

CHAPTER 940.

CRIMES AGAINST LIFE AND BODILY SECURITY.

	LIFE.	940.12	Assisting suicide.
940.01	First-degree murder.		
940.02	Second-degree murder.		BODILY SECURITY.
940.03	Third-degree murder.	940.20	Battery.
940.04	Abortion.	940.21	Mayhem.
940.05	Manslaughter.	940.22	Aggravated battery.
940.06	Homicide by reckless conduct.	940.23	Injury by conduct regardless of life.
940.07	Homicide resulting from negligent control of vicious animal.	940.24	Injury by negligent use of weapon.
940.08	Homicide by negligent use of vehicle or weapon.	940.28	Abandonment of young child.
940.09	Homicide by intoxicated user of vehicle or firearm.	940.29	Abuse of inmates of institutions.
		940.30	False imprisonment.
		940.31	Kidnaping.
		940.32	Abduction.

LIFE.

940.01 **First-degree murder.** (1) Whoever causes the death of another human being with intent to kill that person or another shall be sentenced to life imprisonment.

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

History: 1955 c. 696.

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 place for an appointment with the victim, and that the concrete block which he claimed to have picked up spontaneously after the shooting to fasten to the victim's leg did not come from the vicinity, the jury could not conclude that his plan was laid before setting out for the appointment and that all of the equipment used in the act was on hand in his car. The record in this case warranted the submission of only 3 possible verdicts, namely, murder in the first degree, man-

slaughter in the fourth degree and not guilty, as against a contention that murder in the second degree and all other degrees of manslaughter should also have been submitted. State v. Babich, 258 W 290, 45 NW (2d) 660.

It is the duty of the trial court in a homicide case to accurately give to the jury the law of whatever degree of felonious homicide the evidence tends to prove, and no other. To justify a submittal of a lesser degree of homicide there must be some reasonable ground in the evidence, in the judgment of the trial court, for a conviction of the lesser offense. State v. Stortecky, 273 W 362, 77 NW (2d) 721.

940.02 **Second-degree murder.** Whoever causes the death of another human being by conduct imminently dangerous to another and evincing a depraved mind, regardless of human life, may be imprisoned not less than 5 nor more than 25 years.

History: 1955 c. 696.

940.03 **Third-degree murder.** Whoever in the course of committing or attempting to commit a felony causes the death of another human being as a natural and probable consequence of the commission of or attempt to commit the felony, may be imprisoned not more than 15 years in excess of the maximum provided by law for the felony.

History: 1955 c. 696.

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

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

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

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

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

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

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

(a) Is performed by a physician; and

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

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

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

History: 1955 c. 696.

In a prosecution under 351.22 (Stats. 1947) proof of the use of instruments is not required. *State v. Adams*, 257 W 433, 43 NW (2d) 446.

940.05 Manslaughter. Whoever causes the death of another human being under any of the following circumstances may be imprisoned not more than 10 years:

- (1) Without intent to kill and while in the heat of passion; or
- (2) Unnecessarily, in the exercise of his privilege of self-defense or defense of others or the privilege to prevent or terminate the commission of a felony; or
- (3) Because such person is coerced by threats made by someone other than his co-conspirator and which cause him reasonably to believe that his act is the only means of preventing imminent death to himself or another; or
- (4) Because the pressure of natural physical forces causes such person reasonably to believe that his act is the only means of preventing imminent public disaster or imminent death to himself or another.

History: 1955 c. 696.

940.06 Homicide by reckless conduct. (1) Whoever causes the death of another human being by reckless conduct may be fined not more than \$2,500 or imprisoned not more than 5 years or both.

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

History: 1955 c. 696.

940.07 Homicide resulting from negligent control of vicious animal. Whoever knowing the vicious propensities of any animal intentionally suffers it to go at large or keeps it without ordinary care, if such animal, while so at large or not confined, kills any human being who has taken all the precautions which the circumstances may permit to avoid such animal, may be fined not more than \$2,500 or imprisoned not more than 5 years.

History: 1955 c. 696.

940.08 Homicide by negligent use of vehicle or weapon. (1) Whoever causes the death of another human being by a high degree of negligence in the operation or handling of a vehicle, firearm, airgun, or bow and arrow may be fined not more than \$1,000 or imprisoned not more than one year in county jail or both.

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

History: 1955 c. 696.

See note to 346.62, citing 46 Atty. Gen. 110.

940.09 Homicide by intoxicated user of vehicle or firearm. Whoever by the negligent operation or handling of a vehicle, firearm or airgun and while under the influence of an intoxicant causes the death of another may be fined not more than \$2,500 or imprisoned not more than 5 years or both. No person shall be convicted under this section except upon proof of causal negligence in addition to such operation or handling while under the influence of an intoxicant.

History: 1955 c. 696.

In a prosecution for negligent homicide by the operation of an automobile which left the road and turned over, resulting in the death of a passenger, the testimony of a truck driver as to the speed of the defendant's car and the manner in which it was driven when it passed him at a point a mile and a half or more from the place of the accident, and that he continued along at his same rate of speed to the scene of the accident and that when he arrived there the defendant was already back on the road flagging him down, was properly admitted as material and having probative force. *State v. Resler*, 262 W 285, 55 NW (2d) 35.

In a prosecution under 340.271 (1) (Stats. 1951) if it is shown that the death was caused by the defendant's operation of the car, and also that the defendant was intoxicated when he so operated the car, it must be assumed that there existed a causal connection between the intoxication and the death, and the state has no further burden

as to proving such causal connection. *State v. Resler*, 262 W 285, 55 NW (2d) 35.

In a prosecution under 340.271 (1) (Stats. 1951), if for negligent homicide by the operation of an automobile while under the influence of alcoholic beverages, stipulated facts that at the time and place the defendant operator was under the influence of intoxicating liquor, and struck and killed a child walking on the highway, established a violation of the statute, and further stipulated facts, that a witness would testify that he considered the accident unavoidable, were immaterial. The important elements are that the operator was under the influence of alcoholic beverages, and that he caused the death of another person while operating such motor vehicle; and in a prosecution under the statute, no testimony that the accident resulted from lack of due care on the part of the defendant, or resulted from the fact that he was under the influence of alcoholic beverages, is neces-

sary. The "negligence" is the driving of a motor vehicle while under the influence of alcoholic beverages. State v. Peckham, 263 W 239, 56 NW (2d) 835.

The evidence sustained a conviction under 340.271 (1) (Stats. 1951) for negligent homicide by the operation of an automobile while under the influence of intoxicating liquor, as against a claim that the defendant's alleged "fainting spells," his erratic driving, and his unawareness of events were due to a physical condition caused by pernicious anemia. State v. Schmack, 264 W 333, 58 NW (2d) 668.

940.12 Assisting suicide. Whoever with intent that another take his own life assists such person to commit suicide may be imprisoned not more than 10 years.

History: 1955 c. 696.

BODILY SECURITY.

940.20 Battery. Whoever causes bodily harm to another by an act done with intent to cause bodily harm to that person or another may be fined not more than \$200 or imprisoned not more than 6 months or both.

History: 1955 c. 696.

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

940.21 Mayhem. Whoever, with intent to disable or disfigure another, cuts or mutilates the tongue, eye, ear, nose, lip, limb or other bodily member of another, may be fined not more than \$5,000 or imprisoned not more than 15 years or both.

History: 1955 c. 696.

940.22 Aggravated battery. Whoever intentionally causes great bodily harm to another may be fined not more than \$2,500 or imprisoned not more than 5 years or both.

History: 1955 c. 696.

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

940.23 Injury by conduct regardless of life. Whoever causes great bodily harm to another human being by conduct imminently dangerous to another and evincing a depraved mind, regardless of human life, may be imprisoned not more than 10 years.

History: 1955 c. 696.

940.24 Injury by negligent use of weapon. (1) Whoever causes bodily harm to another by a high degree of negligence in the operation or handling of a firearm, airgun, or bow and arrow, may be fined not more than \$1,000 or imprisoned not more than one year or both.

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

History: 1955 c. 696.

940.28 Abandonment of young child. Whoever, with intent to abandon him, leaves any child under the age of 6 years in a place where he may suffer because of neglect may be imprisoned not more than 3 years.

History: 1955 c. 696.

940.29 Abuse of inmates of institutions. Any person in charge of or employed in any of the following institutions who abuses, neglects or ill-treats any person confined in or an inmate of any such institution or who knowingly permits another person to do so may be fined not more than \$500 or imprisoned not more than one year in county jail or both:

- (1) A penal or correctional institution or other place of confinement; or
- (2) A home for the aged; or
- (3) A hospital for the mentally ill; or
- (4) A school or institution for the mentally deficient; or
- (5) A state school for the blind or deaf; or
- (6) An institution operated by a licensed child welfare agency or by a public agency for the care of neglected, dependent, or delinquent children; or
- (7) A nursing home as defined in s. 146.30.

History: 1955 c. 696.

940.30 False imprisonment. Whoever intentionally confines or restrains another without his consent and with knowledge that he has no lawful authority to do so may be fined not more than \$1,000 or imprisoned not more than 2 years or both.

History: 1955 c. 696.

940.31 Kidnaping. (1) Whoever does any of the following may be imprisoned not more than 15 years:

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

(b) By force or threat of imminent force seizes or confines another without his con-

sent and with intent to cause him to be secretly confined or imprisoned or to be carried out of this state or to be held to service against his will; or

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

(2) Whoever violates sub. (1) with intent to cause another to transfer property in order to obtain the release of the victim shall be sentenced to life imprisonment; but if his victim is released without permanent physical injury prior to the time the first witness is sworn at the trial the defendant may be imprisoned not more than 30 years.

History: 1955 c. 696.

940.32 Abduction. Whoever, for any unlawful or immoral purpose, does any of the following may be imprisoned not more than 15 years:

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

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

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

History: 1955 c. 696.