

## TITLE XXXIII.

## Criminal Procedure.

## CHAPTER 353.

## GENERAL PROVISIONS.

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**353.01 Conviction.** No person shall be punished for a crime unless he has been duly convicted in a court of competent jurisdiction. A person may be convicted only upon his plea of guilty or nolo contendere (with the consent of the court) or by the verdict of a jury or, if a jury is waived, the findings of the court.

Nolo contendere admits matters alleged in the information when the plea is entered, and places the defendant in the same position as though he had pleaded or had been found guilty by the verdict of a jury. Nolo contendere is a waiver of proof so that the trial court may adjudge the defendant guilty thereon, and in particular where, as in this case, the trial court stated to the defendant the crime of larceny charged in the information, and asked if that was the crime to which the defendant was entering a plea of nolo contendere, and the defendant's counsel answered in the affirmative. *Ellsworth v. State*, 258 W 636, 46 NW (2d) 746.

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.

**353.05 Parties to crime.** Every person concerned in the commission of a crime, whether he directly commits the crime or abets or aids in or hires, counsels or otherwise procures its commission is a principal and may be indicted or informed against as principal and tried in the county where the crime was committed either separately or with others concerned; and may be convicted of any degree of the crime charged or any crime included in the charge, whether the principal actor has been convicted or acquitted or convicted of some other degree of the crime or of some other crime based upon the same occurrence or has not been apprehended or is not amenable to justice or for any other reason has not been tried or is a corporation.

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

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 principals, 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.

**353.08 Accessory after the fact.** Every person (except the husband or wife, parent or grandparent, child or grandchild, brother or sister by consanguinity or affinity of the offender) who harbors, conceals or maintains or assists any felon, or who gives him any other aid (knowing that he had committed a felony) with intent that he shall escape punishment, is an accessory after the fact and may be tried and punished, whether the principal felon has or has not been convicted or is or is not amenable to justice, and either in the county where the defendant became an accessory or in the county where the felony was committed.

**353.13 Possession of property, what sufficient.** In the prosecution of a crime committed upon or in relation to or in any way affecting real property or any crime committed by stealing, embezzling, destroying, injuring or fraudulently receiving or concealing personal property, it shall be sufficient if it is proved that at the time the crime

was committed either the actual or constructive possession or the general or special property in any part of such property was in the person alleged to be the owner thereof.

**353.15 Trial of receiver of stolen property.** In a prosecution for the crime of buying, receiving, concealing or aiding in concealing stolen property known to have been stolen, it shall not be necessary to allege or prove that the person who stole the property has been convicted.

**353.16 Officer to secure stolen property.** The officer who arrests a thief shall, if possible, secure the property alleged to have been stolen and annex a schedule thereof to the return of the warrant.

**353.17 Compensation for care of property.** Upon a conviction of burglary, robbery or larceny, the court shall allow the officer who has secured and kept the stolen property his actual and necessary expenses, to be paid by the county.

**353.20 No statute of limitation for murder.** An indictment or information for murder may be found or filed at any time.

**353.21 Limitation as to felonies other than murder.** Prosecution for felonies (except murder) must be commenced within 6 years after the commission thereof unless otherwise provided by law.

**353.22 Limitation as to misdemeanors.** Prosecutions for misdemeanors must be commenced within 3 years after the commission thereof unless otherwise provided by law.

**353.23 Computation of time limit.** (1) The time during which the defendant was not publicly a resident within this state or during which a prosecution against him for crime was pending shall not be computed as part of the limitation mentioned in sections 353.21 and 353.22.

(2) Notwithstanding the expiration of the time limited by sections 353.21 and 353.22, a prosecution for embezzlement or larceny by a bailee may be commenced within one year after discovery of the loss by the aggrieved party. This subsection does not extend the time limited by sections 353.21 and 353.22 more than 5 years in any case.

(3) A prosecution shall be deemed to be commenced and pending within the meaning of sections 353.21 and 353.22 from and after (a) the issuance of a warrant or summons, (b) the finding of an indictment or (c) the filing of an information.

**353.25 Imprisonment for nonpayment of fines; costs; execution.** (1) When a fine is imposed, the court shall also sentence the defendant to pay the costs of the prosecution and the costs incurred by the county at his request and to be committed to the county jail until the fine and costs are paid or discharged; but the time of imprisonment, in addition to any other imprisonment, shall not exceed 6 months; and a property execution may issue against the defendant for said fine and costs. When the costs cannot be so collected from the defendant or when the defendant is acquitted the county shall pay the costs.

(2) The costs taxable against the defendant shall consist of the following items and no other:

(a) The necessary disbursements and fees of officers allowed by law and incurred in connection with the arrest, examination and trial of the defendant, including, in the discretion of the court, the fees and disbursements of the agent appointed by the governor or peace officer in returning the defendant from another state or country.

(b) Fees and travel allowance of witnesses for the state at the preliminary examination and the trial.

(c) Fees and disbursements allowed by the court to expert witnesses appointed under section 357.27.

(d) Fees and travel allowance of witnesses for the defense incurred by the county at the request of the defendant, at the preliminary hearing and the trial.

(e) Attorney fees paid to the defense attorney by the county.

(3) The court may remit the taxable costs, in whole or in part.

Where one has been sentenced to pay a fine or be committed to jail upon nonpayment and has served the jail term, an execution against defendant's property may nevertheless issue within the time limited by 272.04, in view of 353.25 (1). Interest runs from the date of sentence, pursuant to 272.05 (3). 39 Atty. Gen. 559.

Although under (3) courts may remit taxable costs they have no authority to remit fines. But under 57.01 and 57.04, execution may be stayed and the defendant placed on probation. If execution is stayed without placing the defendant on probation the stay is unlawful. 41 Atty. Gen. 338.

**353.27 Penalty and place of imprisonment when none expressed.** (1) PENALTY. Any person who is convicted of any crime the penalty for which is not prescribed by any statute of this state shall be punished only by imprisonment in the county jail not more than one year or by fine not exceeding \$250. Common-law penalties are abolished.

(2) **PLACE OF IMPRISONMENT.** When a statute authorizes imprisonment for its violation but does not prescribe the place of imprisonment, (a) a sentence of less than one year shall be to the county jail, (b) a sentence of more than one year shall be to the state prison and the minimum under the indeterminate sentence law shall be one year, and (c) a sentence of one year may be to either the state prison or the county jail. But in any proper case sentence and commitment may nevertheless be to the state reformatory, the Wisconsin home for women, the Wisconsin school for boys, the Wisconsin school for girls or any house of correction or other institution, as provided by law.

**353.28 Part of crime punishable same as whole crime.** Any person who commits an act or who omits to do an act which act or omission constitutes a part of a crime by the laws of this state shall be punished the same as if he had committed the whole of such crime within this state.

**353.29 Part of crime committed in this state punishable same as if all committed here.** Whenever a person, with intent to commit a crime, does any act or omits to do any act within this state in execution or part execution of such intent, which culminates in the commission of a crime, either within or without this state, such person is punishable for such crime in this state in the same manner as if the same had been committed entirely within this state.

**353.31 Felony.** A crime punishable by imprisonment in the state prison is a felony. Every other crime is a misdemeanor.

**353.33 Married women liable.** The common-law presumption of coercion when a married woman commits a criminal act in the presence of her husband is abolished. All married women shall be subject to prosecution and punishment for their criminal acts.