfully correcting a child or servant, or in doing any other lawful act by lawful means with usual and ordinary caution and without any unlawful intent; or by accident and misfortune in the heat of passion upon any sudden and sufficient provocation, or upon a sudden combat, without any undue advantage being taken and without any dangerous weapon being used, and not done in a cruel or unusual manner.

340.31 Verdict. Whenever it shall appear to the jury on the trial of any person indicted or informed against for murder or manslaughter that the alleged homicide was committed under circumstances or in cases where by law such homicide was justifiable or excusable the jury shall render a general verdict of not guilty.

340.32 Dueling or challenging to a duel. Any person who shall engage in a duel with any deadly weapon, although no homicide ensue, or shall challenge another to fight such duel, or shall send or deliver any written or verbal message purporting or intending to be such challenge, although no duel ensue, shall be punished by imprisonment in the state prison not more than ten years nor less than three years.

340.33 Accepting challenge, etc. Any person who shall accept the challenge of another to fight a duel, or who shall knowingly carry or deliver any such challenge or message, whether a duel shall issue or not, and any person who shall be present at the fighting of a duel with deadly weapons as an aid, or second or surgeon, or who shall advise, encourage or promote such duel shall be punished by imprisonment in the state prison not more than two years nor less than one year.

340.34 Abuse for not fighting. Any person who shall post another, or in writing or print shall use any reproachful or contemptuous language to or concerning another for not fighting a duel or for not sending or accepting a challenge to fight a duel, shall be punished by imprisonment in the state prison not more than two years nor less than one year, or by fine not exceeding five hundred dollars nor less than one hundred dollars.

340.35 Mayhem. Any person with malicious intent to maim or disfigure, who shall cut out or maim the tongue, put out or destroy an eye, cut or tear off an ear, cut, slit or mutilate the nose or lip, or cut or disable a limb or member of another person, and any person privy to such intent who shall be present aiding in the commission of such offense shall be punished by imprisonment in the state prison, not more than fifteen years nor less than one year, or by fine not exceeding five thousand dollars nor less than two hundred dollars.

Note: This section is not applicable to vasectomy performed for purpose of benefiting health of patient. 27 Atty Gen. 416.

340.36 Assault with intent to murder or maim. Any person who shall assault another with intent to murder, not then being armed with a dangerous weapon, or with intent to maim or disfigure his person in any of the ways mentioned in section 340.35, shall be punished by imprisonment in the state prison not more than five years nor less than one year, or by fine not exceeding one thousand dollars nor less than one hundred dollars.

340.37 Attempt to murder by other means. Any person who shall attempt to commit the crime of murder by poisoning, drowning or strangling another person, or by any means not constituting an assault with intent to murder, shall be punished by imprisonment in the state prison not more than ten years nor less than one year.

340.38 Assault regardless of life. Any person who shall assault another in a manner evincing a depraved mind, regardless of human life, without any premeditated design to effect the death of the person assaulted and under such circumstances that if death had resulted the assailant would have been guilty of murder in the second degree, shall be punished by imprisonment in the state prison not more than eight years nor less than one year.

340.39 Assault and theft, being armed. Any person who shall assault another and shall feloniously rob, steal or take from his person any money or other property which may be the subject of larceny, such robber being armed with a dangerous weapon, or any firearm, loaded or unloaded, with intent, if resisted, to kill or maim the person robbed, or being so armed, who shall wound or strike the person robbed, shall be punished by imprisonment in the state prison not less than three years nor more than thirty years. [*1935 c. 173*]

340.40 Assault with intent to murder or rob. Any person being armed with a dangerous weapon, or any firearm, whether loaded or unloaded, who shall assault another with intent to rob or murder, shall, upon conviction thereof, be punished by imprisonment in the state prison not more than thirty years nor less than one year. [*1931 c. 29*]

Note: The supreme court declined to overrule the earlier cases which hold that an unloaded revolver is not a dangerous weapon, but suggested that the rule be changed by legislative enactment. The rule was changed by chapter 29, Laws 1931, amending 340.40. Luitze v. State, 204 W 78, 234 NW 382.

340.41 Assault, great bodily harm. Any person who shall assault another with intent to do great bodily harm shall be punished by imprisonment in the state prison not more than three years nor less than one year, or in the county jail not more than one year, or by fine not exceeding five hundred dollars nor less than one hundred dollars.

Note: The submission of a verdict covering assault with intent to murder while armed with a dangerous weapon, under 340.40, assault with intent to do great bodily harm, under 340.41, and simple assault, under 340.72, and a conviction for assault with intent to do great bodily harm, were proper as against the contention that the offense of assault with intent to murder while armed with a dangerous weapon excludes lower forms of assault while so armed. State v. Wagner, 239 W 634, 2 NW (2d) 229.

340.42 Crime deemed assault with intent to do great bodily harm. Any person who shall wilfully and maliciously discharge any gun, pistol or other firearms or throw any dangerous missile into any railroad or street railway car or train, or motor vehicle as defined in chapter 85, upon or in which either passengers, employes or other persons are being carried, shall be deemed guilty of assault with intent to do great bodily harm under section 340.41, and shall be punished in accordance with the terms of that section, upon complaint duly made by any passenger or employe present upon such car or train at the time of the assault.

340.43 Assault and theft, unarmed. Any person who shall, by force and violence or by assault and putting in fear, feloniously rob, steal and take from the person of another any money or other property which may be the subject of larceny, such robber not being armed with a dangerous weapon, shall be punished by imprisonment in the state prison not more than seven years nor less than one year.

Note: Accused could not escape prosecution for robbery and larceny of a gambling device on ground that its use was forbidden and was contraband and had no value, since contraband property may be subject of larceny. State v. Clementi, 272 NW 29.

Indeterminate sentence of from two to four years is erroneous when imposed for violation of this section which prescribes indeterminate sentence of from one to seven years. Trial judge having refused to modify such sentence it can be corrected only by writ of error or appeal to supreme court. 21 Atty. Gen. 864.

340.44 Assault, intent to rob. Any person, not being armed with a dangerous weapon, who shall assault another with force and violence and with intent to rob or steal shall be punished by imprisonment in the state prison not more than two years nor less than one year.

340.45 Threats to accuse of crime or injure. Any person who shall, either verbally or by any written or printed communication, maliciously threaten to accuse another of any crime or offense, or to do 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 his will or omit to do any lawful act, shall be punished by imprisonment in the state prison not more than two years nor less than one year or by fine not exceeding five hundred dollars nor less than one hundred dollars.

Note: The business agent of a cooks' and waiters' union who had threatened the president and manager of corporations operating restaurants that the business agent would call a strike unless he was paid a certain sum of money is properly found guilty of malicious threatening to do injury to the business of another with intent thereby to extort money. [Schultz v. State, 135 W 644, distinguished.] Mayer v. State, 222 W 34, 267 NW 290.

The complaint does not state a cause of action under this section, since there is no allegation of injury to the plaintiff's business as a contractor or his trade as a carpenter, and injury to reputation is not within the statute. [Muetze v. Tuteur, 77 W 236, overruled as to statement of scope of statute.] Judevine v. Benzies-Montanye F. & W. Co., 222 W 512, 269 NW 295.

In order to sustain a conviction for maliciously threatening to accuse another of a crime with intent thereby to extort money, the state need not establish that the victim's mind was so influenced by the threat in question that he acted under duress and that the money was actually obtained thereby, since the gist of the offense is the attempt to extort money and the commission of the offense is not made to depend either on the victim's state of mind or on whether money was actually obtained. O'Neil v. State, 237 W 391, 296 NW 96.

If the object of a conspiracy was to extort money by maliciously threatening to prosecute another for a criminal libel, the state could institute a prosecution under 340.45, specifically providing as to such offense, and was not required to prosecute under 343.681 because of the existence of a conspiracy. O'Neil v. State, 237 W 391, 296 NW 96.

Although a criminal libel is only a misdemeanor and the discharge of a defendant in a prosecution for a misdemeanor is authorized if the injured party appears in court and acknowledges satisfaction, the belief on the part of the libeled person that he has a right to recover damages when he demands payment thereof in connection with stating that he will prosecute the wrongdoer if the latter fails to pay, does not necessarily constitute a defense to a charge of extortion, since there is still the crucial issue as to whether the prosecution was threatened maliciously with intent thereby to extort money instead of being merely mentioned incidentally in seeking to obtain a settlement by the payment of reasonable compensation for the damage sustained. O'Neil v. State, 237 W 391, 296 NW 96.

340.46 Rape. Any person who shall ravish and carnally know any female of the age of sixteen years or more, by force and against her will, shall be punished by imprisonment in the state prison not more than thirty years nor less than one year; but if the female shall be proven on the trial to have been, at the time of the offense, a common prostitute, he shall be so punished not more than seven years nor less than one year.

Note: Rape defined and evidence held sufficient to warrant a conviction. Starr v. State, 205 W 310, 237 NW 96.

Person may be convicted of rape on prosecutrix' uncorroborated testimony, if jury is satisfied of truth thereof beyond reasonable doubt. Where prosecutrix' testimony bears evidence of unreliability on its face, it should be corroborated by other evidence as to principal facts relied on to constitute crime. Cleaveland v. State, 211 W 565, 248 NW 408.

340.47 Carnal knowledge and abuse. Any person over eighteen years of age who shall unlawfully and carnally know and abuse any female under the age of eighteen years shall be punished by imprisonment in the state prison not more than thirty-five years nor less than one year, or by a fine not exceeding two hundred dollars; and any person of the age of eighteen years or under who shall unlawfully and carnally know and abuse any female under the age of eighteen years shall be punished by imprisonment in the state prison not more than ten years nor less than one year, or by fine not exceeding two hundred dollars.

Note: A violation of this section committed within an Indian reservation by one tribal Indian upon another, both residents of the reservation, cannot be prosecuted in the state court. State v. Rufus, 205 W 317, 237 NW 67.

In a rape case, the weight to be given discrepancies between the testimony of the prosecuting witness upon the preliminary examination and her testimony upon successive trials, and between her testimony on the first trial and that on the second as to an extrajudicial statement, is for the jury. Haley v. State, 207 W 193, 240 NW 829.

A sentence of imprisonment for twenty years of one of three convicted of rape of a girl sixteen years of age is not excessive. Duenkel v. State, 207 W 644, 242 NW 179.

The testimony of the victim when supported by circumstances is sufficient to sustain a verdict of guilty in a prosecution under this section. Where the record shows that the case was given to the jury eleven hours before it returned its verdict the supreme court assumes that the verdict was reached after long and careful consideration of the evidence. State v. Fischer, 228 W 131, 279 NW 661.

Testimony in the trial of statutory rape as to other offenses and acts of the defendant, wholly unconnected with the crime charged, on other dates, was incompetent and irrelevant. Birmingham v. State, 228 W 448, 279 NW 15.

A person may be convicted of rape on the uncorroborated testimony of a prosecutrix

if the jury is satisfied as to the truth of her testimony beyond a reasonable doubt, but where the testimony of the prosecutrix bears on its face evidence of its unreliability, there should be corroboration by other evidence as to the principal facts relied on to constitute the crime. State v. Crabtree, 237 W 16, 296 NW 79.

A sentence for statutory rape, in form of not less than one nor more than 4 years' imprisonment in the state prison, was but a determinate sentence of 4 years, under the indeterminate-sentence statutes (359.05, 359.07) which do not apply to rape. Sprague v. State, 243 W 456, 10 NW (2d) 109.

Testimony of the prosecutrix may be sufficient to sustain a conviction for statutory rape. State v. Fries, 246 W 521, 17 NW (2d) 578.

Under this section, where the age of the defendant is a material element, the prosecution must satisfy the jury beyond a reasonable doubt that the defendant was of the age specified or older at the time of the alleged offense. The physical appearance of the defendant may be observed by the jury in connection with other evidence for the purpose of determining his age. State v. Fries, 246 W 521, 17 NW (2d) 578.

The denial of a motion to vacate the judgment and grant a new trial to a defendant who had had the benefit of counsel and had made a confession and pleaded guilty to a charge of statutory rape was not an abuse of discretion, as against contentions that a medical examination of the child did not disclose facts sufficient to establish an offense and that there was a denial of due process. State v. Graff, 248 W 576, 22 NW (2d) 483.

Person convicted of "carnal knowledge and abuse" of female under age of 18 under 340.47, is required to be sentenced to fixed term of imprisonment, since crime of carnal knowledge is "rape" within exceptions to indeterminate sentence law, 359.05 and 359.07, notwithstanding enactment of ch. 77, Laws 1939. 30 Atty. Gen. 237.

340.48 Assault intending to rape or carnal knowledge and abuse. Any person who shall assault any female with intent to commit the crime of rape or of carnal knowledge and abuse shall be punished by imprisonment in the state prison not more than ten years nor less than one year. [*1939 c. 77*]

Note: 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.

340.49 Poisoning food, drink, etc. Any person who shall mingle any poison with any food, drink or medicine, with intent to kill or injure any other person, or who shall wilfully poison any spring, well or reservoir of water, with such intent, shall be punished by imprisonment in the state prison not more than ten years nor less than one year.

340.50 Narcotic poisoning. If any person shall unlawfully and wilfully administer to another, any chloroform, laudanum, chloral or other stupefying and overpowering drug, narcotic or anaesthetic agent by placing, dropping or pouring the same, or causing the same to be placed, dropped or poured, or administer the same in any other manner into or upon any food or drink intended or prepared for the use of any person, or into or upon any dish, glass or vessel into which any such food or drink is intended to be placed or poured or in any other manner or knowing the said drug, narcotic or anaesthetic agent to have been placed, dropped or poured into or upon any such food or drink, or into or upon any such dish, glass or vessel shall cause or allow or permit another to eat or drink the same with intent thereby to enable such offender or any other person to commit or with the intent to assist such offender or other person in committing any felony, every such offender shall be guilty of a felony, and being thereof convicted shall be sentenced to pay a fine not exceeding five thousand dollars or by imprisonment at hard labor in the state prison not exceeding ten years.

340.51 Assault to commit felony; advice or attempt. Any person who shall assault another with intent to commit any burglary, robbery, rape or mayhem, or who shall advise or attempt to commit any arson or any other felony that shall fail in being committed, the punishment for which such assault, advice or attempt is not herein prescribed, shall be punished by imprisonment in the state prison not more than three years nor less than one year, or by fine not exceeding one thousand dollars nor less than one hundred dollars.

340.52 Advice or attempt to commit felony. Any person who shall advise the commission of or attempt to commit any felony as defined in section 353 31, that shall fail in being committed, the punishment for which such advice or attempt is not otherwise prescribed in these statutes, shall be imprisoned in the state prison not more than three years nor less than one year, or by fine not exceeding one thousand dollars, nor less than one hundred dollars.

Note: See note to 348.231, citing Wood v. Plackey, 202 W 247, 232 NW 564.

340.53 Injuring railroad. Any person who shall wilfully, maliciously or wantonly place any obstruction upon the track of any steam, electric or cable railroad in this state, or take up or displace a rail, switch or signal, or remove a spike, or otherwise injure, break down or destroy the bridge, roadbed or other structure of such railroad shall be punished by imprisonment in the state prison not more than ten years nor less than one year.

340.54 Imprisonment, kidnaping, etc. (1) Any person who shall, without lawful authority, forcibly or secretly confine or imprison another within this state against his

will, or who shall forcibly carry or send another out of this state or from place to place within this state against his will and without lawful authority, or who shall, without such authority, forcibly seize, confine, inveigle or kidnap another with intent to cause such person to be secretly confined or imprisoned in this state against his will or to be sent or carried out of this state against his will, or to be sold as a slave or in any way held to service against his will, or who with criminal intent shall remove therefrom anyone legally committed to any hospital or asylum for the insane, or to any institution for the care of the feeble-minded and epileptic, or to the Wisconsin child center, shall be deemed guilty of a felony and on conviction thereof shall be punished by imprisonment in the state prison not more than 15 years nor less than one year; and such offense may be tried in the county where it is committed, or in any county into which the person so kidnaped may be carried or sent; and upon the trial thereof the consent thereto of the person so seized, confined, inveigled or kidnaped shall not be a defense unless it shall be made satisfactorily to appear that such consent was not obtained by fraud, nor extorted or forced by duress or threats.

(2) Any person who, without lawful authority, but without criminal intent, shall remove therefrom anyone legally committed to any hospital or asylum for the insane, or to any institution for the care of the feeble-minded and epileptic, or to the Wisconsin child center, shall be guilty of a misdemeanor and shall be punished by a fine not exceeding $200, or by imprisonment in the county jail not more than 60 days, or by both such fine and imprisonment. [*1947 c. 540*]

Note: The power to arrest does not confer upon the arresting officer the power to detain a prisoner for other purposes. The defendants in an action for false imprisonment, having detained the plaintiff in the exercise of a supposed power which they did not possess, cannot complain that upon the trial they were not permitted to justify the act upon other grounds. An officer who unlawfully arrests and detains a person upon one charge cannot justify his conduct by showing that the person so arrested was subject to a legal arrest upon other grounds. Geldon v. Finnegan, 213 W 539, 252 NW 369.

340.55 Taking and detention of minors. Any person who shall, without lawful authority and for any immoral or unlawful purpose, forcibly take or carry away and remove, entice or inveigle any person under eighteen years of age from the home or residence of such person or from the care and custody of his parent or guardian, or, without such authority, forcibly detain such person who is absent from his home or residence or the custody of his parent or guardian, or persuade or entice him to remain absent therefrom, shall be punished by imprisonment in the state prison for a term the minimum of which shall be three years and the maximum life imprisonment. It shall not be a defense to any prosecution brought under this section that such person consented to such removal or detention.

Note: Mother is not guilty of kidnaping her own children if she secretly takes them away from her husband who has custody of children after divorce. 20 Atty. Gen. 91.

Conviction under 340.55 is not conviction of "kidnaping" within meaning of 359.07. 28 Atty. Gen. 4.

340.56 Kidnaping penalty; consent of parent. Any person who shall take, carry away, decoy, entice away or secrete any child under the age of sixteen years, without the consent of the parent, guardian, or lawful custodian of said child, with the intent of causing any relative or other person to pay or offer to pay any sum as ransom or reward for the return or release of such child, shall be deemed guilty of a felony and upon conviction thereof shall be punished by imprisonment in the state prison during the life of the person so convicted. If no permanent injury results to the person wrongfully enticed away or secreted, the penalty shall be imprisonment in the state prison for not less than fifteen years nor more than thirty years. Upon the trial thereof the consent of the parent, guardian, or lawful custodian of such child shall not be a defense unless it shall be made satisfactorily to appear that such consent was not obtained by fraud, duress, or threats.

340.57 Assault and battery. Any person who shall commit an assault and battery upon another shall be punished by imprisonment in the county jail not more than six months nor less than ten days, or by fine not exceeding one hundred dollars nor less than one dollar, or by both such fine and imprisonment in the discretion of the court.

340.58 Abuse of inmates of institutions. Any officer or other person in charge of or employed in any hospital or asylum for the insane, county home, workhouse, state prison, state reformatory, home for women, jail, police station or other place of confinement, school for the deaf and dumb or blind, the Wisconsin child center, colony for the feeble-minded, house of correction, industrial school for boys or girls or orphan asylum who shall abuse, neglect or ill-treat any person confined therein or an inmate thereof, or who shall permit any other person so to do shall be punished by imprisonment in the county jail not more than one year or by fine not exceeding $200. [*1945 c. 343; 1947 c. 540*]

Note: Rule of state board of public welfare authorizing corporal punishment of inmates of industrial school for boys does not conflict with 340.58 and is authorized under 46.03 (5). Excessive punishment would violate 340.58 as well as constitute assault and battery giving rise to an action for damages. Rule as to permissible amount and character of punishment stated. 33 Atty. Gen. 127.

340.59 Inciting violation of regulations. It shall be unlawful for any person to encourage, aid or abet any girl or woman committed to the home for women, or to the Wisconsin school for girls, during the term of her commitment, to violate the rules and regulations of such institution; and any person who is convicted of encouraging, aiding or abetting any woman or girl to so violate said rules, shall be deemed guilty of a misdemeanor and shall be fined in a sum not exceeding $500 or be imprisoned in the county jail or house of correction for a period of an indeterminate sentence not exceeding 2 years. [*1945 c. 158, 343*]

340.60 Aiming gun at another. Any person who shall intentionally point or aim any gun, pistol or other firearm at or towards another, except in self-defense, in defense of his property, to prevent a felony or in the lawful discharge of official duty, shall be punished by imprisonment in the county jail not more than one year or by fine not exceeding $500. [*1947 c. 285*]

340.605 Criminal negligence in using weapons. Any person who, by the operation or handling of a gun, pistol or other firearm or of a bow and arrow in a careless, reckless or negligent manner constituting or amounting to a high degree of negligence shall inflict injury upon any other person, shall be fined not more than $1,000 or imprisoned in the county jail not to exceed one year, or both. [*1947 c. 147*]

340.607 Leaving scene of accidental shooting. (1) Any person, who while hunting any wild animal or bird, discharges a firearm or arrow, and thereby injures or kills another person, shall forthwith give his name and address to such person if injured and render such assistance to him as may be necessary and obtain immediate medical or hospital care, and shall immediately thereafter report such injury or death to the sheriff or police of the locality in which such shooting took place.

(2) Any person failing to comply with subsection (1) shall be fined not less than $5 nor more than $5,000, or imprisoned in the county jail not less than 10 days nor to exceed one year, or both. [*1947 c. 146*]

340.61 Use of firearms, etc., near park, etc. Any person who shall discharge or cause the discharge of any missile from any firearm, slung shot, bow and arrow or other weapon, within forty rods of any public park, square or inclosure owned or controlled by any municipality within this state and resorted to for recreation or pleasure, when such park, square or inclosure is wholly situated without the limits of such municipality, shall be punished by imprisonment in the county jail not exceeding sixty days or by fine of not more than twenty-five dollars nor less than one dollar.

340.62 Discharge of explosives in state parks. Any person who discharges or explodes or causes to be discharged or exploded for any purpose any dynamite, blasting powder or other similar explosive at any place or point within the boundaries of any park owned by the state of Wisconsin, unless the use of such explosive is necessary for carrying on works of improvement done by, for or under the authority of the state or done by, for or under the authority of the county or town wherein such park in whole or in part is situated, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished for the first offense by a fine of not less than fifty dollars nor more than one hundred dollars or by imprisonment in the county jail for not less than thirty days nor more than six months, and for a second or subsequent offense by both such fine and imprisonment. This section shall not prevent the use of such explosive on any property which is under the development on July 1, 1917.

340.63 Wilful neglect of railroad employes. Any officer, agent, conductor, engineer or employe of any railroad company operating within this state who shall wilfully neglect or omit to ring or cause to be rung the bell on the engine of any train of cars or on an engine alone when about to cross or before crossing any street opened and used for travel in any city or village, or to blow the whistle eighty rods before crossing and ring the bell while crossing any highway, or to bring or cause to be brought to a full stop any railroad train or engine before arriving at or passing upon the track of another railroad and within four hundred feet of the junction or crossing of such railroad, or before arriving at or passing upon any drawbridge over any stream navigated by boats, vessels or other craft during the season of such navigation and when the draw of such bridge is necessary to be used for the passage of such boats, vessels or other craft, within six hundred feet of such drawbridge, when required by law, or to allow and permit the railroad train first arriving at such railroad crossing or junction to first pass over shall be punished by imprisonment in the county jail not more than six months or by fine not exceeding one hundred dollars.

340.64 Locking cars; dangerous articles. Any officer, agent, conductor or any employe of any railroad company operating within this state who shall wilfully run or cause to be run any railroad train or engine faster than at the rate permitted by section 192.29, while passing over the traveled streets of any city or village or until all such streets have

been passed by such train or engine, or who shall lock or cause to be locked the doors of any passenger car occupied by any passenger, while such car is in motion or so as to prevent the free exit therefrom of any passenger at any time, or who shall use or authorize the use of any kerosene oil or other dangerously explosive burning fluid in lighting any passenger car, or who shall knowingly carry or cause or permit to be carried or transported on any baggage, mail, express or passenger car any powder, dynamite or other dangerously explosive substance, and any person who shall, secretly or surreptitiously, or by concealment or misrepresentation, ship or cause to be shipped upon any railroad train or car any powder, dynamite or other dangerously explosive substance without the knowledge of the proper officer, agent, conductor or employe in charge of such train or car shall be punished by imprisonment in the county jail not more than six months or by fine not exceeding one hundred dollars.

340.65 [*Repealed by 1943 c. 140*]

340.66 **Setting spring guns, etc.** Any person who shall set or fix in any manner whatever any gun, pistol or other firearm, or any spring gun for the purpose of killing game of any kind by coming in contact therewith or with any string, wire or other contrivance attached thereto, by which the same may be discharged, or for any other purpose, shall be punished by imprisonment in the state prison not less than six months nor more than three years; and if the death of any person is caused thereby he shall be deemed guilty of manslaughter in the second degree.

340.67 **Leaving unguarded ice holes.** Any person who shall remove ice or cause its removal from any stream, pond or lake and shall neglect to place around the margin of the opening made by such removal a fence, by setting posts of not less than two by four in size and with a fence board thoroughly nailed thereto not less than three and one-half feet above the surface of the ice on said stream, pond or lake shall be punished by imprisonment in the county jail not more than six months or by a fine not exceeding one hundred dollars.

340.68 **Threshing machine joints to be covered.** Any person owning or running any threshing machine in this state so constructed that any joint, knuckle or jack thereof is dangerously exposed, who shall neglect to cover or secure the same in some suitable manner so as to prevent injury to persons passing over or near the same, shall be punished by fine not exceeding fifty dollars nor less than two dollars.

340.69 **Carrying and sale of weapons.** Any person who shall go armed with any concealed and dangerous weapon shall be punished by imprisonment in the county jail not more than three hundred sixty-four days or by fine not exceeding five hundred dollars: provided, that the foregoing shall not apply to any policeman or officer authorized to serve process. Any minor or person in a state of intoxication who shall go armed with any pistol or revolver, or any dealer or other person who shall sell, loan or give any pistol or revolver to any minor shall be punished by imprisonment in the county jail not more than three hundred sixty-four days or by fine not exceeding five hundred dollars. It shall be the duty of all sheriffs, constables and other public police officers to take from any minor any pistol or revolver found in his possession, and for neglect thereof any such officer shall be punished as hereinbefore provided.

Note: See note to sec. 11, art. I, Const., citing Scaffido v. State, 215 W 389, 254 NW 651.

340.695 [*Repealed by 1933 c. 76 s. 2*]

340.70 **Fireworks regulated.** (1) It is unlawful for any person to sell, expose or offer for sale, use, keep, discharge or explode any firecrackers, blank cartridges, toy pistols or cannons, toy canes or cannons in which explosives are used, contrivances using explosive caps or cartridges, sparklers, display wheels, the type of balloon which requires fire underneath to propel the same, torpedoes, sky rockets, Roman candles, aerial salutes, American or Chinese bombs or other fireworks of like construction, or any fireworks containing any explosive or flammable compound, or any tablets or other devices commonly used and sold as fireworks containing nitrates, chlorates, oxalates, sulphides of lead, barium, antimony, arsenic, mercury, nitroglycerine, phosphorus or any compound containing any of the same or other modern explosives, within the state of Wisconsin, except as hereinafter provided.

(2) Nothing herein contained shall prohibit the use of fireworks other than those prohibited by subsection (6) for pyrotechnic displays given by public authorities, fair associations, amusement parks, park boards, civic organizations or groups of individuals that have been granted a permit for such display by the mayor of the city, president of the village or chairman of the town wherein the display is to be given.

(a) The issuing officer may require an indemnity bond with good and sufficient sureties 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 such permit. Such

bond, if required, shall be taken in the name of the city, village or town wherein the fireworks display is to be given, and any person injured thereby may bring an action on said bond in his own name to recover the damage he has sustained, but the aggregate liability of the surety to all persons shall in no event exceed the amount of such bond. The bond, if required, together with a copy of the permit shall be filed in the office of the clerk of such city, village or town.

(3) Nothing herein contained shall prohibit the use or sale of blank cartridges for circus or theatrical purposes, or signal purposes in athletic contests or sports events, or use by militia, police or military organizations; nor the use or sale of colored flares or torpedoes for railway, aircraft, or highway signal purposes.

(4) Nothing in this section shall be construed to prohibit any resident wholesaler, dealer or jobber from selling fireworks other than those prohibited by subsection (6) at wholesale, but only when the same are shipped or delivered directly outside of the state of Wisconsin or to an organization or group granted a permit under subsection (2).

(5) The following provisions shall apply to places where fireworks are stored or handled:

(a) Such premises shall be equipped with fire extinguishers approved by the fire chief or chief engineer of the fire department in the community in which such premises are located;

(b) Smoking shall be prohibited where fireworks are stored or handled;

(c) It is hereby made the duty of every wholesaler, dealer or jobber keeping, storing or handling, within the state of Wisconsin, fireworks of any description to notify the fire chief or chief engineer of the fire department in the community wherein such fireworks are kept, stored or handled, immediately of the receipt of such fireworks, or the removal thereof from one location to another, and the location where such fireworks are stored. No such fireworks shall be stored in any building used for dwelling purposes or in any building situated within 50 feet of any building used for dwelling purposes, or in places of public assemblage, or within 50 feet of any gasoline pump, gasoline filling station or gasoline bulk station, or any building in which gasoline or volatile liquid is sold in quantities in excess of one gallon.

(6) Under no circumstances shall any person sell, keep for sale, manufacture or bring into this state for use therein any fire balloon, mortars or cannon, or any explosive cane, toy pistol, toy revolver or other contrivance using explosive caps or cartridges, any Chinese firecrackers more than 2 inches in length or more than three-eighths inch in diameter, outside measurements of container, or any article containing a compound of mercury or yellow phosphorus.

(7) A parent or legally appointed guardian of any minor who shall knowingly permit such minor to purchase or have in his possession or to discharge any fireworks forbidden by this section shall be deemed to have violated this section and such parent or guardian shall be personally liable for any damage caused by such possession or discharge of fireworks.

(8) The mayor of each city, the president of each village, the chairman of each town, policemen, firemen and all other peace officers are charged with the duty of enforcing this section in their respective jurisdictions. Failure to do so shall constitute grounds for removal from office. It shall be the duty of the industrial commission to see that the provisions of this section are enforced throughout the state.

(9) Any person who shall violate any provision of this section shall be fined not less than $25 nor more than $500, or imprisoned not less than 30 days nor more than 6 months, or both. Each day on which such violation continues shall constitute a separate and distinct offense. [*1931 c. 386; 1947 c. 369*]

Note: 340.70 (3) (e), Stats. 1931, regulating the sale and use of fireworks applies only to sales to consumers and not to sales by wholesalers to dealers for resale. Beckman v. Bemis-Hooper-Hays Co. 212 W 565, 250 NW 420.

In granting a permit under 340.70 (3) (a), Stats. 1941, for a display of fireworks, the mayor of a city acted as an arm of the state pursuant to a power granted to him by the state to carry out its public policy declared by the statute, and he did not act as an agent of the city, and hence the city is not liable for damages sustained through a fire caused by explosion of the fireworks. Flynn v. Kaukauna, 241 W 163, 5 NW (2d) 754.

Sale of Smith's automatic machine gun and Smith's rapid fire machine gun does not violate 340.70 (2), Stats. 1931. 21 Atty. Gen. 434.

340.71 Getting on and off cars. Any person under the age of seventeen years who shall get upon, attempt to get upon, cling to, jump or step from any railroad car or train while the same is in motion shall be punished by fine of not more than twenty dollars nor less than two dollars, provided that this section shall not apply to the employes of any railway or express company.

340.72 Assault and abusive language. Any person who shall assault another, when not excusable or justifiable, or who shall use in reference to and in the presence of another, or in reference to and in the presence of any member of his family, abusive or obscene lan-

guage, intended or naturally tending to provoke an assault or any breach of the peace, shall be punished by imprisonment in the county jail not more than three months or by fine not exceeding one hundred dollars. The provisions of this section shall not be applicable to any city or village which has enacted an ordinance under its charter for the punishment of the same or similar offense.

340.73 Sale, transportation, etc., of explosive for unlawful purpose. Any person who shall make, manufacture, compound, buy, sell, give away, offer for sale or to give away, transport or have in possession any nitroglycerine, giant, oriental or thunderbolt powder, dynamite, ballistile, fulgarite, detonite or any other explosive compound with intent that the same shall be used in this state or anywhere else for the injury or destruction of public or private property or the assassination, murder, injury or destruction of any person or persons, either within this state or elsewhere, or knowing that such explosive compounds are intended to be used by any other person or persons for any such purpose, shall be punished by imprisonment in the state prison not more than ten years nor less than three years or by fine not exceeding one thousand dollars nor less than five hundred dollars.

340.74 Aiding in so doing. All persons aiding, abetting or in any manner assisting in the manufacture, compounding, buying, selling, offering for sale or transporting any explosive compounds either by furnishing material or ingredients or soliciting or contributing money or other property with which to purchase said materials or ingredients, or by assisting by skill or labor, or by acting as agents for the principal, or in any manner aiding as accessories before the fact, knowing that any of such explosive compounds are intended to be used by the principals or any other person or persons for any of the purposes mentioned in section 340.73, shall be deemed principals, and may be convicted and punished in the same manner and to the same extent as such principal or principals.

340.75 Denial of rights. Any person who shall deny to any other person, in whole or in part, the full and equal enjoyment of the accommodations, advantages, facilities and privileges of inns, restaurants, saloons, barber shops, eating houses, public conveyances on land or water, or any other place of public accommodation or amusement, except for reasons applicable alike to all persons of every race or color, or who shall aid or incite such denial, or require any person to pay a larger sum than the regular rate charged other persons for such accommodations, advantages, facilities and privileges or any of them, or shall refuse to sell or furnish any type of automobile insurance or charge a higher rate for such insurance because of race or color, shall be liable to the person aggrieved thereby in damages not less than twenty-five dollars with costs, and shall also be punished for every such offense by fine of not more than one hundred dollars or be imprisoned in the county jail not exceeding six months, or by both such fine and imprisonment; provided, that a judgment in favor of the party aggrieved or the imposition of a fine or imprisonment shall bar any other proceeding. [*1931 c. 21; 1939 c. 392*]

340.76 Use of engine on highway at night. No person shall cause any steam engine to be propelled or hauled upon or over any highway in the nighttime without causing some person carrying a good clean lantern, giving a strong, clear red light, to go and be at least twenty and not more than thirty rods in advance of such engine; such person so in advance shall, upon meeting any person riding or driving any animal or animals and desiring to pass such engine, signal the person in charge thereof to stop the same, and the person in charge of such engine shall, immediately upon being made aware of the signal, stop the engine and, together with the person so in advance thereof, render all assistance possible to enable the person so riding or driving to pass such engine in safety. Every violation of this section shall be punishable by imprisonment in the county jail not more than twenty days or by fine not exceeding fifteen dollars nor less than five dollars.

340.77 Obstructing stream. Any person who shall unlawfully and maliciously place any obstruction in the channel of any stream or canal, improved or constructed for navigation purposes, whereby the death of any person shall be caused, shall be punished by imprisonment in the state prison during life.

340.78 [*Repealed by 1929 c. 357 s. 1*]

340.79 Unlawful operation of corn shredders. Any person, firm or corporation who shall violate any of the provisions of sections 167.12 to 167.15 shall be punished by a fine of not less than twenty-five or more than one hundred dollars for each offense.

340.85 Hazing prohibited. Any person engaging in or inciting hazing in any public school of this state shall be punished by imprisonment in the county jail for not more than sixty days, or by fine not exceeding two hundred dollars, or by both such fine and imprisonment. [*1933 c. 237*]