



# HO-CHUNK NATION LEGISLATURE

*Governing Body of the Ho-Chunk Nation*

## HO-CHUNK NATION CODE (HCC)

### TITLE 9 – CRIMINAL CODE

#### SECTION 939 – GENERAL PROVISIONS

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#### TABLE OF CONTENTS

##### SUBCHAPTER I: PRELIMINARY PROVISIONS

939.01	Name and interpretation .....	2
939.03	Jurisdiction of Nation over crime .....	2
939.05	Parties to crime .....	3
939.12	Crime defined .....	4
939.14	Criminal conduct or contributory negligence of victim no defense .....	4
939.20	Provisions which apply only to chapters 939 to 951 .....	4
939.22	Words and phrases defined .....	4
939.23	Criminal intent .....	7
939.24	Criminal recklessness .....	8
939.25	Criminal negligence .....	8

##### SUBCHAPTER II: INCHOATE CRIMES

939.30	Solicitation .....	8
939.31	Conspiracy .....	8
939.32	Attempt .....	8

##### SUBCHAPTER III: DEFENSES TO CRIMINAL LIABILITY

939.42	Intoxication .....	10
939.43	Mistake .....	10
939.44	Adequate provocation .....	11
939.45	Privilege .....	11
939.46	Coercion .....	11
939.47	Necessity .....	12
939.48	Self-defense and defense of others .....	12
939.49	Defense of property and protection against retail theft .....	13

### SUBCHAPTER IV: PENALTIES

939.50	Penalty for a felonies .....	14
939.51	Classification of misdemeanors .....	14
939.52	Classification of forfeitures .....	14
939.615	Lifetime supervision of serious sex offenders .....	15
939.616	Mandatory minimum sentence for child sex offenses ..	18
939.617	Minimum sentence for certain child sex offenses .....	18
939.618	Mandatory minimum sentence for repeat serious sex crimes .....	19
939.619	Mandatory minimum sentence for repeat serious violent crimes .....	19
939.62	Increased penalty for habitual criminality .....	19
939.621	Increased penalty for certain domestic abuse offenses .....	21
939.63	Penalties; use of a dangerous weapon .....	21
939.632	Penalties; violent crime in a school zone .....	22
939.635	Increased penalty for certain crimes against children committed by a child care provider .....	23
939.645	Penalty; crimes committed against certain people or property .....	23

### SUBCHAPTER V: RIGHTS OF THE PROSECUTION

939.65	Prosecution under more than one section permitted ....	23
939.66	Conviction of included crime permitted .....	23

### SUBCHAPTER VI: RIGHTS OF THE ACCUSED

939.70	Presumption of innocence and burden of proof .....	24
939.71	Limitation on the number of convictions .....	24
939.72	No conviction of both inchoate and completed crime ..	24
939.73	Criminal penalty permitted only on conviction .....	24
939.74	Time limitations on prosecutions .....	25
939.75	Death or harm to an unborn child .....	26

### SUBCHAPTER I PRELIMINARY PROVISIONS

**939.01 Name and interpretation.** Chapters 939 to 951 may be referred to as the criminal code but shall not be interpreted as a unit. Crimes committed prior to the enactment of this code, are not affected by chs. 939 to 951.

**939.03 Jurisdiction of Nation over crime.**

(1) A person is subject to prosecution and punishment under the law of this Nation if any of the

following applies:

- (a) The person commits a crime, any of the constituent elements of which takes place in this Nation.
  - (b) While out of this Nation, the person aids and abets, conspires with, or advises, incites, commands, or solicits another to commit a crime in this Nation.
  - (c) While out of this Nation, the person does an act with intent that it cause in this Nation a consequence set forth in a section defining a crime.
  - (d) While out of this Nation, the person steals and subsequently brings any of the stolen property into this Nation.
  - (e) The person violates s. 943.201 or 943.203 and the victim, at the time of the violation, is an individual who resides in this Nation, a deceased individual who resided in this Nation immediately before his or her death, or an entity, as defined in s. 943.203 (1) (a), that is located in this Nation.
  - (f) The person violates s. 943.89 and the matter or thing is deposited for delivery within this Nation or is received or taken within this Nation.
  - (g) The person violates s. 943.90 and the transmission is from within this Nation, the transmission is received within this Nation, or it is reasonably foreseeable that the transmission will be accessed by a person or machine within this Nation.
  - (h) A member of the Ho-Chunk Nation commits a crime regardless of whether the crime was committed within the Nation.
- (2) In this section “Nation” includes area within the boundaries of the Nation, area over which the Nation exercises concurrent jurisdiction under Article I, section 1, of the Constitution of the Ho-Chunk Nation, all trust or restricted lands that the Nation has jurisdiction over and all fee land owned by the Nation.
- (3) In this section “person” means any of the following:
- (a) a member of the Ho-Chunk Nation; or
  - (b) a member of a federally recognized tribe.

### **939.05 Parties to crime.**

- (1) Whoever is concerned in the commission of a crime is a principal and may be charged with and convicted of the commission of the crime although the person did not directly commit it and although the person who directly committed it has not been convicted or has been convicted of some other degree of the crime or of some other crime based on the same act.
- (2) A person is concerned in the commission of the crime if the person:
- (a) Directly commits the crime; or
  - (b) Intentionally aids and abets the commission of it; or
  - (c) Is a party to a conspiracy with another to commit it or advises, hires, counsels or otherwise procures another to commit it. Such a party is also concerned in the commission of any other crime which is committed in pursuance of the intended crime and which under the circumstances is a natural and probable consequence of the intended crime. This paragraph does not apply to a person who voluntarily changes his or her mind and no longer desires that the crime be committed and notifies the other parties concerned of his or her withdrawal within a reasonable time before the commission of the crime so as to allow the others also to withdraw.

**939.12 Crime defined.** A crime is conduct which is prohibited by the Nation's law and punishable by fine or imprisonment or both. Conduct punishable only by a forfeiture is not a crime.

**939.14 Criminal conduct or contributory negligence of victim no defense.** It is no defense to a prosecution for a crime that the victim also was guilty of a crime or was contributorily negligent.

**939.20 Provisions which apply only to chapters 939 to 951.** Sections 939.22 to 939.25 apply only to crimes defined in chs. 939 to 951. Other sections in ch. 939 apply to crimes defined in other chapters of the statutes as well as to those defined in chs. 939 to 951.

**939.22 Words and phrases defined.** In chs. 939 to 948 and 951, the following words and phrases have the designated meanings unless the context of a specific section manifestly requires a different construction or the word or phrase is defined in s. 948.01 for purposes of ch. 948:

(2) "Airgun" means a weapon which expels a missile by the expansion of compressed air or other gas.

(3) "Alcohol concentration" means:

(a) The number of grams of alcohol per 100 milliliters of a person's blood.

(b) The number of grams of alcohol per 210 liters of a person's breath.

(4) "Bodily harm" means physical pain or injury, illness, or any impairment of physical condition.

(5) "Commission warden" means a conservation warden employed by the Great Lakes Indian Fish and Wildlife Commission.

(6) "Crime" has the meaning designated in s. 939.12.

(9) "Criminal gang" means an ongoing organization, association or group of 3 or more persons, whether formal or informal, that has as one of its primary activities the commission of one or more of the criminal acts, or acts that would be criminal if the actor were an adult, specified in s. 939.22 (21) (a) to (s); that has a common name or a common identifying sign or symbol; and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

(9g) "Criminal gang member" means any person who participates in criminal gang activity, as defined in s. 941.38 (1) (b), with a criminal gang.

(9r) "Criminal intent" has the meaning designated in s. 939.23.

(10) "Dangerous weapon" means any firearm, whether loaded or unloaded; any device designed as a weapon and capable of producing death or great bodily harm; any ligature or other instrumentality used on the throat, neck, nose, or mouth of another person to impede, partially or completely, breathing or circulation of blood; any electric weapon, as defined in s. 941.295 (1c) (a); or any other device or instrumentality which, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm.

(11) "Drug" means

(a) Any substance recognized as a drug in the official U.S. pharmacopoeia and national formulary or official homeopathic pharmacopoeia of the United States or any supplement to either of them;

(b) Any substance intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease or other conditions in persons or other animals;

(c) Any substance other than a device or food intended to affect the structure or any function of the body of persons or other animals; or

- (d) Any substance intended for use as a component of any article specified in pars. (a) to (c) but does not include gases or devices or articles intended for use or consumption in or for mechanical, industrial, manufacturing or scientific applications or purposes.
- (12) “Felony” has the meaning designated in s. 939.60.
- (14) “Great bodily harm” means bodily injury which creates a substantial risk of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury.
- (15) “Hazardous inhalant” means a substance that is ingested, inhaled, or otherwise introduced into the human body in a manner that does not comply with any cautionary labeling that is required for the substance under applicable tribal, state or federal law, or in a manner that is not intended by the manufacturer of the 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.
- (16) “Human being” when used in the homicide sections means one who has been born alive.
- (18) “Intentionally” has the meaning designated in s. 939.23.
- “Intimate parts” means the breast, buttock, anus, groin, scrotum, penis, vagina or pubic mound of a human being.
- (20) “Misdemeanor” has the meaning designated in s. 939.60.
- (20d) “Offense against an elderly or vulnerable person” means a violation of s. 940.285 (2) (a) that caused death, great bodily harm, or bodily harm to the victim or s. 940.295 (3) (b) that caused death, great bodily harm, or bodily harm to the victim.
- (20m) “Offense related to ethical government” means a violation of the Ho-Chunk Nation Code of Ethics Act (2 HCC § 1), or 946.12.
- (20s) “Offense related to school safety” means a violation of s. 948.605 or 948.61 (2) (b).
- (21) “Pattern of criminal gang activity” means the commission of, attempt to commit or solicitation to commit 2 or more of the following crimes, or acts that would be crimes if the actor were an adult, at least one of those acts or crimes occurs after December 25, 1993, the last of those acts or crimes occurred within 3 years after a prior act or crime, and the acts or crimes are committed, attempted or solicited on separate occasions or by 2 or more persons:
- (a) Manufacture, distribution or delivery of a controlled substance or controlled substance analog, as prohibited in s. 961.41 (1).
  - (b) First-degree intentional homicide, as prohibited in s. 940.01.
  - (c) Second-degree intentional homicide, as prohibited in s. 940.05.
  - (d) Battery, as prohibited in s. 940.19 or 940.195.
  - (e) Battery, special circumstances, as prohibited in s. 940.20.
  - (em) Battery or threat to witness, as prohibited in s. 940.201.
  - (f) Mayhem, as prohibited in s. 940.21.
  - (g) Sexual assault, as prohibited in s. 940.225.
  - (h) False imprisonment, as prohibited in s. 940.30.
  - (i) Taking hostages, as prohibited in s. 940.305.
  - (j) Kidnapping, as prohibited in s. 940.31.
  - (k) Intimidation of witnesses, as prohibited in s. 940.42 or 940.43.
  - (L) Intimidation of victims, as prohibited in s. 940.44 or 940.45.
  - (m) Criminal damage to property, as prohibited in s. 943.01.
  - (mg) Criminal damage to or threat to criminally damage the property of a witness, as prohibited in s. 943.011 or 943.017 (2m).

- (n) Arson of buildings or damage by explosives, as prohibited in s. 943.02.
  - (o) Burglary, as prohibited in s. 943.10.
  - (p) Theft, as prohibited in s. 943.20.
  - (q) 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.
  - (r) Robbery, as prohibited in s. 943.32.
  - (s) Sexual assault of a child, as prohibited in s. 948.02.
  - (t) Repeated acts of sexual assault of the same child, as prohibited in s. 948.025.
  - (u) Sexual assault of a child placed in substitute care under s. 948.085.
- (22) "Peace officer" means any person vested by law with a duty to maintain public order or to make arrests for crime, whether that duty extends to all crimes or is limited to specific crimes. "Peace officer" includes a commission warden and a university police officer.
- (23) "Petechia" means a minute colored spot that appears on the skin, eye, eyelid, or mucous membrane of a person as a result of localized hemorrhage or rupture to a blood vessel or capillary.
- (24) "Place of prostitution" means any place where a person habitually engages, in public or in private, in nonmarital acts of sexual intercourse, sexual gratification involving the sex organ of one person and the mouth or anus of another, masturbation or sexual contact for anything of value.
- (28) "Property of another" means property in which a person other than the actor has a legal interest which the actor has no right to defeat or impair, even though the actor may also have a legal interest in the property.
- (30) "Public officer"; "public employee". A "public officer" is any person appointed or elected according to law to discharge a public duty for the Nation or one of its subordinate governmental units. A "public employee" is any person, not an officer, who performs any official function on behalf of the Nation or one of its subordinate governmental units and who is paid from the public treasury of the Nation or subordinate governmental unit.
- (32) "Reasonably believes" means that the actor believes that a certain fact situation exists and such belief under the circumstances is reasonable even though erroneous.
- (33) "Restricted controlled substance" means any of the following:
- (a) A controlled substance included in schedule I under ch. 961 other than a tetrahydrocannabinol.
  - (b) A controlled substance analog, as defined in s. 961.01 (4m), of a controlled substance described in par. (a).
  - (c) Cocaine or any of its metabolites.
  - (d) Methamphetamine.
  - (e) Delta-9-tetrahydrocannabinol.
- (34) "Sexual contact" means any of the following if done for the purpose of sexual humiliation, degradation, arousal, or gratification:
- (a) The intentional touching by the defendant or, upon the defendant's instruction, by a third person of the clothed or unclothed intimate parts of another person with any part of the body, clothed or unclothed, or with any object or device.
  - (b) The intentional touching by the defendant or, upon the defendant's instruction, by a third person of any part of the body, clothed or unclothed, of another person with the intimate parts of the body, clothed or unclothed.
  - (c) The intentional penile ejaculation of ejaculate or the intentional emission of urine or feces by the defendant or, upon the defendant's instruction, by a third person upon any part of the

body, clothed or unclothed, of another person.

(d) Intentionally causing another person to ejaculate or emit urine or feces on any part of the actor's body, whether clothed or unclothed.

(36) "Sexual intercourse" requires only vulvar penetration and does not require emission.

(37) "Certified commission warden" means a commission warden who has been certified by an applicable jurisdiction and has agreed to accept the duties of a law enforcement officer under the laws of this Nation or state.

(38) "Substantial bodily harm" means bodily injury that causes a laceration that requires stitches, staples, or a tissue adhesive; any fracture of a bone; a broken nose; a burn; a petechia; a temporary loss of consciousness, sight or hearing; a concussion; or a loss or fracture of a tooth.

(40) "Transfer" means any transaction involving a change in possession of any property, or a change of right, title, or interest to or in any property.

(42) "Under the influence of an intoxicant" means that the actor's ability to operate a vehicle or handle a firearm or airgun is materially impaired because of his or her consumption of an alcohol beverage, hazardous inhalant, of a controlled substance or controlled substance analog under ch. 961, of any combination of an alcohol beverage, hazardous inhalant, controlled substance and controlled substance analog, or of any other drug, or of an alcohol beverage and any other drug.

(44) "Vehicle" means any self-propelled device for moving persons or property or pulling implements from one place to another, whether such device is operated on land, rails, water, or in the air.

(46) "With intent" has the meaning designated in s. 939.23.

(48) "Without consent" means no consent in fact or that consent is given for one of the following reasons:

(a) Because the actor put the victim in fear by the use or threat of imminent use of physical violence on the victim, or on a person in the victim's presence, or on a member of the victim's immediate family; or

(b) Because the actor purports to be acting under legal authority; or

(c) Because the victim does not understand the nature of the thing to which the victim consents, either by reason of ignorance or mistake of fact or of law other than criminal law or by reason of youth or defective mental condition, whether permanent or temporary.

### **939.23 Criminal intent.**

(1) When criminal intent is an element of a crime in chs. 939 to 951, such intent is indicated by the term "intentionally", the phrase "with intent to", the phrase "with intent that", or some form of the verbs "know" or "believe".

(2) "Know" requires only that the actor believes that the specified fact exists.

(3) "Intentionally" means that the actor either has a purpose to do the thing or cause the result specified, or is aware that his or her conduct is practically certain to cause that result. In addition, except as provided in sub. (6), the actor must have knowledge of those facts which are necessary to make his or her conduct criminal and which are set forth after the word "intentionally".

(4) "With intent to" or "with intent that" means that the actor either has a purpose to do the thing or cause the result specified, or is aware that his or her conduct is practically certain to cause that result.

(5) Criminal intent does not require proof of knowledge of the existence or constitutionality of the section under which the actor is prosecuted or the scope or meaning of the terms used in that section.

(6) Criminal intent does not require proof of knowledge of the age of a minor even though age is a material element in the crime in question.

#### **939.24 Criminal recklessness.**

(1) In this section, “criminal recklessness” means that the actor creates an unreasonable and substantial risk of death or great bodily harm to another human being and the actor is aware of that risk, except that for purposes of ss. 940.02 (1m), 940.06 (2) and 940.23 (1) (b) and (2) (b), “criminal recklessness” means that the actor creates an unreasonable and substantial risk of death or great bodily harm to an unborn child, to the woman who is pregnant with that unborn child or to another and the actor is aware of that risk.

(2) Except as provided in ss. 940.285, 940.29, 940.295, and 943.76, if criminal recklessness is an element of a crime in chs. 939 to 951, the recklessness is indicated by the term “reckless” or “recklessly”.

#### **939.25 Criminal negligence.**

(1) In this section, “criminal negligence” means ordinary negligence to a high degree, consisting of conduct that the actor should realize creates a substantial and unreasonable risk of death or great bodily harm to another, except that for purposes of ss. 940.08 (2), 940.10 (2) and 940.24 (2), “criminal negligence” means ordinary negligence to a high degree, consisting of conduct that the actor should realize creates a substantial and unreasonable risk of death or great bodily harm to an unborn child, to the woman who is pregnant with that unborn child or to another.

(2) If criminal negligence is an element of a crime in chs. 939 to 951 or reckless driving, the negligence is indicated by the term “negligent” or “negligently”.

### **SUBCHAPTER II INCHOATE CRIMES**

#### **939.30 Solicitation.**

(1) Except as provided in sub. (2) and s. 961.455, whoever, with intent that a felony be committed, advises another to commit that crime under circumstances that indicate unequivocally that he or she has the intent is guilty of a felony.

(2) For a solicitation to commit a crime for which the penalty is life imprisonment, the actor is guilty of a felony. For a solicitation to commit a felony, the actor is guilty of a felony.

**939.31 Conspiracy.** Except as provided in ss. 940.43 (4), 940.45 (4) and 961.41 (1x), whoever, with intent that a crime be committed, agrees or combines with another for the purpose of committing that crime may, if one or more of the parties to the conspiracy does an act to effect its object, be fined or imprisoned or both not to exceed the maximum provided for the completed crime; except that for a conspiracy to commit a crime for which the penalty is 3 years, the actor is guilty of a felony.

#### **939.32 Attempt.**

(1) GENERALLY. Whoever attempts to commit a felony or a crime specified in s. 940.19, 940.195, 943.20, or 943.74 may be fined or imprisoned or both as provided under sub. (1g), except:

(a) Whoever attempts to commit a crime for which the penalty is 3 years is guilty of a felony.

**(bm)** Whoever attempts to commit a felony, other than one to which a penalty enhancement statute listed in s. 973.01 (2) (c) 2. A. or b. is being applied, is guilty of a Class A misdemeanor.

**(c)** Whoever attempts to commit a crime under ss. 940.42 to 940.45 is subject to the penalty for the completed act, as provided in s. 940.46.

**(cm)** Whoever attempts to commit a crime under s. 941.21 is subject to the penalty provided in that section for the completed act.

**(cr)** Whoever attempts to commit a crime under s. 948.055 (1) is subject to the penalty for the completed act, as provided in s. 948.055 (2).

**(d)** Whoever attempts to commit a crime under s. 948.07 is subject to the penalty provided in that section for the completed act.

**(de)** Whoever attempts to commit a crime under s. 948.075 (1r) is subject to the penalty provided in that subsection for the completed act.

**(e)** Whoever attempts to commit a crime under s. 948.605 (3) (a) is subject to the penalty provided in that paragraph for the completed act.

**(f)** Whoever attempts to commit a crime under s. 946.79 is subject to the penalty provided in that section for the completed act.

**(g)** Whoever attempts to commit a crime of intentionally taking, carrying away, using, concealing, or retaining possession of anhydrous ammonia belonging to another or anhydrous ammonia equipment belonging to another, without the other's consent and with intent to deprive the owner permanently of possession of the anhydrous ammonia or anhydrous ammonia equipment is guilty of a felony except any person who violates this provision while performing an agricultural activity or while performing an activity related to the construction, repair, alteration, location, installation, inspection, or operation of anhydrous ammonia equipment with the consent of the owner of the anhydrous ammonia equipment may be required to forfeit not less than \$10 nor more than \$100 for each violation.

**(1g) MAXIMUM PENALTY.** The maximum penalty for an attempt to commit a crime that is punishable under sub. (1) (intro.) is as follows:

**(a)** The maximum fine is one-half of the maximum fine for the completed crime not to exceed \$15,000.00.

**(b)** 1. If s. 939.62 (1) is not being applied, the maximum term of imprisonment is one-half of the maximum term of imprisonment, for the completed crime not to exceed a maximum term of 3 years.

2. If s. 939.62 (1) is being applied, the maximum term of imprisonment is determined by the following method:

a. Multiplying by one-half the maximum term of imprisonment, for the completed crime.

b. Applying s. 939.62 (1) to the product obtained under subd. 2. a not to exceed a maximum term of 3 years.

**(1m) BIFURCATED SENTENCES.** If the court imposes a bifurcated sentence for an attempt to commit a crime that is punishable under sub. (1) (intro.), the following requirements apply:

**(a) Maximum term of confinement for attempt to commit classified felony.** 1. If the crime is a classified felony and s. 939.62 (1) is not being applied, the maximum term of confinement in prison is one-half of the maximum term of confinement in prison, as increased by any penalty enhancement for the classified felony not to exceed a maximum term of 3 years.

2. If the crime is a classified felony and s. 939.62 (1) is being applied, the court shall

determine the maximum term of confinement in prison by the following method:

- a. Multiplying by one-half the maximum term of confinement in prison, as increased by any penalty enhancement for the classified felony.
- b. Applying s. 939.62 (1) to the product obtained under subd. 2. a. not to exceed a maximum term of 3 years.

**(b)** *Maximum term of extended supervision for attempt to commit classified felony.* The maximum term of extended supervision for an attempt to commit a classified felony is one-half of the maximum term of extended supervision for the completed.

**(c)** *Maximum term of confinement for attempt to commit unclassified felony or misdemeanor.* The court shall determine the maximum term of confinement in prison for an attempt to commit a crime other than a classified felony by applying the maximum term of imprisonment calculated under sub. (1g) (b).

**(2) MISDEMEANOR COMPUTER CRIMES.** Whoever attempts to commit a misdemeanor under s. 943.70 is subject to:

**(a)** A Class D forfeiture if it is the person's first violation under s. 943.70.

**(b)** A Class C forfeiture if it is the person's 2<sup>nd</sup> violation under s. 943.70.

**(c)** A Class B forfeiture if it is the person's 1<sup>st</sup>, 2<sup>nd</sup>, or 3<sup>rd</sup> violation under s. 943.70.

**(d)** A Class A forfeiture if it is the person's 4th or subsequent violation under s. 943.70.

**(2m) MISDEMEANOR CRIMES AGAINST FINANCIAL INSTITUTION.** Whoever attempts to commit a crime under s. 943.81, 943.82 (1), 943.83, or 943.84 that is a Class A misdemeanor under s. 943.91 (1) is subject to the penalty for a Class B misdemeanor.

**(3) REQUIREMENTS.** An attempt to commit a crime requires that the actor have an intent to perform acts and attain a result which, if accomplished, would constitute such crime and that the actor does acts toward the commission of the crime which demonstrate unequivocally, under all the circumstances, that the actor formed that intent and would commit the crime except for the intervention of another person or some other extraneous factor.

### **SUBCHAPTER III DEFENSES TO CRIMINAL LIABILITY**

**939.42 Intoxication.** An intoxicated or a drugged condition of the actor is a defense only if such condition is involuntarily produced and does one of the following:

- (1)** Renders the actor incapable of distinguishing between right and wrong in regard to the alleged criminal act at the time the act is committed.
- (2)** Negatives the existence of a state of mind essential to the crime.

**939.43 Mistake.**

- (1)** An honest error, whether of fact or of law other than criminal law, is a defense if it negatives the existence of a state of mind essential to the crime.
- (2)** A mistake as to the age of a minor or as to the existence or constitutionality of the section under which the actor is prosecuted or the scope or meaning of the terms used in that section is not a defense.

**939.44 Adequate provocation.**

(1) In this section:

(a) “Adequate” means sufficient to cause complete lack of self-control in an ordinarily constituted person.

(b) “Provocation” means something which the defendant reasonably believes the intended victim has done which causes the defendant to lack self-control completely at the time of causing death.

(2) Adequate provocation is an affirmative defense only to first-degree intentional homicide and mitigates that offense to 2<sup>nd</sup>-degree intentional homicide.

**939.45 Privilege.** The fact that the actor’s conduct is privileged, although otherwise criminal, is a defense to prosecution for any crime based on that conduct. The defense of privilege can be claimed under any of the following circumstances:

(1) When the actor’s conduct occurs under circumstances of coercion or necessity so as to be privileged under s. 939.46 or 939.47; or

(2) When the actor’s conduct is in defense of persons or property under any of the circumstances described in s. 939.48 or 939.49; or

(3) When the actor’s conduct is in good faith and is an apparently authorized and reasonable fulfillment of any duties of a public office; or

(4) When the actor’s conduct is a reasonable accomplishment of a lawful arrest; or

(5) (a) In this subsection:

1. “Child” has the meaning specified in s. 948.01 (1).

3. “Person responsible for the child’s welfare” includes the child’s parent, stepparent or guardian; an employee of a public or private residential home, institution or agency in which the child resides or is confined or that provides services to the child; or any other person legally responsible for the child’s welfare in a residential setting.

(b) When the actor’s conduct is reasonable discipline of a child by a person responsible for the child’s welfare. Reasonable discipline may involve only such force as a reasonable person believes is necessary. It is never reasonable discipline to use force which is intended to cause great bodily harm or death or creates an unreasonable risk of great bodily harm or death.

(6) When for any other reason the actor’s conduct is privileged by the statutory or common law of this Nation.

**939.46 Coercion.**

(1) A threat by a person other than the actor’s coconspirator which causes the actor reasonably to believe that his or her act is the only means of preventing imminent death or great bodily harm to the actor or another and which causes him or her so to act is a defense to a prosecution for any crime based on that act, except that if the prosecution is for first-degree intentional homicide, the degree of the crime is reduced to 2<sup>nd</sup>-degree intentional homicide.

(1m) A victim of a violation of s. 940.302 (2) or 948.051 has an affirmative defense for any offense committed as a direct result of the violation of s. 940.302 (2) or 948.051 without regard to whether anyone was prosecuted or convicted for the violation of s. 940.302 (2) or 948.051.

(2) It is no defense to a prosecution of a married person that the alleged crime was committed by command of the spouse nor is there any presumption of coercion when a crime is committed by a married person in the presence of the spouse.

**939.47 Necessity.** Pressure of natural physical forces which causes the actor reasonably to believe that his or her act is the only means of preventing imminent public disaster, or imminent death or great bodily harm to the actor or another and which causes him or her so to act, is a defense to a prosecution for any crime based on that act, except that if the prosecution is for first-degree intentional homicide, the degree of the crime is reduced to 2<sup>nd</sup>-degree intentional homicide.

**939.48 Self-defense and defense of others.**

(1) A person is privileged to threaten or intentionally use force against another for the purpose of preventing or terminating what the person reasonably believes to be an unlawful interference with his or her person by such other person. The actor may intentionally use only such force or threat thereof as the actor reasonably believes is necessary to prevent or terminate the interference. The actor may not intentionally use force which is intended or likely to cause death or great bodily harm unless the actor reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself.

(1m) (a) In this subsection:

1. "Dwelling" means any premises or portion of a premises that is used as a home or a place of residence and that part of the lot or site on which the dwelling is situated that is devoted to residential use. "Dwelling" includes other existing structures on the immediate residential premises such as driveways, sidewalks, swimming pools, terraces, patios, fences, porches, garages, and basements.

2. "Place of business" means a business that the actor owns or operates.

(ar) If an actor intentionally used force that was intended or likely to cause death or great bodily harm, the court may not consider whether the actor had an opportunity to flee or retreat before he or she used force and shall presume that the actor reasonably believed that the force was necessary to prevent imminent death or great bodily harm to himself or herself if the actor makes such a claim under sub. (1) and either of the following applies:

1. The person against whom the force was used was in the process of unlawfully and forcibly entering the actor's dwelling, motor vehicle, or place of business, the actor was present in the dwelling, motor vehicle, or place of business, and the actor knew or reasonably believed that an unlawful and forcible entry was occurring.

2. The person against whom the force was used was in the actor's dwelling, motor vehicle, or place of business after unlawfully and forcibly entering it, the actor was present in the dwelling, motor vehicle, or place of business, and the actor knew or reasonably believed that the person had unlawfully and forcibly entered the dwelling, motor vehicle, or place of business.

(b) The presumption described in par. (ar) does not apply if any of the following applies:

1. The actor was engaged in a criminal activity or was using his or her dwelling, motor vehicle, or place of business to further a criminal activity at the time.

2. The person against whom the force was used was a public safety worker, as defined in s. 941.375 (1) (b), who entered or attempted to enter the actor's dwelling, motor vehicle, or place of business in the performance of his or her official duties. This subdivision applies only if at least one of the following applies:

a. The public safety worker identified himself or herself to the actor before the force described in par. (ar) was used by the actor.

b. The actor knew or reasonably should have known that the person entering or

attempting to enter his or her dwelling, motor vehicle, or place of business was a public safety worker.

(2) Provocation affects the privilege of self-defense as follows:

(a) A person who engages in unlawful conduct of a type likely to provoke others to attack him or her and thereby does provoke an attack is not entitled to claim the privilege of self-defense against such attack, except when the attack which ensues is of a type causing the person engaging in the unlawful conduct to reasonably believe that he or she is in imminent danger of death or great bodily harm. In such a case, the person engaging in the unlawful conduct is privileged to act in self-defense, but the person is not privileged to resort to the use of force intended or likely to cause death to the person's assailant unless the person reasonably believes he or she has exhausted every other reasonable means to escape from or otherwise avoid death or great bodily harm at the hands of his or her assailant.

(b) The privilege lost by provocation may be regained if the actor in good faith withdraws from the fight and gives adequate notice thereof to his or her assailant.

(c) A person who provokes an attack, whether by lawful or unlawful conduct, with intent to use such an attack as an excuse to cause death or great bodily harm to his or her assailant is not entitled to claim the privilege of self-defense.

(3) The privilege of self-defense extends not only to the intentional infliction of harm upon a real or apparent wrongdoer, but also to the unintended infliction of harm upon a 3<sup>rd</sup> person, except that if the unintended infliction of harm amounts to the crime of first-degree or 2<sup>nd</sup>-degree reckless homicide, homicide by negligent handling of dangerous weapon, explosives or fire, first-degree or 2<sup>nd</sup>-degree reckless injury or injury by negligent handling of dangerous weapon, explosives or fire, the actor is liable for whichever one of those crimes is committed.

(4) A person is privileged to defend a 3<sup>rd</sup> person from real or apparent unlawful interference by another under the same conditions and by the same means as those under and by which the person is privileged to defend himself or herself from real or apparent unlawful interference, provided that the person reasonably believes that the facts are such that the 3<sup>rd</sup> person would be privileged to act in self-defense and that the person's intervention is necessary for the protection of the 3<sup>rd</sup> person.

(5) A person is privileged to use force against another if the person reasonably believes that to use such force is necessary to prevent such person from committing suicide, but this privilege does not extend to the intentional use of force intended or likely to cause death.

(6) In this section "unlawful" means either tortious or expressly prohibited by criminal law or both.

#### **939.49 Defense of property and protection against retail theft.**

(1) A person is privileged to threaten or intentionally use force against another for the purpose of preventing or terminating what the person reasonably believes to be an unlawful interference with the person's property. Only such degree of force or threat thereof may intentionally be used as the actor reasonably believes is necessary to prevent or terminate the interference. It is not reasonable to intentionally use force intended or likely to cause death or great bodily harm for the sole purpose of defense of one's property.

(2) A person is privileged to defend a 3<sup>rd</sup> person's property from real or apparent unlawful interference by another under the same conditions and by the same means as those under and by which the person is privileged to defend his or her own property from real or apparent unlawful interference, provided that the person reasonably believes that the facts are such as would give the

3<sup>rd</sup> person the privilege to defend his or her own property, that his or her intervention is necessary for the protection of the 3<sup>rd</sup> person's property, and that the 3<sup>rd</sup> person whose property the person is protecting is a member of his or her immediate family or household or a person whose property the person has a legal duty to protect, or is a merchant and the actor is the merchant's employee or agent. An official or adult employee or agent of a library is privileged to defend the property of the library in the manner specified in this subsection.

(3) In this section "unlawful" means either tortious or expressly prohibited by criminal law or both.

#### **SUBCHAPTER IV PENALTIES**

**939.50 Penalty for a felony.** The penalties for a felony are a fine not to exceed \$15,000, or imprisonment not to exceed 3 years, or both.

**939.51 Classification of misdemeanors.**

(1) Misdemeanors in chs. 939 to 951 are classified as follows:

- (a) Class A misdemeanor.
- (b) Class B misdemeanor.
- (c) Class C misdemeanor.

(2) A misdemeanor is a Class A, B or C misdemeanor when it is so specified in chs. 939 to 951.

(3) Penalties for misdemeanors are as follows:

- (a) For a Class A misdemeanor, a fine not to exceed \$5,000 or imprisonment not to exceed 1 year, or both.
- (b) For a Class B misdemeanor, a fine not to exceed \$1,000 or imprisonment not to exceed 90 days, or both.
- (c) For a Class C misdemeanor, a fine not to exceed \$500 or imprisonment not to exceed 30 days, or both.

**939.52 Classification of forfeitures.**

(1) Except as provided in ss. 946.86 and 946.87, forfeitures in chs. 939 to 951 are classified as follows:

- (a) Class A forfeiture.
- (b) Class B forfeiture.
- (c) Class C forfeiture.
- (d) Class D forfeiture.
- (e) Class E forfeiture.

(2) A forfeiture is a Class A, B, C, D or E forfeiture when it is so specified in chs. 939 to 951.

(3) Penalties for forfeitures are as follows:

- (a) For a Class A forfeiture, a forfeiture not to exceed \$10,000.
- (b) For a Class B forfeiture, a forfeiture not to exceed \$1,000.
- (c) For a Class C forfeiture, a forfeiture not to exceed \$500.
- (d) For a Class D forfeiture, a forfeiture not to exceed \$200.
- (e) For a Class E forfeiture, a forfeiture not to exceed \$25.

**939.615 Lifetime supervision of serious sex offenders.****(1) DEFINITIONS.** In this section:

(a) “Department” means the department of justice.

(b) “Serious sex offense” means any of the following:

1. A violation, or the solicitation, conspiracy, or attempt to commit a violation, of s. 940.22 (2), 940.225 (1), (2), or (3), 948.02 (1) or (2), 948.025 (1), 948.05 (1) or (1m), 948.051, 948.055 (1), 948.06, 948.07, 948.075, 948.08, 948.085, 948.11 (2) (a), 948.12, or 948.13 or of s. 940.302 (2) if s. 940.302 (2) (a) b. applies.

2. A violation, or the solicitation, conspiracy or attempt to commit a violation, under ch. 940, 942, 943, 944 or 948 other than a violation specified in subd. 1., if the court determines that one of the purposes for the conduct constituting the violation was for the actor’s sexual arousal or gratification.

**(2) WHEN LIFETIME SUPERVISION MAY BE ORDERED.**

(a) Except as provided in par. (b), if a person is convicted of a serious sex offense or found not guilty of a serious sex offense by reason of mental disease or defect, the court may, in addition to sentencing the person, placing the person on probation or, if applicable, committing the person who has been found not guilty by reason of mental disease or mental defect, place the person on lifetime supervision by the department if notice concerning lifetime supervision was given to the person under s. 973.125 and if the court determines that lifetime supervision of the person is necessary to protect the public.

(b) A court may not place a person on lifetime supervision under this section if the person was previously placed on lifetime supervision under this section for a prior conviction for a serious sex offense or a prior finding of not guilty of a serious sex offense by reason of mental disease or defect and that previous placement on lifetime supervision has not been terminated under sub. (6).

(c) If the prosecutor is seeking lifetime supervision for a person who is charged with committing a serious sex offense specified in sub. (1) (b) 2., the court shall direct that the trier of fact find a special verdict as to whether the conduct constituting the offense was for the actor’s sexual arousal or gratification.

**(3) WHEN LIFETIME SUPERVISION BEGINS.** Subject to sub. (4), the period of lifetime supervision on which a person is placed under this section shall begin at whichever of the following times is applicable:

(a) If the person is placed on probation for the serious sex offense, upon his or her discharge from probation.

(b) If the person is sentenced to prison for the serious sex offense, upon his or her discharge from parole or extended supervision.

(c) If the person is sentenced to prison for the serious sex offense and is being released from prison because he or she has reached the expiration date of his or her sentence, upon his or her release from prison.

(d) If the person has been committed to a department of health services for a serious sex offense, upon the termination of his or her commitment or his or her discharge from the commitment, whichever is applicable.

(e) If par. (a), (b), (c) or (d) does not apply, upon the person being sentenced for the serious sex offense.

**(4) ONLY ONE PERIOD OF LIFETIME SUPERVISION MAY BE IMPOSED.** If a person is

being sentenced for more than one conviction for a serious sex offense, the court may place the person on one period of lifetime supervision only. A period of lifetime supervision ordered for a person sentenced for more than one conviction begins at whichever of the times specified in sub. (3) is the latest.

**(5) STATUS OF PERSON PLACED ON LIFETIME SUPERVISION; POWERS AND DUTIES OF DEPARTMENT.** (a) A person placed on lifetime supervision under this section is subject to the control of the department under conditions set by the court and regulations established by the department that are necessary to protect the public and promote the rehabilitation of the person placed on lifetime supervision.

(am) The department may temporarily take a person on lifetime supervision into custody if the department has reasonable grounds to believe that the person has violated a condition or regulation of lifetime supervision. Custody under this paragraph may last only as long as is reasonably necessary to investigate whether the person violated a condition or regulation of lifetime supervision and, if warranted, to refer the person to the appropriate prosecuting agency for commencement of prosecution under sub. (7).

(b) The department shall charge a fee to a person placed on lifetime supervision to partially reimburse the department for the costs of providing supervision and services. The department shall set varying rates for persons placed on lifetime supervision based on ability to pay and with the goal of receiving at least \$1 per day, if appropriate, from each person placed on lifetime supervision. The department may decide not to charge a fee while a person placed on lifetime supervision is exempt as provided under par. (c). The department shall collect moneys for the fees charged under this paragraph and credit those moneys to the appropriation account.

(c) The department may decide not to charge a fee under par. (b) to any person placed on lifetime supervision while he or she meets any of the following conditions:

1. Is unemployed.
2. Is pursuing a full-time course of instruction approved by the department.
3. Is undergoing treatment approved by the department and is unable to work.
4. Has a statement from a physician certifying to the department that the person should be excused from working for medical reasons.

**(6) PETITION FOR TERMINATION OF LIFETIME SUPERVISION.** (a) Subject to par. (b), a person placed on lifetime supervision under this section may file a petition requesting that lifetime supervision be terminated. A person shall file a petition requesting termination of lifetime supervision with the court that ordered the lifetime supervision.

(b) 1. A person may not file a petition requesting termination of lifetime supervision if he or she has been convicted of a crime that was committed during the period of lifetime supervision.

2. A person may not file a petition requesting termination of lifetime supervision earlier than 15 years after the date on which the period of lifetime supervision began. If a person files a petition requesting termination of lifetime supervision at any time earlier than 15 years after the date on which the period of lifetime supervision began, the court shall deny the petition without a hearing.

(c) Upon receiving a petition requesting termination of lifetime supervision, the court shall send a copy of the petition to the district attorney responsible for prosecuting the serious sex offense that was the basis for the order of lifetime supervision. Upon receiving a copy of a petition sent to him or her under this paragraph, a district attorney shall conduct a criminal

history record search to determine whether the person has been convicted of a criminal offense that was committed during the period of lifetime supervision. No later than 30 days after the date on which he or she receives the copy of the petition, the district attorney shall report the results of the criminal history record search to the court and may provide a written response to the petition.

**(d)** After reviewing the report of the district attorney submitted under par. (c) concerning the results of a criminal history record search, the court shall do whichever of the following is applicable:

1. If the report of the district attorney indicates that the person filing the petition has been convicted of a criminal offense that was committed during the period of lifetime supervision, the court shall deny the person's petition without a hearing.
2. If the report of the district attorney indicates that the person filing the petition has not been convicted of a criminal offense that was committed during the period of lifetime supervision, the court shall order the person to be examined under par. (e), shall notify the department that it may submit a report under par. (em) and shall schedule a hearing on the petition to be conducted as provided under par. (f).

**(e)** A person filing a petition requesting termination of lifetime supervision who is entitled to a hearing under par. (d) 2. Shall be examined by a person who is either a physician or a psychologist licensed and who is approved by the court. The physician or psychologist who conducts an examination under this paragraph shall prepare a report of his or her examination that includes his or her opinion of whether the person petitioning for termination of lifetime supervision is a danger to public. The physician or psychologist shall file the report of his or her examination with the court within 60 days after completing the examination, and the court shall provide copies of the report to the person filing the petition and the district attorney who received a copy of the person's petition under par. (c). The contents of the report shall be confidential until the physician or psychologist testifies at a hearing under par. (f). The person petitioning for termination of lifetime supervision shall pay the cost of an examination required under this paragraph.

**(em)** After it receives notification from the court under par. (d) 2., the department may prepare and submit to the court a report concerning a person who has filed a petition requesting termination of lifetime supervision. If the department prepares and submits a report under this paragraph, the report shall include information concerning the person's conduct while on lifetime supervision and an opinion as to whether lifetime supervision of the person is still necessary to protect the public. When a report prepared under this paragraph has been received by the court, the court shall, before the hearing under par. (f), disclose the contents of the report to the attorney for the person who filed the petition and to the district attorney. When the person who filed the petition is not represented by an attorney, the contents shall be disclosed to the person.

**(f)** A hearing on a petition requesting termination of lifetime supervision may not be conducted until the person filing the petition has been examined and a report of the examination has been filed as provided under par. (c). At the hearing, the court shall take evidence it considers relevant to determining whether lifetime supervision should be continued because the person who filed the petition is a danger to the public. The person who filed the petition and the district attorney who received the petition under par. (c) may offer evidence relevant to the issue of the person's dangerousness and the continued need for lifetime supervision.

(g) The court may grant a petition requesting termination of lifetime supervision if it determines after a hearing under par. (f) that lifetime supervision is no longer necessary to protect the public.

(h) If a petition requesting termination of lifetime supervision is denied after a hearing under par. (f), the person may not file a subsequent petition requesting termination of lifetime supervision until at least 3 years have elapsed since the most recent petition was denied.

(i) If the court grants a petition requesting termination of lifetime supervision and the person is registered with the department as a sex offender, the court may also order that the person is no longer required to comply with the reporting requirements.

(7) PENALTY FOR VIOLATION OF A CONDITION OF LIFETIME SUPERVISION. (a) No person placed on lifetime supervision under this section may knowingly violate a condition or regulation of lifetime supervision established by the court or by the department.

(b) 1. Except as provided in subd. 2., whoever violates par. (a) is guilty of a Class A misdemeanor.

2. Whoever violates par. (a) is guilty of a felony if the same conduct that violates par. (a) also constitutes a crime that is a felony.

**939.616 Mandatory minimum sentence for child sex offenses.** (1g) If a person is convicted of a violation of s. 948.02 (1) (am) or 948.025 (1) (a), notwithstanding s. 973.014 (1g) (a) 1. and 2., the court may not make an extended supervision eligibility date determination on a date that will occur before the person has served a 25-year term of confinement in prison.

(1r) If a person is convicted of a violation of s. 948.02 (1) (b) or (c) or 948.025 (1) (b), the court shall impose a bifurcated sentence under s. 973.01. The term of confinement in prison portion of the bifurcated sentence shall be at least 3 years. Otherwise the penalties for the crime apply, subject to any applicable penalty enhancement.

(2) If a person is convicted of a violation of s. 948.02 (1) (d) or 948.025 (1) (c), the court shall impose a bifurcated sentence under s. 973.01. The term of confinement in prison portion of the bifurcated sentence shall be at least 3 years. Otherwise the penalties for the crime apply, subject to any applicable penalty enhancement.

(3) This section does not apply if s. 939.62 (2m) (c) applies. The mandatory minimum sentences in this section do not apply to an offender who was under 18 years of age when the violation occurred.

**939.617 Minimum sentence for certain child sex offenses.** (1) Except as provided in subs. (2) and (3), if a person is convicted of a violation of s. 948.05, 948.075, or 948.12, the court shall impose a bifurcated sentence. The term of confinement in prison portion of the bifurcated sentence shall be at least 3 years for violations of s. 948.05 or 948.075 and 3 years for violations of s. 948.12. Otherwise the penalties for the crime apply, subject to any applicable penalty enhancement.

(2) If the court finds that the best interests of the community will be served and the public will not be harmed and if the court places its reasons on the record, the court may impose a sentence that is less than the sentence required under sub. (1) or may place the person on probation under any of the following circumstances:

(a) If the person is convicted of a violation of s. 948.05, the person is no more than 48 months older than the child who is the victim of the violation.

(b) If the person is convicted of a violation of s. 948.12, the person is no more than 48 months

older than the child who engaged in the sexually explicit conduct.

(3) This section does not apply if the offender was under 18 years of age when the violation occurred.

**939.618 Mandatory minimum sentence for repeat serious sex crimes.** (1) In this section, “serious sex crime” means a violation of s. 940.225 (1) or (2).

(2) (a) Except as provided in par. (b), if a person has one or more prior convictions for a serious sex crime and subsequently commits a serious sex crime, the court shall impose a bifurcated sentence. The term of confinement in prison portion of a bifurcated sentence imposed under this subsection may not be less than 3 years, but otherwise the penalties for the crime apply, subject to any applicable penalty enhancement. The court may not place the defendant on probation.

(b) If a person has one or more prior convictions for a violation of s. 940.225 (1) or for a comparable crime under federal law or the law of any tribe or state and subsequently is convicted of a violation of s. 940.225 (1), the maximum term of imprisonment for the violation of s. 940.225 (1) is 3 years without the possibility of parole or extended supervision.

**939.619 Mandatory minimum sentence for repeat serious violent crimes.** (1) In this section, “serious violent crime” means a violation of s. 940.03 or 940.05.

(2) If a person has one or more prior convictions for a serious violent crime or a crime that if they had been convicted in another jurisdiction would be punishable by life imprisonment and subsequently commits a serious violent crime, the court shall impose a bifurcated sentence. The term of confinement in prison portion of a bifurcated sentence imposed under this subsection may not be less than 3 years, but otherwise the penalties for the crime apply, subject to any applicable penalty enhancement. The court may not place the defendant on probation.

**939.62 Increased penalty for habitual criminality.** (1) If the actor is a repeater, as that term is defined in sub. (2), and the present conviction is for any crime for which imprisonment may be imposed, except for an escape under s. 946.42 or a failure to report under s. 946.425, the maximum term of imprisonment prescribed by law for that crime may be increased not more than 2 years up to a maximum of 3 years of imprisonment.

(2) The actor is a repeater if the actor was convicted of a felony during the 5-year period immediately preceding the commission of the crime for which the actor presently is being sentenced, or if the actor was convicted of a misdemeanor on 3 separate occasions during that same period, which convictions remain of record and unreversed. It is immaterial that sentence was stayed, withheld or suspended, or that the actor was pardoned, unless such pardon was granted on the ground of innocence. In computing the preceding 5-year period, time which the actor spent in actual confinement serving a criminal sentence shall be excluded.

(2m) (a) In this subsection:

1m. “Serious child sex offense” means any of the following:

a. A violation of s. 948.02, 948.025, 948.05, 948.051, 948.055, 948.06, 948.07, 948.08, 948.085, or 948.095 or 948.30 or, if the victim was a minor and the convicted person was not the victim’s parent, a violation of s. 940.31.

b. A crime at any time under federal law or the law of any other tribe or state or, prior to July 16, 1998, under the law of this Nation that is comparable to a crime specified in

subd. 1m. a.

2m. “Serious felony” means any of the following:

a. Any felony under s. 961.41 (1), (1m), (1x) or, if the felony was committed before February 1, 2003, that is or was punishable by a maximum prison term of 3 years or more.

am. A crime under s. 961.65.

b. Any felony under s. 940.09 (1), 1999 stats., s. 943.23 (1m) or (1r), 1999 stats., s. 948.35 (1) (b) or (c), 1999 stats., or s. 948.36, 940.01, 940.02, 940.03, 940.05, 940.09 (1c), 940.16, 940.19 (5), 940.195 (5), 940.21, 940.225 (1) or (2), 940.305, 940.31, 941.327 (2) (b) 4., 943.02, 943.10 (2), 943.23 (1g), 943.32 (2), 946.43 (1m), 948.02 (1) or (2), 948.025, 948.03(2) (a) or (c), 948.05, 948.06, 948.07, 948.075, 948.08, 948.085, or 948.30 (2).

c. The solicitation, conspiracy or attempt, under s. 939.30, 939.31 or 939.32, to commit a felony.

d. A crime at any time under federal law or the law of any other jurisdiction or, prior to April 28, 1994, under the law of this Nation that is comparable to a crime specified in subd. 2m. a., am., b., or c.

**(b)** The actor is a persistent repeater if one of the following applies:

1. The actor has been convicted of a serious felony on 2 or more separate occasions at any time preceding the serious felony for which he or she presently is being sentenced under ch. 973, which convictions remain of record and unreversed and, of the 2 or more previous convictions, at least one conviction occurred before the date of violation of at least one of the other felonies for which the actor was previously convicted.

2. The actor has been convicted of a serious child sex offense on at least one occasion at any time preceding the date of violation of the serious child sex offense for which he or she presently is being sentenced under ch. 973, which conviction remains of record and unreversed.

**(bm)** For purposes of counting a conviction under par. (b), it is immaterial that the sentence for the previous conviction was stayed, withheld or suspended, or that the actor was pardoned, unless the pardon was granted on the ground of innocence.

**(c)** If the actor is a persistent repeater, the term of imprisonment for the felony for which the persistent repeater presently is being sentenced under ch. 973 is 3 years without the possibility of parole or extended supervision.

**(d)** If a prior conviction is being considered as being covered under par. (a) 1m. b. or 2m. d. as comparable to a felony specified under par. (a) 1m. a. or 2m. a., am., b., or c., the conviction may be counted as a prior conviction under par. (b) only if the court determines, beyond a reasonable doubt, that the violation relating to that conviction would constitute a felony specified under par. (a) 1m. a. or 2m. a., am., b., or c. if committed by an adult in this jurisdiction.

**(3)** In this section “felony” and “misdemeanor” have the following meanings:

In case of crimes committed in this Nation, the terms do not include motor vehicle offenses and offenses handled through proceedings in the court assigned to exercise jurisdiction over child welfare and juvenile delinquency matters, but otherwise have the meanings designated in s. 939.60.

In case of crimes committed in other jurisdictions, the terms do not include those crimes which are equivalent to motor vehicle offenses or to offenses handled through proceedings in the court

assigned to exercise jurisdiction over child welfare and juvenile delinquency matters. Otherwise, felony means a crime which under the laws of that jurisdiction carries a prescribed maximum penalty of imprisonment in a prison or penitentiary for one year or more. Misdemeanor means a crime which does not carry a prescribed maximum penalty sufficient to constitute it a felony and includes crimes punishable only by a fine.

**939.621 Increased penalty for certain domestic abuse offenses. (1) DEFINITIONS.** In this section,

(a) “domestic abuse” means any of the following engaged in by an adult person against his or her spouse or former spouse, against an adult with whom the person resides or formerly resided or against an adult with whom the person has a child in common:

1. Intentional infliction of physical pain, physical injury or illness.
2. Intentional impairment of physical condition.
3. A violation of s. 940.225 (1), (2) or (3).
4. A physical act that may cause the other person reasonably to fear imminent engagement in the conduct described under subd. 1., 2. or 3.

(b) “domestic abuse repeater” means either of the following:

1. A person who commits, during the 72 hours immediately following an arrest for a domestic abuse incident that constitutes the commission of a crime.
2. A person who was convicted, on 2 separate occasions, of a felony or a misdemeanor involving domestic abuse, during the 10-year period immediately prior to the commission of the crime for which the person presently is being sentenced, if the convictions remain of record and unreversed. For the purpose of the definition under this paragraph, it is immaterial that sentence was stayed, withheld or suspended, or that the person was pardoned, unless such pardon was granted on the ground of innocence. In computing the preceding 10-year period, time that the person spent in actual confinement serving a criminal sentence shall be excluded.

(2) If a person commits an act of domestic abuse and the act constitutes the commission of a crime, the maximum term of imprisonment for that crime may be increased up to a maximum term of imprisonment of 3 years if the person is a domestic abuse repeater. The victim of the domestic abuse crime does not have to be the same as the victim of the domestic abuse incident that resulted in the prior arrest or conviction. The penalty increase under this section changes the status of a misdemeanor to a felony.

**939.63 Penalties; use of a dangerous weapon. (1)** If a person commits a crime while possessing, using or threatening to use a dangerous weapon, the maximum term of imprisonment prescribed by law for that crime may be increased as follows:

(a) The maximum term of imprisonment for a misdemeanor may be increased by not more than 6 months and not to exceed a 3 year maximum term of imprisonment.

(d) The maximum term of imprisonment for a felony may be increased up to a maximum term of 3 years.

(2) The increased penalty provided in this section does not apply if possessing, using or threatening to use a dangerous weapon is an essential element of the crime charged.

(3) This section applies only to crimes specified under chs. 939 to 951 and 961.

**939.632 Penalties; violent crime in a school zone. (1)** In this section:

(a) “School” means a place where children regularly play or go to school including a public school, parochial or private school, or tribal school, that provides an educational program for one or more grades between grades 1 and 12 and that is commonly known as an elementary school, middle school, junior high school, senior high school, or high school, head start, kindergarten, youth center, child care center, daycare, community center, playground, park, sporting venue, powwow ground during a powwow, ceremonial ground and any other place designated by the Nation’s Legislature.

(b) “School bus” means a motor vehicle which carries 8 or more passengers in addition to the operator or a motor vehicle painted to indicate accordingly for the purpose of transporting pupils to or from a public or private school, technical college, curricular or extracurricular activities, and religious instruction on days when school is in session and for children with disabilities to or from an educational program.

(c) “School premises” means any school building, grounds, recreation area or athletic field or any other property owned, used or operated for school administration.

(d) “School zone” means any of the following:

1. On the premises of a school.

2. Within 1,000 feet from the premises of a school.

3. On a school bus or public transportation transporting students to and from a public or private school or to and from a tribal school.

3m. At school bus stops where students are waiting for a school bus or are being dropped off by a school bus.

(e) “Violent crime” means any of the following:

1. Any felony under s. 940.01, 940.02, 940.03, 940.05, 940.09 (1c), 940.19 (2), (4) or (5), 940.21, 940.225 (1), (2) or (3), 940.235, 940.305, 940.31, 941.20, 941.21, 943.02, 943.06, 943.10 (2), 943.23 (1g), 943.32 (2), 948.02 (1) or (2), 948.025, 948.03 (2) (a) or (c), 948.05, 948.051, 948.055, 948.07, 948.08, 948.085, or 948.30 (2) or under s. 940.302 (2) if s. 940.302 (2) (a)1.b. applies.

2. The solicitation, conspiracy or attempt, under s. 939.30, 939.31 or 939.32, to commit a felony.

3. Any misdemeanor under s. 940.19 (1), 940.225 (3m), 940.32 (2), 940.42, 940.44, 941.20 (1), 941.23, 941.235, 941.24 or 941.38 (3).

(2) If a person commits a violent crime in a school zone, the maximum term of imprisonment is increased as follows:

(a) If the violent crime is a felony, the maximum term of imprisonment is increased up to a maximum term of imprisonment of 3 years.

(b) If the violent crime is a misdemeanor, the maximum term of imprisonment is increased by 3 months.

(3) (a) In addition to any other penalties that may apply to the crime under sub. (2), the court may require the person to complete 100 hours of community service work for a public agency or a nonprofit charitable organization. The court shall ensure that the defendant is provided a written statement of the terms of the community service order. Any organization or agency acting in good faith to which a defendant is assigned under an order under this paragraph has immunity from civil liability in excess of \$25,000 for acts or omissions by or impacting on the defendant.

- (b) The court shall not impose the requirement under par. (a) if the court determines that the person would pose a threat to public safety while completing the requirement.
- (4) This section provides for the enhancement of the penalties applicable for the underlying crime. The court shall direct that the trier of fact find a special verdict as to all of the issues specified in sub. (2).

**939.635 Increased penalty for certain crimes against children committed by a child care provider.** If a person commits a violation of s. 948.02, 948.025, or 948.03 (2) or (3) against a child for whom the person was providing child care for compensation, the maximum term of imprisonment for that crime may be increased up to a maximum term of 3 years.

**939.645 Penalty; crimes committed against certain people or property.** (1) If a person does all of the following, the penalties for the underlying crime are increased as provided in sub. (2):

- (a) Commits a crime under chs. 939 to 948.
- (b) Intentionally selects the person against whom the crime under par. (a) is committed or selects the property that is damaged or otherwise affected by the crime under par. (a) in whole or in part because of the actor's belief or perception regarding the race, religion, color, disability, sexual orientation, national origin or ancestry of that person or the owner or occupant of that property, whether or not the actor's belief or perception was correct.
- (2) (a) If the crime committed under sub. (1) is ordinarily a misdemeanor other than a Class A misdemeanor, the revised maximum fine is \$5,000 and the revised maximum term of imprisonment is one year in jail.
- (b) If the crime committed under sub. (1) is ordinarily a Class A misdemeanor, the penalty increase under this section changes the status of the crime to a felony and the revised maximum fine is \$5,000 and the revised maximum term of imprisonment is 2 years.
- (c) If the crime committed under sub. (1) is a felony, the maximum fine prescribed by law for the crime may be increased by not more than \$5,000 and the maximum term of imprisonment prescribed by law for the crime may be increased to a maximum term of 3 years.
- (3) This section provides for the enhancement of the penalties applicable for the underlying crime. The court shall direct that the trier of fact find a special verdict as to all of the issues specified in sub. (1).
- (4) This section does not apply to any crime if proof of race, religion, color, disability, sexual orientation, national origin or ancestry or proof of any person's perception or belief regarding another's race, religion, color, disability, sexual orientation, national origin or ancestry is required for a conviction for that crime.

## SUBCHAPTER V RIGHTS OF THE PROSECUTION

**939.65 Prosecution under more than one section permitted.** Except as provided in s. 948.025 (3), if an act forms the basis for a crime punishable under more than one statutory provision, prosecution may proceed under any or all such provisions.

**939.66 Conviction of included crime permitted.** Upon prosecution for a crime, the actor may be convicted of either the crime charged or an included crime, but not both. An included crime

may be any of the following:

- (1) A crime which does not require proof of any fact in addition to those which must be proved for the crime charged.
- (2) A crime which is a less serious type of criminal homicide than the one charged.
- (2m) A crime which is a less serious or equally serious type of battery than the one charged.
- (2p) A crime which is a less serious or equally serious type of violation under s. 948.02 than the one charged.
- (2r) A crime which is a less serious type of violation under s. 943.23 than the one charged.
- (3) A crime which is the same as the crime charged except that it requires recklessness or negligence while the crime charged requires a criminal intent.
- (4) An attempt in violation of s. 939.32 to commit the crime charged.
- (4m) A crime of failure to timely pay child support under s. 948.22 (3) when the crime charged is failure to pay child support for more than 120 days under s. 948.22 (2).
- (5) The crime of attempted battery when the crime charged is sexual assault, sexual assault of a child, robbery, mayhem or aggravated battery or an attempt to commit any of them.
- (6) A crime specified in s. 940.285 (2) (b) 4. or 5. when the crime charged is specified in s. 940.19 (2) to (6), 940.225 (1), (2) or (3) or 940.30.
- (6c) A crime that is a less serious type of violation under s. 940.285 than the one charged.
- (6e) A crime that is a less serious type of violation under s. 940.295 than the one charged.
- (7) The crime specified in s. 940.11 (2) when the crime charged is specified in s. 940.11 (1).

## SUBCHAPTER VI RIGHTS OF THE ACCUSED

**939.70 Presumption of innocence and burden of proof.** No provision of chs. 939 to 951 shall be construed as changing the existing law with respect to presumption of innocence or burden of proof.

**939.71 Limitation on the number of convictions.** If an act forms the basis for a crime punishable under more than one statutory provision of this Nation or under a statutory provision of this Nation and the laws of another jurisdiction, a conviction or acquittal on the merits under one provision bars a subsequent prosecution under the other provision unless each provision requires proof of a fact for conviction which the other does not require.

**939.72 No conviction of both inchoate and completed crime.** A person shall not be convicted under both:

- (1) Section 939.30 for solicitation and s. 939.05 as a party to a crime which is the objective of the solicitation; or
- (2) Section 939.31 for conspiracy and s. 939.05 as a party to a crime which is the objective of the conspiracy; or
- (3) Section 939.32 for attempt and the section defining the completed crime.

**939.73 Criminal penalty permitted only on conviction.** A penalty for the commission of a crime may be imposed only after the actor has been duly convicted in a court of competent jurisdiction.

**939.74 Time limitations on prosecutions.** (1) Except as provided in subs. (2) and (2d) and s. 946.88 (1), prosecution for a felony must be commenced within 6 years and prosecution for a misdemeanor or for adultery within 3 years after the commission thereof. Within the meaning of this section, a prosecution has commenced when a warrant or summons is issued, an indictment is found, or an information is filed.

(2) Notwithstanding that the time limitation under sub. (1) has expired:

(a) 1. A prosecution under s. 940.01, 940.02, 940.03, 940.05, 940.225 (1), 948.02 (1), or 948.025 (1) (a), (b), (c), or (d) may be commenced at any time.

2. A prosecution for an attempt to commit a violation of s. 940.01, 940.05, 940.225 (1), or 948.02 (1) may be commenced at any time.

(am) A prosecution under s. 940.06 may be commenced within 15 years after the commission of the violation.

(b) A prosecution for theft against one who obtained possession of the property lawfully and subsequently misappropriated it may be commenced within one year after discovery of the loss by the aggrieved party, but in no case shall this provision extend the time limitation in sub. (1) by more than 5 years.

(c) A prosecution for violation of s. 948.02 (2), 948.025 (1) (e), 948.03 (2) (a), 948.05, 948.051, 948.06, 948.07 (1), (2), (3), or (4), 948.075, 948.08, 948.085, or 948.095 shall be commenced before the victim reaches the age of 45 years or be barred, except as provided in sub. (2d).

(cm) A prosecution for violation of s. 948.03 (2) (b) or (c), (3) or (4), 948.04 or 948.07 (5) or (6) shall be commenced before the victim reaches the age of 26 years or be barred, except as provided in sub. (2d).

(2d)(a) In this subsection, “deoxyribonucleic acid profile” means an individual’s patterned chemical structure of genetic information identified by analyzing biological material that contains the individual’s deoxyribonucleic acid.

(am) For purposes of this subsection, crimes are related if they are committed against the same victim, are proximate in time, and are committed with the same intent, purpose, or opportunity so as to be part of the same course of conduct.

(c) If, before the applicable time limitation under sub. (1) or (2) (am), (c), or (cm) for commencing prosecution of a felony under ch. 940 or 948, other than a felony specified in sub. (2) (a), expires, the Nation collects biological material that is evidence of the identity of the person who committed the felony, identifies a deoxyribonucleic acid profile from the biological material, and compares the deoxyribonucleic acid profile to deoxyribonucleic acid profiles of known persons, the Nation may commence prosecution of the person who is the source of the biological material for the felony or a crime that is related to the felony or both within 12 months after comparison of the deoxyribonucleic acid profile relating to the felony results in a probable identification of the person or within the applicable time under sub. (1) or (2), whichever is latest.

(e) If, within 6 years after commission of a felony specified under sub. (2) (a), the Nation collects biological material that is evidence of the identity of the person who committed the felony, identifies a deoxyribonucleic acid profile from the biological material, and compares the deoxyribonucleic acid profile to deoxyribonucleic acid profiles of known persons, the Nation may commence prosecution of the person who is the source of the biological material for a crime that is related to the felony within 12 months after comparison of the deoxyribonucleic acid profile relating to the felony results in a probable identification of the

person or within the applicable time under sub. (1) or (2), whichever is latest.

(3) In computing the time limited by this section, the time during which the actor was not publicly a resident within this Nation or during which a prosecution against the actor for the same act was pending shall not be included. A prosecution is pending when a warrant or a summons has been issued, an indictment has been found, or an information has been filed.

(4) In computing the time limited by this section, the time during which an alleged victim under s. 940.22 (2) is unable to seek the issuance of a complaint under s. 968.02 due to the effects of the sexual contact or due to any threats, instructions or statements from the therapist shall not be included.

**939.75 Death or harm to an unborn child.** (1) In this section and ss. 939.24 (1), 939.25 (1), 940.01 (1) (b), 940.02 (1m), 940.05 (2g) and (2h), 940.06 (2), 940.08 (2), 940.09 (1) (c) to (e) and (1g) (c), (cm), and (d), 940.10 (2), 940.195, 940.23 (1) (b) and (2) (b), 940.24 (2) and 940.25 (1) (c) to (e), “unborn child” means any individual of the human species from fertilization until birth that is gestating inside a woman.

(2) (a) In this subsection, “induced abortion” means the use of any instrument, medicine, drug or other substance or device in a medical procedure with the intent to terminate the pregnancy of a woman and with an intent other than to increase the probability of a live birth, to preserve the life or health of the infant after live birth or to remove a dead fetus.

(b) Sections 940.01 (1) (b), 940.02 (1m), 940.05 (2g) and (2h), 940.06 (2), 940.08 (2), 940.09 (1) (c) to (e) and (1g) (c), (cm), and (d), 940.10 (2), 940.195, 940.23 (1) (b) and (2) (b), 940.24 (2) and 940.25(1) (c) to (e) do not apply to any of the following:

1. An act committed during an induced abortion. This subdivision does not limit the applicability of ss. 940.04, 940.13, 940.15 and 940.16 to an induced abortion.
2. An act that is committed in accordance with the usual and customary standards of medical practice during diagnostic testing or therapeutic treatment performed by, or under the supervision of, a licensed physician.
- 2h. An act by any health care provider, that is in accordance with a pregnant woman’s power of attorney for health care instrument or in accordance with a decision of a health care agent who is acting under a pregnant woman’s power of attorney for health care instrument.
3. An act by a woman who is pregnant with an unborn child that results in the death of or great bodily harm, substantial bodily harm or bodily harm to that unborn child.
4. The prescription, dispensation or administration by any person lawfully authorized to do so and the use by a woman of any medicine, drug or device that is used as a method of birth control or is intended to prevent pregnancy.

(3) When the existence of an exception under sub. (2) has been placed in issue by the trial evidence, the Nation must prove beyond a reasonable doubt that the facts constituting the exception do not exist in order to sustain a finding of guilt under s. 940.01 (1) (b), 940.02 (1m), 940.05 (2g), 940.06 (2), 940.08 (2), 940.09 (1) (c) to (e) or (1g) (c), (cm), or (d), 940.10 (2), 940.195, 940.23 (1) (b) or (2) (b), 940.24 (2) or 940.25 (1) (c) to (e).

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Legislative History:

- 12/17/13 Legislature established the Criminal Code Workgroup through Resolution 12-17-13C.
- 12/11/14 The Criminal Code Workgroup presented the Criminal Code to the Administration Committee at which time it was referred to the full Legislature to be placed out for 45 Day Public Comment.
- 01/06/15 Legislature placed the Criminal Code out for 45 Day Public Comment by Resolution 01-06-15B.
- 03/17/15 Legislature placed the Criminal Code out for an additional 45 Day Public Comment by Resolution 03-17-15K.
- 05/05/15 Legislature enacted the Criminal Code through Resolution 05-05-15P.
- 05/17/16 Technical corrections made in accordance with Section 45 of the Legislative Organization Act (2 HCC § 11).