CHAPTER 941

CRIMES AGAINST PUBLIC HEALTH AND SAFETY

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Cross−reference: See definitions in s. 939.22.

SUBCHAPTER I

VEHICLES

941.01 Negligent operation of vehicle. (1) Whoever endangers another's safety by a high degree of negligence in the operation of a vehicle, not upon a highway as defined in s. 340.01, is guilty of a Class A misdemeanor.

(2) Upon conviction under sub. (1), no revocation or suspension of an operator's license may follow.

History: 1977 c. 173; 1987 a. 399.

SUBCHAPTER II

FIRE

941.10 Negligent handling of burning material. (1) Whoever handles burning material in a highly negligent manner is guilty of a Class A misdemeanor.

(2) Burning material is handled in a highly negligent manner if handled with criminal negligence under s. 939.25 or under circumstances in which the person should realize that a substantial and unreasonable risk of serious damage to another's property is created.

History: 1977 c. 173; 1987 a. 399.

941.11 Unsafe burning of buildings. Whoever does either of the following is guilty of a Class H felony:

(1) Intentionally burns his or her own building under circumstances in which he or she should realize he or she is creating an unreasonable risk of death or great bodily harm to another or serious damage to another's property; or

(2) Intentionally burns a building of one who has consented to the destruction thereof but does so under circumstances in which he or she should realize he or she is creating an unreasonable risk of death or great bodily harm to another or serious damage to a 3rd person's property.

History: 1977 c. 173; 1993 a. 486; 1995 a. 417; 2001 a. 109.

941.12 Interfering with fire fighting. (1) Whoever intentionally interferes with the proper functioning of a fire alarm system or the lawful efforts of fire fighters to extinguish a fire is guilty of a Class I felony.

(2) Whoever interferes with, tampers with or removes, without authorization, any fire extinguisher, fire hose or any other fire fighting equipment, is guilty of a Class A misdemeanor.

(3) Whoever interferes with accessibility to a fire hydrant by piling or dumping material near it without first obtaining permission from the appropriate municipal authority is guilty of a Class C misdemeanor. Every day during which the interference continues constitutes a separate offense.

History: 1977 c. 173; 2001 a. 109.

941.13 False alarms. Whoever intentionally gives a false alarm to any public officer or employee, whether by means of a fire alarm system or otherwise, is guilty of a Class A misdemeanor.

History: 1977 c. 173.

SUBCHAPTER III

WEAPONS

941.20 Endangering safety by use of dangerous weapon. (1) Whoever does any of the following is guilty of a Class A misdemeanor:

(a) Endangers another's safety by the negligent operation or handling of a dangerous weapon.

(b) Operates or goes armed with a firearm while he or she is under the influence of an intoxicant.

(bm) Operates or goes armed with a firearm while he or she has a detectable amount of a restricted controlled substance in his or her blood. A defendant has a defense to any action under this paragraph that is based on the defendant allegedly having a detectable amount of methamphetamine, gamma−hydroxybutyric acid, or delta−9−tetrahydrocannabinol in his or her blood, if he or she proves by a preponderance of the evidence that at the time of the incident or occurrence he or she had a valid prescription for

methamphetamine or one of its metabolic precursors, gamma−hydroxybutyric acid, or delta−9−tetrahydrocannabinol.

(c) Except as provided in sub. (1m), intentionally points a firearm at or toward another.

(d) While on the lands of another discharges a firearm within 100 yards of any building devoted to human occupancy situated on and attached to the lands of another without the express permission of the owner or occupant of the building. "Building" as used in this paragraph does not include any tent, bus, truck, vehicle or similar portable unit.

(1m) (a) In this subsection:

1. "Ambulance" has the meaning given in s. 256.01 (1).

2. "Emergency medical technician" has the meaning given in s. 256.01 (5).

3. "First responder" has the meaning given in s. 256.01 (9).

(b) Whoever intentionally points a firearm at or towards a law enforcement officer, a fire fighter, an emergency medical technician, a first responder, an ambulance driver, or a commission warden who is acting in an official capacity and who the person knows or has reason to know is a law enforcement officer, a fire fighter, an emergency medical technician, a first responder, an ambulance driver, or a commission warden is guilty of a Class H felony.

(2) Whoever does any of the following is guilty of a Class G felony:

(a) Intentionally discharges a firearm into a vehicle or building under circumstances in which he or she should realize there might be a human being present therein; or

(b) Sets a spring gun.

(3) (a) Whoever intentionally discharges a firearm from a vehicle while on a highway, as defined in s. 340.01 (22), or on a vehicle parking lot that is open to the public under any of the following circumstances is guilty of a Class F felony:

1. The person discharges the firearm at or toward another.

2. The person discharges the firearm at or toward any building or other vehicle.

(b) 1. Paragraph (a) does not apply to any of the following who, in the line of duty, discharges a firearm from a vehicle:

a. A peace officer, except for a commission warden who is not a state−certified commission warden.

b. A member of the U.S. armed forces.

c. A member of the national guard.

2. Paragraph (a) does not apply to the holder of a permit under s. 29.193 (2) who is hunting from a standing motor vehicle, as defined in s. 29.001 (57), in accordance with s. 29.193 (2) (cr) 2.

(c) The state does not have to negate any exception under par. (b). Any party that claims that an exception under par. (b) is applicable has the burden of proving the exception by a preponderance of the evidence.

(d) The driver of the vehicle may be charged and convicted for a violation of par. (a) according to the criteria under s. 939.05.

(e) A person under par. (a) has a defense of privilege of self−defense or defense of others in accordance with s. 939.48.

History: 1977 c. 173; 1987 a. 399; 1989 a. 131; 1993 a. 94, 486; 1997 a. 248, 249; 1999 a. 32; 2001 a. 109; 2003 a. 97, 190; 2007 a. 11, 27, 130; 2015 a. 197 s. 51.

Judicial Council Note, 1988: The mental element of the offense under sub. (1) (a) is changed from reckless conduct to criminal negligence. See s. 939.25. If the defendant acts recklessly, the conduct is prohibited by s. 941.30. [Bill 191−S]

Pointing a firearm is not a lesser included offense of armed robbery and a defendant can be convicted of both. State v. Smith, 55 Wis. 2d 304, 198 N.W.2d 630 (1972).

A jury instruction that shooting "into" a building under sub. (2) (a) occurs when a bullet penetrates the building however slightly, conformed with common usage of the word and was not improper. State v. Grady, 175 Wis. 2d 553, 499 N.W.2d 285 (Ct. App. 1993).

Police officers do not have an absolute right to point their weapons, but privilege may be asserted as an affirmative defense. State v. Trentadue, 180 Wis. 2d 670, 510 N.W.2d 727 (Ct. App. 1993).

Although intentionally pointing a firearm at another constitutes a violation of this section, under s. 939.48 (1) a person is privileged to point a gun at another person in self−defense if the person reasonably believes that the threat of force is necessary to prevent or terminate what he or she reasonably believes to be an unlawful interference. State v. Watkins, 2002 WI 101, 255 Wis. 2d 265, 647 N.W.2d 244, 00−0064.

941.21 Disarming a peace officer. Whoever intentionally disarms a peace officer who is acting in his or her official capacity by taking a dangerous weapon or a device or container described under s. 941.26 (1g) (b) or (4) (a) from the officer without his or her consent is guilty of a Class H felony. This section applies to any dangerous weapon or any device or container described under s. 941.26 (1g) (b) or (4) (a) that the officer is carrying or that is in an area within the officer's immediate presence.

History: 1983 a. 262; 1993 a. 98; 1995 a. 339; 2001 a. 109; 2015 a. 197.

941.23 Carrying concealed weapon. (1) In this section:

(ag) "Carry" has the meaning given in s. 175.60 (1) (ag).

(ap) Notwithstanding s. 939.22 (10), "dangerous weapon" does not include a knife.

(ar) "Destructive device" has the meaning given in 18 USC 921 (a) (4).

(b) "Firearm silencer" has the meaning given in s. 941.298 (1).

(c) "Former officer" means a person who served as a law enforcement officer with a law enforcement agency before separating from law enforcement service.

(d) "Law enforcement agency" has the meaning given in s. 175.49 (1) (f).

(e) "Law enforcement officer" has the meaning given in s. 175.49 (1) (g).

(f) "Machine gun" has the meaning given in s. 941.25 (1).

(g) "Qualified out−of−state law enforcement officer" means a law enforcement officer to whom all of the following apply:

1. The person is employed by a state or local government agency in another state.

2. The agency has authorized the person to carry a firearm.

3. The person is not the subject of any disciplinary action by the agency that could result in the suspension or loss of the person's law enforcement authority.

4. The person meets all standards established by the agency to qualify the person on a regular basis to use a firearm.

5. The person is not prohibited under federal law from possessing a firearm.

(2) Any person, other than one of the following, who carries a concealed and dangerous weapon is guilty of a Class A misdemeanor:

(a) A peace officer, but notwithstanding s. 939.22, for purposes of this paragraph, peace officer does not include a commission warden who is not a state−certified commission warden.

(b) A qualified out−of−state law enforcement officer. This paragraph applies only if all of the following apply:

1. The weapon is a firearm but is not a machine gun or a destructive device.

2. The officer is not carrying a firearm silencer.

3. The officer is not under the influence of an intoxicant.

(c) A former officer. This paragraph applies only if all of the following apply:

1. The former officer has been issued a photographic identification document described in sub. (3) (b) 1. or both of the following:

a. A photographic identification document described in sub. (3) (b) 2. (intro.).

b. An identification card described in sub. (3) (b) 2. a., if the former officer resides in this state, or a certification described in sub. (3) (b) 2. b., if the former officer resides in another state.

2. The weapon is a firearm that is of the type described in a photographic identification document described in subd. 1. (intro.) or a card or certification described in subd. 1. b.

3. Within the preceding 12 months, the former officer met the standards of the state in which he or she resides for training and qualification for active law enforcement officers to carry firearms.

4. The weapon is not a machine gun or a destructive device.

5. The former officer is not carrying a firearm silencer.

6. The former officer is not under the influence of an intoxicant.

7. The former officer is not prohibited under federal law from possessing a firearm.

(d) A licensee, as defined in s. 175.60 (1) (d), or an out−of−state licensee, as defined in s. 175.60 (1) (g), if the dangerous weapon is a weapon, as defined under s. 175.60 (1) (j). An individual formerly licensed under s. 175.60 whose license has been suspended or revoked under s. 175.60 (14) may not assert his or her refusal to accept a notice of revocation or suspension mailed under s. 175.60 (14) (b) 1. as a defense to prosecution under this subsection, regardless of whether the person has complied with s. 175.60 (11) (b) 1.

(e) An individual who carries a concealed and dangerous weapon, as defined in s. 175.60 (1) (j), in his or her own dwelling or place of business or on land that he or she owns, leases, or legally occupies.

(3) (a) A qualified out−of−state law enforcement officer shall, while carrying a concealed firearm, also have with him or her an identification card that contains his or her photograph and that was issued by the law enforcement agency by which he or she is employed.

(b) A former officer shall, while carrying a concealed firearm, also have with him or her one of the following:

1. A photographic identification document issued by the law enforcement agency from which the former officer separated that indicates that, within the 12 months preceding the date on which the former officer is carrying the concealed firearm, he or she was tested or otherwise found by that law enforcement agency to meet the standards for qualification in firearms training that that law enforcement agency sets for active law enforcement officers to carry a firearm of the same type as the firearm that the former officer is carrying.

2. A photographic identification document issued by the law enforcement agency from which the former officer separated and one of the following:

a. A certification card issued under s. 175.49 (2) or (3), if the former officer resides in this state.

b. A certification issued by the state in which the former officer resides, if the former officer resides in another state, that indicates that, within the 12 months preceding the date on which the former officer is carrying the concealed firearm, he or she has been found by the state in which he or she resides, or by a certified firearms instructor if such an instructor is qualified to conduct a firearms qualification test for active law enforcement officers in that state, to meet the standards for qualification in firearms training for active law enforcement officers to carry a firearm of the type he or she is carrying, that are established by his or her state of residence or, if that state does not establish standards, by any law enforcement agency in his or her state of residence.

(c) A person who violates this subsection may be required to forfeit not more than $25, except that the person shall be exempted from the forfeiture if the person presents, within 48 hours, his or her license document or out−of−state license and photographic identification to the law enforcement agency that employs the requesting law enforcement officer.

(d) This subsection does not apply to a licensee, as defined in s. 175.60 (1) (d), or an out−of−state licensee, as defined in s. 175.60 (1) (g).

History: 1977 c. 173; 1979 c. 115, 221; 2007 a. 27; 2011 a. 35; 2015 a. 68, 149, 197.

The burden is on the defendant to prove that he or she is a peace officer and within the exception. State v. Williamson, 58 Wis. 2d 514, 206 N.W.2d 613 (1973).

A defendant was properly convicted under this section for driving a vehicle with a gun locked in a glove compartment. State v. Fry, 131 Wis. 2d 153, 388 N.W.2d 565 (1986).

To "go armed" does not require going anywhere. The elements for a violation of s. 941.23 are: 1) a dangerous weapon is on the defendant's person or within reach; 2) the defendant is aware of the weapon's presence; and 3) the weapon is hidden. State v. Keith, 175 Wis. 2d 75, 498 N.W.2d 865 (Ct. App. 1993).

A handgun on the seat of a car that was indiscernible from ordinary observation by a person outside, and within the immediate vicinity, of the vehicle was hidden from view for purposes of determining whether the gun was a concealed weapon under this section. State v. Walls, 190 Wis. 2d 65, 526 N.W.2d 765 (Ct. App. 1994).

There is no statutory or common law privilege for the crime of carrying a concealed weapon under s. 941.23. State Dundon, 226 Wis. 2d 654, 594 N.W.2d 780 (1999), 97−1423.

Under the facts of the case, the privilege of self−defense was inapplicable to a charge of carrying a concealed weapon. State v. Nollie, 2002 WI 4, 249 Wis. 2d 538, 638 N.W.2d 280, 00−0744.

The concealed weapons statute is a restriction on the manner in which firearms are possessed and used. It is constitutional under Art. I, s. 25. Only if the public benefit in the exercise of the police power is substantially outweighed by an individual's need to conceal a weapon in the exercise of the right to bear arms will an otherwise valid restriction on that right be unconstitutional, as applied. The right to keep and bear arms for security, as a general matter, must permit a person to possess, carry, and sometimes conceal arms to maintain the security of a private residence or privately operated business, and to safely move and store weapons within those premises. State v. Hamdan, 2003 WI 113, 264 Wis. 2d 433, 665 N.W.2d 785, 01−0056. See also State v. Cole, 2003 WI 112, 264 Wis. 2d 520, 665 N.W.2d 328, 01−0350.

A challenge on constitutional grounds of a prosecution for carrying a concealed weapon requires affirmative answers to the following before the defendant may raise the constitutional defense: 1) under the circumstances, did the defendant's interest in concealing the weapon to facilitate exercise of his or her right to keep and bear arms substantially outweigh the state's interest in enforcing the concealed weapons statute? and 2) did the defendant conceal his or her weapon because concealment was the only reasonable means under the circumstances to exercise his or her right to bear arms? State v. Hamdan, 2003 WI 113, 264 Wis. 2d 433, 665 N.W.2d 785, 01−0056.

This section is constitutional as applied in this case. The defendant's interest in exercising his right to keep and bear arms for purposes of security by carrying a concealed weapon in his vehicle does not substantially outweigh the state's interest in prohibiting him from carrying a concealed weapon in his vehicle. State v. Fisher, 2006 WI 44, 290 Wis. 2d 121, 714 N.W.2d 495, 04−2989.

Judges are not peace officers authorized to carry concealed weapons. 69 Atty. Gen. 66.

941.231 Carrying a concealed knife. Any person who is prohibited from possessing a firearm under s. 941.29 who goes armed with a concealed knife that is a dangerous weapon is guilty of a Class A misdemeanor.

History: 2015 a. 149.

941.235 Carrying firearm in public building. (1) Any person who goes armed with a firearm in any building owned or leased by the state or any political subdivision of the state is guilty of a Class A misdemeanor.

(2) This section does not apply to any of the following:

(a) Peace officers or armed forces or military personnel who go armed in the line of duty or to any person duly authorized by the chief of police of any city, village or town, the chief of the capitol police, or the sheriff of any county to possess a firearm in any building under sub. (1). Notwithstanding s. 939.22 (22), for purposes of this paragraph, peace officer does not include a commission warden who is not a state−certified commission warden.

(c) A qualified out−of−state law enforcement officer, as defined in s. 941.23 (1) (g), to whom s. 941.23 (2) (b) 1. to 3. applies.

(d) A former officer, as defined in s. 941.23 (1) (c), to whom s. 941.23 (2) (c) 1. to 7. applies.

(e) A licensee, as defined in s. 175.60 (1) (d), or an out−of−state licensee, as defined in s. 175.60 (1) (g).

History: 1979 c. 221; 1991 a. 172; 1993 a. 246; 2001 a. 109; 2007 a. 27; 2011 a. 35.

941.237 Carrying handgun where alcohol beverages may be sold and consumed. (1) In this section:

(a) "Alcohol beverages" has the meaning given in s. 125.02 (1).

(b) "Correctional officer" means any person employed by the state or any political subdivision as a guard or officer whose principal duties are the supervision and discipline of inmates.

(c) "Encased" has the meaning given in s. 167.31 (1) (b).

(cm) "Firearms dealer" means any person engaged in the business of importing, manufacturing or dealing in firearms and having a license as an importer, manufacturer or dealer issued by the federal government.

(d) "Handgun" has the meaning given in s. 175.35 (1) (b).

(dm) "Hotel" has the meaning given in s. 97.01 (7).

(dr) Notwithstanding s. 939.22 (22), "peace officer" does not include a commission warden who is not a state−certified commission warden.

(e) "Premises" has the meaning given in s. 125.02 (14m), but excludes any area primarily used as a residence.

(em) "Private security person" has the meaning given in s. 440.26 (1m) (h).

(f) "Target range" means any area where persons are allowed to use a handgun to fire shots at targets.

(fm) "Tavern" means an establishment, other than a private club or fraternal organization, in which alcohol beverages are sold for consumption on the premises.

(g) "Unloaded" means any of the following:

1. Having no shell or cartridge in the chamber of a handgun or in the magazine attached to a handgun.

2. In the case of a caplock muzzle−loading handgun, having the cap removed.

3. In the case of a flintlock muzzle−loading handgun, having the flashpan cleaned of powder.

(2) Whoever intentionally goes armed with a handgun on any premises for which a Class "B" or "Class B" license or permit has been issued under ch. 125 is guilty of a Class A misdemeanor.

(3) Subsection (2) does not apply to any of the following:

(a) A peace officer.

(b) A correctional officer while going armed in the line of duty.

(c) A member of the U.S. armed forces or national guard while going armed in the line of duty.

(cm) A private security person meeting all of the following criteria:

1. The private security person is covered by a license or permit issued under s. 440.26.

2. The private security person is going armed in the line of duty.

3. The private security person is acting with the consent of the person specified in par. (d).

(cr) A qualified out−of−state law enforcement officer, as defined in s. 941.23 (1) (g), to whom s. 941.23 (2) (b) 1. to 3. applies.

(ct) A former officer, as defined in s. 941.23 (1) (c), to whom s. 941.23 (2) (c) 1. to 7. applies.

(cx) A licensee, as defined in s. 175.60 (1) (d), or an out−of−state licensee, as defined in s. 175.60 (1) (g), if the licensee or out−of−state licensee is not consuming alcohol on the premises.

(d) The licensee, owner, or manager of the premises, or any employee or agent authorized to possess a handgun by the licensee, owner, or manager of the premises.

(e) The possession of a handgun that is unloaded and encased in a vehicle in any parking lot area.

(f) The possession or use of a handgun at a public or private gun or sportsmen's range or club.

(g) The possession or use of a handgun on the premises if authorized for a specific event of limited duration by the owner or manager of the premises who is issued the Class "B" or "Class B" license or permit under ch. 125 for the premises.

(h) The possession of any handgun that is used for decoration if the handgun is encased, inoperable or secured in a locked condition.

(i) The possession of a handgun in any portion of a hotel other than the portion of the hotel that is a tavern.

(j) The possession of a handgun in any portion of a combination tavern and store devoted to other business if the store is owned or operated by a firearms dealer, the other business includes the sale of handguns and the handgun is possessed in a place other than a tavern.

History: 1993 a. 95, 491; 1995 a. 461; 2007 a. 27; 2011 a. 35; 2015 a. 22, 55.

Sub. (3) does not allow going armed with a concealed handgun in violation of s. 941.23. State v. Mata, 199 Wis. 2d 315, 544 N.W.2d 578 (Ct. App. 1996), 95−1336.

941.25 Manufacturer to register machine guns. (1) In this section, "machine gun" means any of the following:

(a) Any weapon that shoots, is designed to shoot or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger.

(b) The frame or receiver of any weapon described under par. (a) or any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a weapon described under par. (a).

(c) Any combination of parts from which a weapon described under par. (a) can be assembled if those parts are in the possession or under the control of a person.

(2) Every manufacturer shall keep a register of all machine guns manufactured or handled by him or her. This register shall show the model and serial number, date of manufacture, sale, loan, gift, delivery, or receipt, of every machine gun, the name, address, and occupation of the person to whom the machine gun was sold, loaned, given, or delivered, or from whom it was received; and the purpose for which it was acquired by the person to whom the machine gun was sold, loaned, given, or delivered, or from whom received. Upon demand every manufacturer shall permit any marshal, sheriff, or police officer to inspect his or her entire stock of machine guns, parts, and supplies therefor, and shall produce the register required under this subsection for inspection. Whoever violates any provision of this subsection is subject to a Class B forfeiture.

(3) This section does not prohibit or interfere with the manufacture for, and sale of, machine guns to the military forces or the peace officers of the United States or of any political subdivision thereof, or the transportation required for that purpose; the possession of a machine gun for scientific purpose, or the possession of a machine gun not usable as a weapon and possessed as a curiosity, ornament, or keepsake; or the possession of a machine gun other than one adapted to use pistol cartridges for a purpose manifestly not aggressive or offensive.

History: 1977 c. 173; 2015 a. 197 ss. 17, 30, 31.

941.26 Machine guns and other weapons; use in certain cases; penalty. (1c) In this section, "machine gun" has the meaning given in s. 941.25 (1).

(1g) (a) No person may sell, possess, use or transport any machine gun or other full automatic firearm.

(b) Except as provided in sub. (4), no person may sell, possess, use or transport any tear gas bomb, hand grenade, projectile or shell or any other container of any kind or character into which tear gas or any similar substance is used or placed for use to cause bodily discomfort, panic, or damage to property.

(1m) No person may take a firearm that is not designed to shoot more than one shot, without manual reloading, by a single function of the trigger and modify the firearm so that it does shoot more than one shot, without manual reloading, by a single function of the trigger.

(2) (a) Any person violating sub. (1g) (a) is guilty of a Class H felony.

(b) Any person violating sub. (1m) is guilty of a Class F felony.

(c) Except as provided in par. (d), any person who violates sub. (1g) (b) regarding the possession, noncommercial transportation or use of the bomb, grenade, projectile, shell, or container under sub. (1g) (b) is guilty of a Class A misdemeanor.

(d) Any person who violates sub. (1g) (b) regarding the possession, noncommercial transportation or use of the bomb, grenade, projectile, shell, or container under sub. (1g) (b) in self−defense or defense of another, as allowed under s. 939.48, is subject to a Class D forfeiture.

(e) Any person who violates sub. (1g) (b) regarding the sale or commercial transportation of the bomb, grenade, projectile, shell, or container under sub. (1g) (b) is guilty of a Class H felony.

(f) Any person who violates sub. (1g) (b) regarding the use of the bomb, grenade, projectile, shell or container under sub. (1g) (b) to cause bodily harm or bodily discomfort to a person who the actor knows, or has reason to know, is a peace officer who is acting in an official capacity is guilty of a Class H felony.

(g) Any person who violates sub. (1g) (b) regarding the use of the bomb, grenade, projectile, shell or container under sub. (1g) (b) during his or her commission of another crime to cause bodily harm or bodily discomfort to another or who threatens to use the bomb, grenade, projectile, shell, or container during his or her commission of another crime to incapacitate another person is guilty of a Class H felony.

(3) This section does not apply to the sale, possession, modification, use or transportation of any weapons or containers under sub. (1g) or (1m) to or by any armed forces or national guard personnel in the line of duty, any civil enforcement officer of the state or of any city or county. This section does not apply to the sale, possession, modification, use, or transportation of weapons under sub. (1g) (a) or (1m) to or by any person duly authorized by the chief of police of any city or the sheriff of any county. This section does not apply to the restoration of any weapon under sub. (1g) (a) or (1m) by a person having a license to collect firearms as curios or relics issued by the U.S. department of the treasury. The restriction on transportation contained in this section does not apply to common carriers.

(4) (a) Subsections (1g) to (3) do not apply to any device or container that contains a combination of oleoresin of capsicum and inert ingredients but does not contain any other gas or substance that will cause bodily discomfort.

(b) Whoever intentionally uses a device or container described under par. (a) to cause bodily harm or bodily discomfort to another is guilty of a Class A misdemeanor.

(c) Paragraph (b) does not apply to any of the following:

1. Any person acting in self−defense or defense of another, as allowed under s. 939.48.

2. Any peace officer acting in his or her official capacity. Notwithstanding s. 939.22 (22), for purposes of this subdivision, peace officer does not include a commission warden who is not a state−certified commission warden.

3. Any armed forces or national guard personnel acting in the line of duty.

(d) Whoever intentionally uses a device or container described under par. (a) to cause bodily harm or bodily discomfort to a person who the actor knows, or has reason to know, is a peace officer who is acting in an official capacity is guilty of a Class H felony.

(e) Whoever uses a device or container described under par. (a) during his or her commission of another crime to cause bodily harm or bodily discomfort to another or who threatens to use the device or container during his or her commission of another crime to incapacitate another person is guilty of a Class H felony.

(g) 1. Any person who sells or distributes a device or container described under par. (a) to a person who has not attained 18 years of age is subject to a Class C forfeiture.

1m. Subdivision 1. does not apply to an actor who is a parent, guardian, or legal custodian of a person who has not attained 18 years of age if the actor gives the person the device or container.

2. A person who proves all of the following by a preponderance of the evidence has a defense to prosecution under subd. 1.:

a. That the purchaser or distributee falsely represented that he or she had attained the age of 18 and presented an identification card.

b. That the appearance of the purchaser or distributee was such that an ordinary and prudent person would believe that the purchaser or distributee had attained the age of 18.

c. That the sale was made in good faith, in reasonable reliance on the identification card and appearance of the purchaser or distributee and in the belief that the purchaser or distributee had attained the age of 18.

(j) Whoever intentionally sells a device or container described under par. (a) without providing the purchaser with a proper label on the device or container and written safety instructions for using the device or container is guilty of a Class A misdemeanor.

(k) 1. Except as provided in subd. 2., any person who has not attained the age of 18 years and who possesses a device or container described under par. (a) is subject to a Class E forfeiture.

2. Subdivision 1. does not apply if the person's parent, guardian, or legal custodian purchased the device or container for him or her or gave the device or container to him or her.

(L) Any person who has been convicted of a felony in this state or has been convicted of a crime elsewhere that would be a felony if committed in this state who possesses a device or container described under par. (a) is subject to a Class A misdemeanor. This paragraph does not apply if the person has received a pardon for the felony or crime.

(m) The department of justice may not promulgate or enforce any rule that regulates a device or container described under par. (a).

(5) This section does not prohibit or interfere with the manufacture for, and sale of, machine guns to the military forces or the peace officers of the United States or of any political subdivision thereof, or the transportation required for that purpose; the possession of a machine gun for scientific purpose, or the possession of a machine gun not usable as a weapon and possessed as a curiosity, ornament, or keepsake; or the possession of a machine gun other than one adapted to use pistol cartridges for a purpose manifestly not aggressive or offensive.

History: 1977 c. 173; 1987 a. 234; 1991 a. 137; 1993 a. 91; 1995 a. 25; 2001 a. 109; 2007 a. 27; 2013 a. 77; 2015 a. 197.

Cross−reference: See also ch. Jus 14, Wis. adm. code.

941.28 Possession of short−barreled shotgun or short−barreled rifle. (1) In this section:

(a) "Rifle" means a firearm designed or redesigned, made or remade, and intended to be fired from the shoulder or hip and designed or redesigned and made or remade to use the energy of a propellant in a metallic cartridge to fire through a rifled barrel a single projectile for each pull of the trigger.

(b) "Short−barreled rifle" means a rifle having one or more barrels having a length of less than 16 inches measured from closed breech or bolt face to muzzle or a rifle having an overall length of less than 26 inches.

(c) "Short−barreled shotgun" means a shotgun having one or more barrels having a length of less than 18 inches measured from closed breech or bolt face to muzzle or a shotgun having an overall length of less than 26 inches.

(d) "Shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder or hip and designed or redesigned and made or remade to use the energy of a propellant in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

(2) No person may sell or offer to sell, transport, purchase, possess or go armed with a short−barreled shotgun or short−barreled rifle.

(3) Any person violating this section is guilty of a Class H felony.

(4) This section does not apply to the sale, purchase, possession, use or transportation of a short−barreled shotgun or short−barreled rifle to or by any armed forces or national guard personnel in line of duty, any peace officer of the United States or of any political subdivision of the United States or any person who has complied with the licensing and registration requirements under 26 USC 5801 to 5872. This section does not apply to the manufac-

ture of short−barreled shotguns or short−barreled rifles for any person or group authorized to possess these weapons. The restriction on transportation contained in this section does not apply to common carriers. This section shall not apply to any firearm that may be lawfully possessed under federal law, or any firearm that could have been lawfully registered at the time of the enactment of the national firearms act of 1968.

(5) Any firearm seized under this section is subject to s. 968.20 (3) and is presumed to be contraband.

History: 1979 c. 115; 2001 a. 109.

The intent in sub. (1) (d) is that of the fabricator; that the gun is incapable of being fired or not intended to be fired by the possessor is immaterial. State v. Johnson, 171 Wis. 2d 175, 491 N.W.2d 110 (Ct. App. 1992).

"Firearm" means a weapon that acts by force of gunpowder to fire a projectile, regardless of whether it is inoperable due to disassembly. State v. Rardon, 185 Wis. 2d 701, 518 N.W.2d 330 (Ct. App. 1994).

941.29 Possession of a firearm. (1g) In this section:

(a) "Violent felony" means any felony under s. 943.23 (1m), 1999 stats., or s. 943.23 (1r), 1999 stats., this section, or s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.08, 940.09, 940.10, 940.19, 940.195, 940.20, 940.201, 940.203, 940.21, 940.225, 940.23, 940.235, 940.285 (2), 940.29, 940.295 (3), 940.30, 940.302, 940.305, 940.31, 940.43 (1) to (3), 940.45 (1) to (3), 941.20, 941.26, 941.28, 941.292, 941.30, 941.327 (2) (b) 3. or 4., 943.02, 943.04, 943.06, 943.10 (2), 943.23 (1g), 943.32, 943.87, 946.43, 948.02 (1) or (2), 948.025, 948.03, 948.04, 948.05, 948.051, 948.06, 948.07, 948.08, 948.085, or 948.30.

(b) "Violent misdemeanor" means a violation of s. 813.12, 813.122, 813.125, 940.19 (1), 940.195, 940.42, 940.44, 941.20 (1), 941.26, 941.38 (3), 941.39, 947.013, 948.55, 951.02, 951.08, 951.09, or 951.095 or a violation to which a penalty specified in s. 939.63 (1) is applied.

(1m) A person who possesses a firearm is guilty of a Class G felony if any of the following applies:

(a) The person has been convicted of a felony in this state.

(b) The person has been convicted of a crime elsewhere that would be a felony if committed in this state.

(bm) The person has been adjudicated delinquent for an act committed on or after April 21, 1994, that if committed by an adult in this state would be a felony.

(c) The person has been found not guilty of a felony in this state by reason of mental disease or defect.

(d) The person has been found not guilty of or not responsible for a crime elsewhere that would be a felony in this state by reason of insanity or mental disease, defect or illness.

(e) The person has been committed for treatment under s. 51.20 (13) (a) and is subject to an order not to possess a firearm under s. 51.20 (13) (cv) 1., 2007 stats.

(em) The person is subject to an order not to possess a firearm under s. 51.20 (13) (cv) 1., 51.45 (13) (i) 1., 54.10 (3) (f) 1., or 55.12 (10) (a).

(f) The person is subject to an injunction issued under s. 813.12 or 813.122 or under a tribal injunction, as defined in s. 813.12 (1) (e), issued by a court established by any federally recognized Wisconsin Indian tribe or band, except the Menominee Indian tribe of Wisconsin, that includes notice to the respondent that he or she is subject to the requirements and penalties under this section and that has been filed under s. 813.128 (3g).

NOTE: Par. (f) is shown as affected by 2015 Wis. Acts 109 and 352 and as merged by the legislative reference bureau under s. 13.92 (2) (i).

(g) The person is subject to an order not to possess a firearm under s. 813.123 (5m) or 813.125 (4m).

(3) Any firearm involved in an offense under this section is subject to s. 968.20 (3).

(4) A person is concerned with the commission of a crime, as specified in s. 939.05 (2) (b), in violation of this section if he or she knowingly furnishes a person with a firearm in violation of this section.

(4m) (a) The court shall impose a bifurcated sentence under s. 973.01 and the confinement portion of the bifurcated sentence imposed on the person shall be not less than 3 years if all of the following are true:

1. The person is subject to this section because he or she was convicted of, adjudicated delinquent for, or found not guilty of by reason of mental disease or defect, committing, soliciting, conspiring, or attempting to commit a violent felony.

2. The person committed the current offense within 5 years after completing his or her sentence, including any probation, parole, or extended supervision, or being discharged by the department of corrections, for a prior felony or violent misdemeanor.

(b) This subsection does not apply to sentences imposed after July 1, 2020.

(5) This section does not apply to any person specified in sub. (1m) who:

(a) Has received a pardon with respect to the crime or felony specified in sub. (1m) or (4m) and has been expressly authorized to possess a firearm under 18 USC app. 1203; or

(b) Has obtained relief from disabilities under 18 USC 925 (c).

(6) The prohibition against firearm possession under this section does not apply to any correctional officer employed before May 1, 1982, who is required to possess a firearm as a condition of employment. This exemption applies if the officer is eligible to possess a firearm under any federal law and applies while the officer is acting in an official capacity.

(7) This section does not apply to any person who has been found not guilty or not responsible by reason of insanity or mental disease, defect or illness if a court subsequently determines both of the following:

(a) The person is no longer insane or no longer has a mental disease, defect or illness.

(b) The person is not likely to act in a manner dangerous to public safety.

(8) This section does not apply to any person specified in sub. (1m) (bm) if a court subsequently determines that the person is not likely to act in a manner dangerous to public safety. In any action or proceeding regarding this determination, the person has the burden of proving by a preponderance of the evidence that he or she is not likely to act in a manner dangerous to public safety.

(9) (a) This section does not apply to a person specified in sub. (1m) (e) if the prohibition under s. 51.20 (13) (cv) 1., 2007 stats., has been canceled under s. 51.20 (13) (cv) 2. or (16) (gm), 2007 stats., or under s. 51.20 (13) (cv) 1m. c.

(b) This section does not apply to a person specified in sub. (1m) (em) if the order under s. 51.20 (13) (cv) 1. is canceled under s. 51.20 (13) (cv) 1m. c., if the order under s. 51.45 (13) (i) 1. is canceled under s. 51.45 (13) (i) 2. c., if the order under s. 54.10 (3) (f) 1. is canceled under s. 54.10 (3) (f) 2. c., or if the order under s. 55.12 (10) (a) is canceled under s. 55.12 (10) (b) 3.

(10) The prohibition against firearm possession under this section does not apply to a person specified in sub. (1m) (f) if the person satisfies any of the following:

(a) The person is a peace officer and the person possesses a firearm while in the line of duty or, if required to do so as a condition of employment, while off duty. Notwithstanding s. 939.22 (22), for purposes of this paragraph, peace officer does not include a commission warden who is not a state−certified commission warden.

(b) The person is a member of the U.S. armed forces or national guard and the person possesses a firearm while in the line of duty.

History: 1981 c. 141, 317; 1983 a. 269; 1985 a. 259; 1993 a. 195, 196, 491; 1995 a. 71, 77, 306, 417; 2001 a. 109; 2007 a. 27; 2009 a. 258; 2011 a. 257, 258; 2013 a. 223; 2015 a. 109, 352; s. 13.92 (2) (i).

NOTE: See Chapter 141, laws of 1981, section 2, entitled "Initial applicability."

If a defendant is willing to stipulate to being a convicted felon, evidence of the nature of the felony is irrelevant if offered only to support the felony conviction element. State v. McAllister, 153 Wis. 2d 523, 451 N.W.2d 764 (Ct. App. 1989).

Failure to give the warning under s. 973.033, 1989 stats., does not prevent a conviction under this section. State v. Phillips, 172 Wis. 2d 391, 493 N.W.2d 238 (Ct. App. 1992).

Retroactive application of this provision did not violate the prohibition against ex post facto laws because the law is intended not to punish persons for a prior crime but to protect public safety. State v. Thiel, 188 Wis. 2d 695, 524 N.W.2d 641 (1994).

A convicted felon's possession of a firearm is privileged in limited enumerated circumstances. State v. Coleman, 206 Wis. 2d 199, 556 N.W.2d 701 (1996), 95−0917.

In this section, to possess means that the defendant knowingly has control of a firearm. There is no minimum length of time the firearm must be possessed for a violation to occur. Intention in handling a firearm is irrelevant unless the handling is privileged under s. 939.45. State v. Black, 2001 WI 31, 242 Wis. 2d 126, 624 N.W.2d 363, 99−0230.

To determine whether a person has been "convicted of a crime elsewhere that would be a felony if committed in this state" under sub. (1) (b) [now sub. (1m) (b)], the courts must consider the underlying conduct of the out−of−state conviction, not merely the statute that was violated. State v. Campbell, 2002 WI App 20, 250 Wis. 2d 238, 642 N.W.2d 230, 01−0758.

Article I, s. 25, of the Wisconsin constitution did not effectively repeal this section, nor is this section unconstitutionally vague, overbroad, or in violation of the equal protection clauses of the United States and Wisconsin constitutions. State v. Thomas, 2004 WI App 115, 274 Wis. 2d 513, 683 N.W.2d 497, 03−1369.

While 18 U.S.C. s. 1162(b) prohibits the state from depriving any Indian of any right, privilege, or immunity afforded under federal treaty, defendant's claim that he was exercising tribal hunting rights did not prevent the application of this section. Application of this section did not make defendant's exercise of treaty hunting rights illegal. Rather, the defendant's own actions in committing a felony limited him from fully enjoying those rights. State v. Jacobs, 2007 WI App 155, 302 Wis. 2d 675, 735 N.W.2d 535, 06−2076.

The ban on felons possessing firearms is constitutional, and that ban extends to all felons, including nonviolent ones. The governmental objective of public safety is an important one, and the legislature's decision to deprive a nonviolent felon of the right to possess a firearm is substantially related to this goal. State v. Pocian, 2012 WI App 58, 341 Wis. 2d 380, 814 N.W.2d 894, 11−1035.

Attempted possession of a firearm by a felon is a crime recognized under Wisconsin law. State v. Henning, 2013 WI App 15, 346 Wis. 2d 246, 828 N.W.2d 235, 10−2449.

Denial of the defendant's motion to dismiss a charge of possession of a firearm as someone who has been adjudicated delinquent that was based on the same underlying chain of events as an earlier dismissed charge of possession of a firearm as a felon did not violate the defendant's right to be free from double jeopardy. State v. Berry, 2016 WI App 40, 369 Wis. 2d 211, 879 N.W.2d 802, 15−1195.

Sub. (5) (a) has been invalidated by congressional action. Pardons granted after November 15, 1986 will give recipients the right to receive, possess, or transport in commerce firearms unless the pardon expressly provides otherwise. 78 Atty. Gen. 22.

941.291 Possession of body armor. (1) DEFINITIONS. In this section:

(a) "Body armor" means any garment that is designed, redesigned, or adapted to prevent bullets from penetrating through the garment.

(b) "Violent felony" means any felony, or the solicitation, conspiracy, or attempt to commit any felony, under s. 943.23 (1m) or (1r), 1999 stats., or s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.08, 940.09, 940.10, 940.19, 940.195, 940.20, 940.201, 940.203, 940.21, 940.225, 940.23, 940.285 (2), 940.29, 940.295 (3), 940.30, 940.305, 940.31, 940.43 (1) to (3), 940.45 (1) to (3), 941.20, 941.26, 941.28, 941.29, 941.30, 941.327, 943.01 (2) (c), 943.011, 943.013, 943.02, 943.04, 943.06, 943.10 (2), 943.23 (1g), 943.32, 943.81, 943.82, 943.83, 943.85, 943.86, 943.87, 943.88, 943.89, 943.90, 946.43, 947.015, 948.02 (1) or (2), 948.025, 948.03, 948.04, 948.05, 948.06, 948.07, 948.08, 948.085, or 948.30; or, if the victim is a financial institution, as defined in s. 943.80 (2), a felony, or the solicitation, conspiracy, or attempt to commit a felony under s. 943.84 (1) or (2).

(2) PROHIBITION. Except as provided in subs. (4), (5), (5m), and (6), no person may possess body armor if any of the following applies to the person:

(a) The person has been convicted of a violent felony in this state and has not been pardoned for it.

(b) The person has been convicted of a crime elsewhere that would be a violent felony if committed in this state and has not been pardoned for it.

(c) The person has been adjudicated delinquent for an act that if committed by an adult in this state would be a violent felony.

(d) The person has been found not guilty of a violent felony in this state by reason of mental disease or defect.

(e) The person has been found not guilty of or not responsible for a crime elsewhere by reason of insanity or mental disease, defect, or illness if the crime would be a violent felony in this state.

(3) PENALTY. (a) Whoever violates sub. (2) is guilty of a Class E felony.

(b) Whoever violates sub. (2) after being convicted of violating sub. (2) is guilty of a Class D felony.

(4) REQUEST BY CERTAIN PERSONS FOR COMPLETE OR PARTIAL EXEMPTION FROM PROHIBITION. (a) A person who is otherwise prohibited from possessing body armor under sub. (2) may request a complete or partial exemption from the prohibition if all of the following apply:

1. The person has a reasonable need to possess body armor to ensure his or her personal safety, to earn a livelihood, or as a condition of employment.

2. The person is likely to use the body armor in a safe and lawful manner.

(b) A person seeking a complete or partial exemption under this subsection from the prohibition under sub. (2) shall request the exemption by filing a written motion in the circuit court for the county in which the person will possess the body armor. A person who files a motion under this paragraph shall send a copy of the motion to the district attorney for the county in which the motion is filed. The district attorney shall make a reasonable attempt to contact the county sheriff and, if applicable, the chief of police of a city, village, or town in the county in which the person will possess the body armor for the purpose of informing the sheriff and the chief of police that the person has made a request for an exemption and to solicit from the sheriff and chief of police any information that may be relevant to the criteria specified in par. (a) 1. and 2.

(c) A court deciding whether to grant a request for an exemption made under par. (b) may deny the request for an exemption, grant a complete exemption from the prohibition, or grant a partial exemption by allowing possession of body armor only under certain specified circumstances or in certain locations or both. In deciding whether a person satisfies the criteria specified in par. (a) 1. and 2. and, if so, whether to grant an exemption, the court shall consider the person's character, including the person's criminal record, the totality of the person's circumstances, and any relevant evidence of the person's character and circumstances, including any relevant evidence submitted by the district attorney who received the copy of the motion under par. (b).

(d) If a court grants a request for an exemption under par. (c), the court shall issue a written order of exemption to the person who requested the exemption. The exemption is valid only in the county in which the court is located. If the exemption is a partial exemption, the order shall specify the circumstances under which the person may possess body armor, the locations in which the person may possess body armor, or, if applicable, both. The person granted the exemption shall carry a copy of the order of exemption at all times during which he or she is in possession of body armor. The clerk of the circuit court shall send a copy of the order of exemption to the county sheriff and, if applicable, to the chief of police of a city, village, or town in the county in which the person will possess the body armor.

(5) EXEMPTION BASED ON REQUEST OF LAW ENFORCEMENT AGENCY FOR CERTAIN WITNESSES AND INFORMERS. A person who is otherwise prohibited from possessing body armor under sub. (2) may wear body armor if the person is furnishing or has furnished information to a law enforcement agency relating to a possible violation of law or is assisting or has assisted a law enforcement agency in an investigation of a possible violation of law and is wearing the body armor at the request or direction of the law enforcement agency.

(5m) EXEMPTION BASED ON REQUEST BY CERTAIN WITNESSES AND INFORMERS. (a) A person who is otherwise prohibited from

possessing body armor under sub. (2) may possess body armor if all of the following apply:

2. The law enforcement agency to which the person is furnishing or has furnished information or to which the person is providing or has provided assistance determines that there is reason to believe that the person may be in danger of suffering death or great bodily harm because he or she is furnishing or has furnished information or because he or she is assisting or has assisted or is assisting in an investigation.

3. The law enforcement agency to which the person is furnishing or has furnished information or to which the person is providing or has provided assistance approves of the person's request to possess body armor under par. (b).

(b) A person seeking an exemption under this subsection from the prohibition under sub. (2) shall request the exemption from the law enforcement agency to which the person is furnishing or has furnished information or to which the person is providing or has provided assistance. The law enforcement agency may deny the request for an exemption, grant a complete exemption from the prohibition, or grant a partial exemption by allowing possession of body armor only under certain specified circumstances or in certain locations or both. If the law enforcement agency grants a request for an exemption under this subsection, it shall keep a written record of the exemption. If the exemption is a partial exemption, the record shall specify the circumstances under which the person may possess body armor, the locations in which the person may possess body armor, or, if applicable, both. A written record relating to an exemption granted by a law enforcement agency under this subsection is not subject to inspection or copying under s. 19.35 (1), except that a written record shall, upon request, be disclosed to another law enforcement agency or a district attorney, if the other law enforcement agency or the district attorney is investigating or prosecuting an alleged violation of sub. (2) or to the person to whom the exemption was granted.

(6) EXEMPTION FROM PROHIBITION FOR CERTAIN PRISONERS. A person who is prohibited from possessing body armor under sub. (2) may wear body armor if he or she is in the actual custody of a law enforcement officer, as defined in s. 165.85 (2) (c), or a correctional officer, as defined in s. 102.475 (8) (a), and is wearing the body armor at the request or direction of the law enforcement officer or correctional officer.

History: 2001 a. 95; 2003 a. 321; 2005 a. 212, 277; 2007 a. 97.

941.292 Possession of a weaponized drone. (1) In this section, "drone" means a powered, aerial vehicle that does not carry a human operator, uses aerodynamic forces to provide vehicle lift, and can fly autonomously or be piloted remotely. A drone may be expendable or recoverable.

(2) Whoever operates any weaponized drone is guilty of a Class H felony. This subsection does not apply to a member of the U.S. armed forces or national guard acting in his or her official capacity.

History: 2013 a. 213.

941.295 Possession of electric weapon. (1c) In this section:

(a) "Electric weapon" means any device which is designed, redesigned, used or intended to be used, offensively or defensively, to immobilize or incapacitate persons by the use of electric current.

(b) "Licensee" has the meaning given in s. 175.60 (1) (d).

(c) "Out−of−state licensee" has the meaning given in s. 175.60 (1) (g).

(1m) Whoever sells, transports, manufactures, possesses or goes armed with any electric weapon is guilty of a Class H felony.

(2) Subsection (1m) does not apply to any of the following:

(a) Any peace officer. Notwithstanding s. 939.22 (22), for purposes of this paragraph, peace officer does not include a commission warden who is not a state−certified commission warden.

(b) Any armed forces or national guard personnel while on official duty.

(c) Any corrections personnel in a county or in the department of corrections while on official duty.

(d) Any manufacturer or seller of electric weapons, unless the manufacturer or seller engages in the conduct described in sub. (1m) with the intent to provide an electric weapon to someone other than one of the following:

1. A person specified in pars. (a) to (c), a licensee, or an out−of−state licensee.

2. A person for use in his or her dwelling or place of business or on land that he or she owns, leases, or legally occupies.

(e) Any common carrier transporting electric weapons.

(2g) The prohibition in sub. (1m) on possessing or going armed with an electric weapon does not apply to any of the following:

(a) A licensee or an out−of−state licensee.

(b) An individual who goes armed with an electric weapon in his or her own dwelling or place of business or on land that he or she owns, leases, or legally occupies.

(2r) The prohibition in sub. (1m) on transporting an electric weapon does not apply to any of the following:

(a) A licensee or an out−of−state licensee.

(b) An individual who is not a licensee or an out−of−state licensee who transports an electric weapon if the electric weapon is enclosed within a carrying case.

(3) During the first 30 days after May 7, 1982, the electric weapons may be surrendered to any peace officer. Peace officers shall forward electric weapons to the crime laboratories if the retention of those weapons is not necessary for criminal prosecution purposes.

History: 1981 c. 348; 1985 a. 29 s. 3200 (35); 1989 a. 31, 56; 2001 a. 109; 2007 a. 27, 128; 2011 a. 35.

941.296 Use or possession of a handgun and an armor−piercing bullet during crime. (1) In this section:

(a) "Armor−piercing bullet" means a bullet meeting any of the following criteria: any projectile or projectile core that may be fired from any handgun and that is constructed entirely, excluding the presence of traces of other substances, from one or a combination of tungsten alloys, steel, iron, brass, bronze, beryllium copper or depleted uranium.

(b) "Handgun" has the meaning given in s. 175.35 (1) (b).

(2) Whoever uses or possesses a handgun during the commission of a crime under chs. 939 to 948 or 961 is guilty of a Class H felony under any of the following circumstances.

(a) The handgun is loaded with an armor−piercing bullet or a projectile or projectile core that may be fired from the handgun with a muzzle velocity of 1,500 feet per second or greater.

(b) The person possesses an armor−piercing bullet capable of being fired from the handgun.

History: 1993 a. 98; 1995 a. 448; 2001 a. 109.

941.2965 Restrictions on use of facsimile firearms. (1) In this section, "facsimile firearm" means any replica, toy, starter pistol or other object that bears a reasonable resemblance to or that reasonably can be perceived to be an actual firearm. "Facsimile firearm" does not include any actual firearm.

(2) No person may carry or display a facsimile firearm in a manner that could reasonably be expected to alarm, intimidate, threaten or terrify another person. Whoever violates this section is subject to a Class C forfeiture.

(3) Subsection (2) does not apply to any of the following:

(a) Any peace officer acting in the discharge of his or her official duties. Notwithstanding s. 939.22 (22), this paragraph does not apply to a commission warden.

(b) Any person engaged in military activities, sponsored by the state or federal government, acting in the discharge of his or her official duties.

(c) Any person who is on his or her own real property, in his or her own home or at his or her own fixed place of business.

(d) Any person who is on real property and acting with the consent of the owner of that property.

History: 1993 a. 191; 1993 a. 491 s. 262; Stats. 1993 s. 941.2965; 2007 a. 27.

941.297 Sale or distribution of imitation firearms. (1) In this section, "look−alike firearm" means any imitation of any original firearm that was manufactured, designed and produced after December 31, 1897, including and limited to toy guns, water guns, replica nonguns, and air−soft guns firing nonmetallic projectiles. "Look−alike firearm" does not include any imitation, nonfiring, collector replica of an antique firearm developed prior to 1898, or any traditional beebee, paint−ball or pellet−firing air gun that expels a projectile through the force of air pressure.

(2) Beginning November 1, 1992, no person may sell or distribute any look−alike firearm. Whoever violates this subsection is subject to a Class A forfeiture.

(3) This section does not apply to the sale or distribution of a look−alike firearm that complies with the marking or waiver requirements under 15 USC 5001 (b).

History: 1991 a. 155.

941.298 Firearm silencers. (1) In this section, "firearm silencer" means any device for silencing, muffling or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for use in assembling or fabricating such a device, and any part intended only for use in that assembly or fabrication.

(2) Whoever sells, delivers or possesses a firearm silencer is guilty of a Class H felony.

(3) Subsection (2) does not apply to sales or deliveries of firearm silencers to or possession of firearm silencers by any of the following:

(a) Any peace officer who is acting in compliance with the written policies of the officer's department or agency. This paragraph does not apply to any officer whose department or agency does not have such a policy. Notwithstanding s. 939.22 (22), this paragraph does not apply to a commission warden.

(b) Any armed forces or national guard personnel, while in the line of duty.

(c) Any person who has complied with the licensing and registration requirements under 26 USC 5801 to 5872.

History: 1991 a. 39; 2001 a. 109; 2007 a. 27.

941.299 Restrictions on the use of laser pointers. (1) In this section:

(a) "Correctional officer" has the meaning given in s. 941.237 (1) (b).

(b) "Laser pointer" means a hand−held device that uses light amplification by stimulated emission of radiation to emit a beam of light that is visible to the human eye.

(c) "Law enforcement officer" means a Wisconsin law enforcement officer, as defined in s. 175.46 (1) (g), or a federal law enforcement officer, as defined in s. 175.40 (7) (a) 1.

(2) No person may do any of the following:

(a) Intentionally direct a beam of light from a laser pointer at any part of the body of a correctional officer, law enforcement officer, or commission warden without the officer's consent, if the person knows or has reason to know that the victim is a correctional officer, law enforcement officer, or commission warden who is acting in an official capacity.

(b) Intentionally and for no legitimate purpose direct a beam of light from a laser pointer at any part of the body of any human being.

(c) Intentionally direct a beam of light from a laser pointer in a manner that could reasonably be expected to alarm, intimidate, threaten or terrify another person.

(d) Intentionally direct a beam of light from a laser pointer in a manner that, under the circumstances, tends to disrupt any public or private event or create or provoke a disturbance.

(3) (a) Whoever violates sub. (2) (a) is guilty of a Class B misdemeanor.

(b) Whoever violates sub. (2) (b), (c) or (d) is subject to a Class B forfeiture.

(c) A person may be charged with a violation of sub. (2) (a) or (b) or both for an act involving the same victim. If the person is charged with violating both sub. (2) (a) and (b) with respect to the same victim, the charges shall be joined. If the person is found guilty of both sub. (2) (a) and (b) for an act involving the same victim, the charge under sub. (2) (b) shall be dismissed and the person may be sentenced only under sub. (2) (a).

History: 1999 a. 157; 2007 a. 27.

SUBCHAPTER IV

OTHER DANGEROUS INSTRUMENTALITIES AND PRACTICES

941.30 Recklessly endangering safety. (1) FIRST−DEGREE RECKLESSLY ENDANGERING SAFETY. Whoever recklessly endangers another's safety under circumstances which show utter disregard for human life is guilty of a Class F felony.

(2) SECOND−DEGREE RECKLESSLY ENDANGERING SAFETY. Whoever recklessly endangers another's safety is guilty of a Class G felony.

History: 1987 a. 399; 2001 a. 109.

Judicial Council Note, 1988: Sub. (1) is analogous to the prior offense of endangering safety by conduct regardless of life.

Sub. (2) is new. It creates the offense of endangering safety by criminal recklessness. See s. 939.24 and the NOTE thereto. [Bill 191−S]

A bomb scare under s. 947.015 is not a lesser included crime of recklessly endangering safety. State v. Van Ark, 62 Wis. 2d 155, 215 N.W.2d 41 (1974).

Section 941.30 is a lesser included offense of s. 940.01, 1st−degree homicide. State v. Weeks, 165 Wis. 2d 200, 477 N.W.2d 642 (Ct. App. 1991).

A conviction under sub. (1) was proper when the defendant desisted from an attack but showed no regard for the victim's life or safety during the attack. State v. Holtz, 173 Wis. 2d 515, 496 N.W.2d 668 (Ct. App. 1992).

941.31 Possession of explosives. (1) Whoever makes, buys, transports, possesses, or transfers any explosive compound or offers to do the same, either with intent to use such explosive to commit a crime or knowing that another intends to use it to commit a crime, is guilty of a Class F felony.

(2) (a) In this subsection, "improvised explosive device" means a destructive explosive device capable of causing bodily harm, great bodily harm, death or property damage; with some type of explosive material and a means of detonating the explosive material, directly, remotely, or with a timer either present or readily capable of being inserted or attached; which may include a pipe or similar casing, with the ends of the pipe or casing capped, plugged or crimped, and a fuse or similar object sticking out of the pipe or casing; and made by a person not engaged in the legitimate manufacture or legitimate use of explosives, or otherwise authorized by law to do so. "Improvised explosive device" does not include ammunition for any rifle, pistol or shotgun.

(b) Whoever makes, buys, sells, transports, possesses, uses or transfers any improvised explosive device, or possesses materials or components with intent to assemble any improvised explosive device, is guilty of a Class H felony.

(c) This subsection does not apply to the transportation, possession, use, or transfer of any improvised explosive device by any armed forces or national guard personnel or to any peace officer in the line of duty or as part of a duty−related function or exercise. The restriction on transportation in this subsection does not apply to common carriers. Notwithstanding s. 939.22 (22), this paragraph does not apply to a commission warden.

History: 1977 c. 173; 1987 a. 234; 1999 a. 32; 2001 a. 109; 2007 a. 27.

Sub. (1) is not unconstitutionally vague. An explosive is any chemical compound, mixture, or device, the primary purpose of which is to function by explosion. An

explosion is a substantially instantaneous release of both gas and heat. State v. Brulport, 202 Wis. 2d 505, 551 N.W.2d 824 (Ct. App. 1996), 95−1687.

First−degree recklessly endangering safety is not a lesser included offense of s. 940.19 (5), aggravated battery. State v. Dibble, 2002 WI App 219, 257 Wis. 2d. 274, 650 N.W.2d 908, 02−0538.

The court applied a dictionary definition of explosive material as "a substance that on ignition by heat, impact, friction, or detonation undergoes very rapid decomposition (as combustion) with the production of heat and the formation of more stable products (as gases) which exert tremendous pressure as they expand at the high temperature produced" in finding methyl ethyl ketone, commonly known as acetone, is an explosive material under sub. (2) (a). State v. Strong, 2011 WI App 43, 332 Wis. 2d 554, 796 N.W.2d 438, 10−1798.

A device qualifies as an improvised explosive under sub. (2) (a) even if it lacks a functioning detonator as long as a means of detonation can be readily inserted or attached. The defendant's devices met this requirement because the detonators could have been made operable with the insertion of two readily available parts. State v. Strong, 2011 WI App 43, 332 Wis. 2d 554, 796 N.W.2d 438, 10−1798.

941.315 Possession, distribution or delivery of nitrous oxide. (1) In this section:

(a) "Deliver" or "delivery" means the actual, constructive or attempted transfer of nitrous oxide or a substance containing nitrous oxide from one person to another.

(b) "Distribute" means to deliver, other than by administering.

(2) Whoever does any of the following is guilty of a Class A misdemeanor:

(a) Possesses nitrous oxide or a substance containing nitrous oxide with the intent to inhale the nitrous oxide.

(b) Intentionally or otherwise inhales nitrous oxide.

(3) Whoever does any of the following is guilty of a Class H felony:

(a) Distributes or delivers, or possesses with intent to distribute or deliver, nitrous oxide to a person who has not attained the age of 21.

(b) Distributes or delivers, or possesses with intent to distribute or deliver, nitrous oxide or a substance containing nitrous oxide to a person aged 21 years or older knowing or having reason to know that the person will use the nitrous oxide in violation of sub. (2).

(c) Distributes or delivers to a person aged 21 years or older any object used, designed for use or primarily intended for use in inhaling nitrous oxide at the same time that he or she distributes or delivers nitrous oxide or a substance containing nitrous oxide to the person.

(5) (a) Subsection (2) does not apply to a person to whom nitrous oxide is administered for the purpose of providing medical or dental care, if the nitrous oxide is administered by a physician or dentist or at the direction or under the supervision of a physician or dentist.

(b) Subsection (3) does not apply to the administration of nitrous oxide by a physician or dentist, or by another person at the direction or under the supervision of a physician or dentist, for the purpose of providing medical or dental care.

(c) Subsection (3) (c) does not apply to the sale to a hospital, health care clinic or other health care organization or to a physician or dentist of any object used, designed for use or primarily intended for use in administering nitrous oxide for the purpose of providing medical or dental care.

History: 1997 a. 336; 2001 a. 109.

941.316 Abuse of hazardous substance. (1) In this section:

(a) "Abuse" means to ingest, inhale, or otherwise introduce into the human body a hazardous substance in a manner that does not comply with any cautionary labeling that is required for the hazardous substance under s. 100.37 or under federal law, or in a manner that is not intended by the manufacturer of the hazardous substance, and that is intended to induce intoxication or elation, to stupefy the central nervous system, or to change the human audio, visual, or mental processes.

(b) "Distribute" means to transfer a hazardous substance from one person to another.

(c) "Hazardous substance" has the meaning given in s. 100.37 (1) (c). "Hazardous substance" also includes any substance or mixture of substances that has the capacity to produce personal injury or illness to a person who abuses the substance and includes any household product, as defined in s. 941.327 (1) (e), or any mixture of household products, as defined in s. 941.327 (1) (e).

(2) Whoever does any of the following is guilty of a Class A misdemeanor:

(a) Possesses a hazardous substance with the intent to abuse the hazardous substance.

(b) Intentionally abuses a hazardous substance.

(3) Whoever distributes, or possesses with intent to distribute, a hazardous substance, knowing or having reason to know that the hazardous substance will be abused, is guilty of a Class I felony.

(4) Subsection (2) does not apply to a person who possesses or uses the hazardous substance if the substance is obtained from, or pursuant to a valid prescription or order of, a practitioner, as defined in s. 961.01 (19), while acting in the course of professional practice.

(5) Subsection (3) does not apply to a person who distributes a hazardous substance in an ordinary course of business.

History: 2005 a. 44.

941.32 Administering dangerous or stupefying drug. Whoever administers to another or causes another to take any poisonous, stupefying, overpowering, narcotic or anesthetic substance with intent thereby to facilitate the commission of a crime is guilty of a Class F felony.

History: 1977 c. 173; 2001 a. 109.

941.325 Placing foreign objects in edibles. Whoever places objects, drugs or other substances in candy or other liquid or solid edibles with the intent to cause bodily harm to another person is guilty of a Class I felony.

History: 1971 c. 72; 1977 c. 173; 1995 a. 410; 2001 a. 109.

"Edibles" includes solids and liquids. State v. Timm, 163 Wis. 2d 894, 472 N.W.2d 593 (Ct. App. 1991).

941.327 Tampering with household products. (1) In this section:

(a) "Cosmetic" means articles intended to be rubbed, poured, sprinkled or sprayed on, introduced into or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness or altering the appearance; and articles intended for use as a component of any such articles. "Cosmetic" does not include soap.

(b) "Device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar or related article, including any component, part or accessory which is recognized in the official national formulary, or the United States Pharmacopeia, or any supplement to them; intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment or prevention of disease, in persons or other animals; or intended to affect the structure or any function of the body of persons or other animals; and which does not achieve any of its principal intended purposes through chemical action within or on the body of persons or other animals and which is not dependent upon being metabolized for the achievement of any of its principal intended purposes.

(c) "Drug" has the meaning described in s. 450.01 (10), but does not include a prescription drug.

(d) "Food" has the meaning described in s. 97.01 (6).

(e) "Household product" means any food, drug, device or cosmetic or any article, product or commodity of any kind or class which is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals, or use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and which usually is consumed or expended in the course of that consumption or use.

(f) "Label" means a written, printed or graphic matter upon the immediate container of any household product.

(g) "Labeling" means all labels and other written, printed or graphic matter upon any household product or any of its containers or wrappers or accompanying any household product.

(h) "Prescription drug" has the meaning described in s. 450.01 (20).

(2) (a) Whoever, with intent to kill, injure or otherwise endanger the health or safety of any person or to cause significant injury or damage to the business of any person or entity, does either of the following may be punished under par. (b):

1. Tampers with any household product and thereby taints the product.

2. Tampers with any household product or its container and thereby renders the labeling of the product or its container materially false or misleading.

(b) 1. Except as provided in subds. 2. to 4., a person violating par. (a) is guilty of a Class I felony.

2. If the act under par. (a) creates a high probability of great bodily harm to another, a person violating par. (a) is guilty of a Class H felony.

3. If the act under par. (a) causes great bodily harm to another, a person violating par. (a) is guilty of a Class F felony.

4. If the act under par. (a) causes death to another, a person is guilty of a Class C felony.

(3) Whoever intentionally imparts or conveys false information, knowing the information to be false, concerning an act or attempted act which, if true, would constitute a violation of sub. (2) is guilty of a Class I felony.

History: 1987 a. 90; 2001 a. 109.

941.34 Fluoroscopic shoe−fitting machines. Whoever uses, or possesses or controls with intent to so use, any fluoroscopic or X−ray machine for the purpose of shoe−fitting or attempting to fit shoes, or who knowingly permits such machine, whether in use or not, to remain on his or her premises, is subject to a Class B forfeiture. Each day of such use, possession or control shall constitute a separate violation of this section.

History: 1977 c. 173.

941.35 Emergency telephone calls. (1) As used in this section:

(a) "Emergency" means a situation in which property or human life are in jeopardy and the prompt summoning of aid is essential.

(b) "Party line" means a subscriber's line telephone circuit, consisting of 2 or more main telephone stations connected therewith, each station with a distinctive ring or telephone number.

(2) Whoever intentionally refuses to yield or surrender the use of a party line to another person immediately upon being informed by such other person that he or she wants to report a fire or summon police, medical or other aid in case of emergency, is subject to a Class B forfeiture.

(3) Whoever intentionally asks for or requests the use of a party line on the pretext that an emergency exists, knowing that no emergency in fact exists, is subject to a Class B forfeiture.

(4) Every telephone directory printed and distributed to the general public shall contain a notice prominently printed and displayed in bold−faced type, stating in substance the conduct prohibited by this section, and to be preceded by the word "Warning". This subsection does not apply to directories distributed solely for business advertising purposes, commonly known as classified directories.

History: 1977 c. 173; 1983 a. 189, 192.

941.36 Fraudulent tapping of electric wires or gas or water meters or pipes. (1) Whoever, without permission and for the purpose of obtaining electrical current, gas or water with intent to defraud any vendor of electricity, gas or water by doing any of the following, is guilty of a Class C misdemeanor:

(a) Connects or causes to be connected by wire or any other device with the wire, cables or conductors of any such vendor.

(b) Connects or disconnects the meters, pipes or conduits of the vendor or in any other manner tampers or interferes with the meters, pipes or conduits, or connects with the meters, pipes or conduits by pipes, conduits or other instruments.

(2) The existence of any of the conditions with reference to meters, pipes, conduits or attachments, described in this section, is presumptive evidence that the person to whom gas, electricity or water is at the time being furnished by or through the meters, pipes, conduits or attachments has, with intent to defraud, created or caused to be created the conditions. The presumption does not apply to any person furnished with gas, electricity or water for less than 31 days or until there has been at least one meter reading.

History: 1977 c. 311.

941.37 Obstructing emergency or rescue personnel. (1) In this section:

(a) "Ambulance" has the meaning specified in s. 256.01 (1).

(b) "Authorized emergency vehicle" has the meaning specified in s. 340.01 (3).

(c) "Emergency medical personnel" means an emergency medical technician licensed under s. 256.15, first responder certified under s. 256.15 (8), peace officer or fire fighter, or other person operating or staffing an ambulance or an authorized emergency vehicle.

(2) Any person who knowingly obstructs any emergency medical personnel in the performance of duties relating to an emergency or rescue is guilty of a Class A misdemeanor.

(3) Any person who intentionally interferes with any emergency medical personnel in the performance of duties relating to an emergency or rescue and who has reasonable grounds to believe that the interference may endanger another's safety is guilty of a Class I felony.

(4) Any person who violates sub. (3) and thereby contributes to the death of another is guilty of a Class E felony.

History: 1983 a. 515; 1989 a. 102; 1999 a. 56; 2001 a. 109; 2007 a. 130.

941.375 Throwing or discharging bodily fluids at public safety workers. (1) In this section:

(a) "Ambulance" has the meaning specified in s. 256.01 (1).

(am) "Prosecutor" means any of the following:

1. A district attorney, a deputy district attorney, an assistant district attorney, or a special prosecutor appointed under s. 978.045 or 978.05 (8) (b).

2. The attorney general, a deputy attorney general, or an assistant attorney general.

(b) "Public safety worker" means an emergency medical technician licensed under s. 256.15, a first responder certified under s. 256.15 (8), a peace officer, a fire fighter, or a person operating or staffing an ambulance.

(2) Any person who throws or expels blood, semen, vomit, saliva, urine, feces, or other bodily substance at or toward a public safety worker or a prosecutor under all of the following circumstances is guilty of a Class I felony:

(a) The person throws or expels the blood, semen, vomit, saliva, urine, feces, or other bodily substance with the intent that it come into contact with the public safety worker or prosecutor.

(c) The public safety worker or prosecutor does not consent to the blood, semen, vomit, saliva, urine, feces, or other bodily substance being thrown or expelled at or toward him or her.

History: 2003 a. 190; 2007 a. 130; 2011 a. 72; 2015 a. 340.

941.38 Criminal gang member solicitation and contact. (1) In this section:

(a) "Child" means a person who has not attained the age of 18 years.

(b) "Criminal gang activity" means the commission of, attempt to commit or solicitation to commit one or more of the following crimes, or acts that would be crimes if the actor were an adult, committed for the benefit of, at the direction of or in association with any criminal gang, with the specific intent to promote, further or assist in any criminal conduct by criminal gang members:

1. Manufacture, distribution or delivery of a controlled substance or controlled substance analog, as prohibited in s. 961.41 (1).

2. First−degree intentional homicide, as prohibited in s. 940.01.

3. Second−degree intentional homicide, as prohibited in s. 940.05.

4. Battery, as prohibited in s. 940.19 or 940.195.

5. Battery, special circumstances, as prohibited in s. 940.20.

5m. Battery or threat to witness, as prohibited in s. 940.201.

6. Mayhem, as prohibited in s. 940.21.

7. Sexual assault, as prohibited in s. 940.225.

8. False imprisonment, as prohibited in s. 940.30.

9. Taking hostages, as prohibited in s. 940.305.

10. Kidnapping, as prohibited in s. 940.31.

11. Intimidation of witnesses, as prohibited in s. 940.42 or 940.43.

12. Intimidation of victims, as prohibited in s. 940.44 or 940.45.

13. Criminal damage to property, as prohibited in s. 943.01.

13m. Criminal damage to or threat to criminally damage the property of a witness, as prohibited in s. 943.011 or 943.017 (2m).

14. Arson of buildings or damage by explosives, as prohibited in s. 943.02.

15. Burglary, as prohibited in s. 943.10.

16. Theft, as prohibited in s. 943.20.

17. Taking, driving or operating a vehicle, or removing a part or component of a vehicle, without the owner's consent, as prohibited in s. 943.23.

18. Robbery, as prohibited in s. 943.32.

19. Sexual assault of a child, as prohibited in s. 948.02.

20. Repeated acts of sexual assault of the same child, as prohibited in s. 948.025.

21. A crime under s. 943.81, 943.82, 943.83, 943.85, 943.86, 943.87, 943.88, 943.89, or 943.90 or, if the victim is a financial institution, as defined in s. 943.80 (2), a crime under s. 943.84 (1) or (2).

21m. Sexual assault of a child placed in substitute care under s. 948.085.

(2) Whoever intentionally solicits a child to participate in criminal gang activity is guilty of a Class I felony.

(3) Whoever intentionally violates, under all of the following circumstances, a court order to refrain from contacting a criminal gang member is guilty of a Class A misdemeanor:

(a) The court finds that the person who is subject to the court order is a criminal gang member.

(b) The court informs the person of the contact restriction orally and in writing.

(c) The order specifies how long the contact restriction stays in effect.

History: 1993 a. 98, 227; 1995 a. 448; 1997 a. 143, 295; 2001 a. 109; 2005 a. 212, 277; 2007 a. 97.

NOTE: See 1993 Wis. Act 98, s. 9159, for a statement of legislative intent.

The definition in sub. (1) (b) is sufficiently specific that when incorporated into a probation condition it provides fair and adequate notice as to the expected course of conduct and provides an adequate standard of enforcement. State v. Lo, 228 Wis. 2d 531, 599 N.W.2d 659 (Ct. App. 1999), 98−2490.

941.39 Victim, witness, or co−actor contact. Whoever intentionally violates a court order issued under s. 973.049 (2) is guilty of one of the following:

(1) If the court order results from a conviction for a felony, a Class H felony.

(2) If the court order results from a conviction for a misdemeanor, a Class A misdemeanor.

History: 2005 a. 32; 2011 a. 267.

941.40 Injury to wires by removal of building, etc.; tampering with telecommunication or electric wires. **(1)** Except as provided under sub. (4), any person having the right so to do who intentionally removes or changes any building or other structure or any timber, standing or fallen, to which any telegraph, telecommunications, electric light, or electric power lines or wires are in any manner attached, or causes the same to be done, and consequently destroys, disturbs, or injures the wires, poles, or other property of any telegraph, telecommunications, electric light, or electric power company, including a cooperative association organized under ch. 185, transacting business in this state, without first giving the company, at its office nearest the place of injury, at least 24 hours' notice thereof, is guilty of a Class B misdemeanor.

(2) Any person who intentionally breaks down, interrupts, or removes any telegraph, telecommunications, electric light, or electric power line or wire including grounds or who destroys, disturbs, interferes with, or injures the wires, poles, or other property of any telegraph, telecommunications, electric light, or electric power company, including a cooperative association organized under ch. 185, is guilty of a Class B misdemeanor.

(3) Any person who, for any purpose, intentionally makes or causes to be made a physical electrical connection with any wire, cable, conductor, ground, equipment, facility, or other property of any telegraph, telecommunications, electric light, or electric power company, including a cooperative association organized under ch. 185, is guilty of a Class A misdemeanor.

(4) (a) Subsections (1) and (2) do not apply to any person who is lawfully using a land survey marker for land surveying purposes no more than 30 inches below ground level.

(b) Subsections (2) and (3) do not apply to a person who acts with the permission of the telegraph, telecommunications, electric light, or electric power company, including a cooperative association organized under ch. 185, that owns the wire, pole, cable, conductor, ground, equipment, facility, or other property.

History: 1985 a. 187, 297, 332; 2011 a. 155 ss. 3 to 5, 32 to 34; Stats. 2011 s. 941.40; 2013 a. 125.