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- (3) A person may not be subject to prosecution under both this section and s. 946.47 for his or her acts regarding the same corpse.

History: 1991 a. 205; 2001 a. 109.

Evidence that the defendant dragged a corpse behind a locked gate into a restricted, secluded wildlife area, then rolled the corpse into water at the bottom of a ditch was sufficient for a jury to conclude that the defendant hid a corpse in violation of this section. *State v. Badker*, 2001 WI App 27, 240 Wis. 2d 460, 623 N.W.2d 142, 99-2943.

- 940.12 Assisting suicide.** Whoever with intent that another take his or her own life assists such person to commit suicide is guilty of a Class H felony.

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

- 940.13 Abortion exception.** No fine or imprisonment may be imposed or enforced against and no prosecution may be brought against a woman who obtains an abortion or otherwise violates any provision of any abortion statute with respect to her unborn child or fetus, and s. 939.05, 939.30 or 939.31 does not apply to a woman who obtains an abortion or otherwise violates any provision of any abortion statute with respect to her unborn child or fetus.

History: 1985 a. 56.

940.15 Abortion.

- (1) In this section, "viability" means that stage of fetal development when, in the medical judgment of the attending physician based on the particular facts of the case before him or her, there is a reasonable likelihood of sustained survival of the fetus outside the womb, with or without artificial support.
- (2) Whoever intentionally performs an abortion after the fetus or unborn child reaches viability, as determined by reasonable medical judgment of the woman's attending physician, is guilty of a Class I felony.
- (3) Subsection (2) does not apply if the abortion is necessary to preserve the life or health of the woman, as determined by reasonable medical judgment of the woman's attending physician.
- (4) Any abortion performed under sub. (3) after viability of the fetus or unborn child, as determined by reasonable medical judgment of the woman's attending physician, shall be performed in a hospital on an inpatient basis.
- (5) Whoever intentionally performs an abortion and who is not a physician is guilty of a Class I felony.
- (6) Any physician who intentionally performs an abortion under sub. (3) shall use that method of abortion which, of those he or she knows to be available, is in his or her medical judgment most likely to preserve the life and health of the fetus or unborn child. Nothing in this subsection requires a physician performing an abortion to employ a method of abortion which, in his or her medical judgment based on the particular facts of the case before him or her, would increase the risk to the woman. Any physician violating this subsection is guilty of a Class I felony.
- (7) Subsections (2) to (6) and s. 939.05, 939.30 or 939.31 do not apply to a woman who obtains an abortion that is in violation of this section or otherwise violates this section with respect to her unborn child or fetus.

History: 1985 a. 56; 2001 a. 109.

The essential holding of *Roe v. Wade* allowing abortion is upheld, but various state restrictions on abortion are permissible. *Planned Parenthood v. Casey*, 505 U.S. 833, 120 L. Ed. 2d 674 (1992).

940.16 Partial-birth abortion.

- (1) In this section:
- (a) "Child" means a human being from the time of fertilization until it is completely delivered from a pregnant woman.
 - (b) "Partial-birth abortion" means an abortion in which a person partially vaginally delivers a living child, causes the death of the partially delivered child with the intent to kill the child, and then completes the delivery of the child.
- (2) Except as provided in sub. (3), whoever intentionally performs a partial-birth abortion is guilty of a Class A felony.
- (3) Subsection (2) does not apply if the partial-birth abortion is necessary to save the life of a woman whose life is endangered by a physical disorder, physical illness or physical injury, including a life-endangering physical disorder, physical illness or physical injury caused by or arising from the pregnancy itself, and if no other medical procedure would suffice for that purpose.

History: 1997 a. 219.

A Nebraska statute that provided that no partial birth abortion can be performed unless it is necessary to save the life of the mother whose life is endangered by a physical disorder, physical illness, or physical injury is unconstitutional. *Stenberg v. Carhart*, 530 U.S. 949, 147 L. Ed. 2d 743 (2000).

Enforcement of this section is enjoined under *Carhart. Hope clinic v. Ryan*, 249 F.3d 603 (2001).

SUBCHAPTER II

BODILY SECURITY

940.19 Battery; substantial battery; aggravated battery.

- (1) Whoever causes bodily harm to another by an act done with intent to cause bodily harm to that person or another without the consent of the person so harmed is guilty of a Class A misdemeanor.
- (2) Whoever causes substantial bodily harm to another by an act done with intent to cause bodily harm to that person or another is guilty of a Class I felony.
- (4) Whoever causes great bodily harm to another by an act done with intent to cause bodily harm to that person or another is guilty of a Class H felony.
- (5) Whoever causes great bodily harm to another by an act done with intent to cause great bodily harm to that person or another is guilty of a Class E felony.
- (6) Whoever intentionally causes bodily harm to another by conduct that creates a substantial risk of great bodily harm is guilty of a Class H felony. A rebuttable presumption of conduct creating a substantial risk of great bodily harm arises:
 - (a) If the person harmed is 62 years of age or older; or
 - (b) If the person harmed has a physical disability, whether congenital or acquired by accident, injury or disease, that is discernible by an ordinary person viewing the physically disabled person, or that is actually known by the actor.

History: 1977 c. 173; 1979 c. 111, 113; 1987 a. 399; 1993 a. 441, 483; 2001 a. 109.

Under the "elements only" test, offenses under subsections that require proof of nonconsent are not lesser included offenses of offenses under subsections for which proof of nonconsent is not required. *State v. Richards*, 123 Wis. 2d 1, 365 N.W.2d 7 (1985).

"Physical disability" is discussed. *State v. Crowley*, 143 Wis. 2d 324, 422 N.W.2d 847 (1988).

First-degree reckless injury, s. 940.23 (1), is not a lesser included offense of aggravated battery. State v. Eastman, 185 Wis. 2d 405, 518 N.W.2d 257 (Ct. App. 1994).

The act of throwing urine that strikes another and causes pain constitutes a battery. State v. Higgs, 230 Wis. 2d 1, 601 N.W.2d 653 (Ct. App. 1999), 98-1811.

Section 941.20 (1), 1st-degree recklessly endangering safety, is not a lesser included offense of sub. (5), aggravated battery. State v. Dibble, 2002 WI App 219, 257 Wis. 2d 274, 650 N.W.2d 908, 02-0538.

940.195 Battery to an unborn child; substantial battery to an unborn child; aggravated battery to an unborn child.

- (1) Whoever causes bodily harm to an unborn child by an act done with intent to cause bodily harm to that unborn child, to the woman who is pregnant with that unborn child or another is guilty of a Class A misdemeanor.
- (2) Whoever causes substantial bodily harm to an unborn child by an act done with intent to cause bodily harm to that unborn child, to the woman who is pregnant with that unborn child or another is guilty of a Class I felony.
- (4) Whoever causes great bodily harm to an unborn child by an act done with intent to cause bodily harm to that unborn child, to the woman who is pregnant with that unborn child or another is guilty of a Class H felony.
- (5) Whoever causes great bodily harm to an unborn child by an act done with intent to cause great bodily harm to that unborn child, to the woman who is pregnant with that unborn child or another is guilty of a Class E felony.
- (6) Whoever intentionally causes bodily harm to an unborn child by conduct that creates a substantial risk of great bodily harm is guilty of a Class H felony.

History: 1997 a. 295; 2001 a. 109.

940.20 Battery: special circumstances.

- (1) BATTERY BY PRISONERS. Any prisoner confined to a state prison or other state, county or municipal detention facility who intentionally causes bodily harm to an officer, employee, visitor or another inmate of such prison or institution, without his or her consent, is guilty of a Class H felony.
- (1g) BATTERY BY CERTAIN COMMITTED PERSONS. Any person placed in a facility under s. 980.065 and who intentionally causes bodily harm to an officer, employee, agent, visitor, or other resident of the facility, without his or her consent, is guilty of a Class H felony.
- (1m) BATTERY BY PERSONS SUBJECT TO CERTAIN INJUNCTIONS.
 - (a) Any person who is subject to an injunction under s. 813.12 or a tribal injunction filed under s. 806.247 (3) and who intentionally causes bodily harm to the petitioner who sought the injunction by an act done without the consent of the petitioner is guilty of a Class I felony.
 - (b) Any person who is subject to an injunction under s. 813.125 and who intentionally causes bodily harm to the petitioner who sought the injunction by an act done without the consent of the petitioner is guilty of a Class I felony.
- (2) BATTERY TO LAW ENFORCEMENT OFFICERS, FIRE FIGHTERS, AND COMMISSION WARDENS. Whoever intentionally causes bodily harm to a law enforcement officer or fire fighter, as those terms are defined in s. 102.475 (8) (b) and (c), or to a commission warden, acting in an official capacity and the person knows or has reason to know that the victim is a law enforcement officer, fire fighter, or commission warden, by an act done without the consent of the person so injured, is guilty of a Class H felony.
- (2m) BATTERY TO PROBATION, EXTENDED SUPERVISION AND PAROLE AGENTS AND AFTERCARE AGENTS.
 - (a) In this subsection:

1. "Aftercare agent" means any person authorized by the department of corrections to exercise control over a juvenile on aftercare.
 2. "Probation, extended supervision and parole agent" means any person authorized by the department of corrections to exercise control over a probationer, parolee or person on extended supervision.
- (b)** Whoever intentionally causes bodily harm to a probation, extended supervision and parole agent or an aftercare agent, acting in an official capacity and the person knows or has reason to know that the victim is a probation, extended supervision and parole agent or an aftercare agent, by an act done without the consent of the person so injured, is guilty of a Class H felony.
- (3)** BATTERY TO JURORS. Whoever intentionally causes bodily harm to a person who he or she knows or has reason to know is or was a grand or petit juror, and by reason of any verdict or indictment assented to by the person, without the consent of the person injured, is guilty of a Class H felony.
- (4)** BATTERY TO PUBLIC OFFICERS. Whoever intentionally causes bodily harm to a public officer in order to influence the action of such officer or as a result of any action taken within an official capacity, without the consent of the person injured, is guilty of a Class I felony.
- (5)** BATTERY TO TECHNICAL COLLEGE DISTRICT OR SCHOOL DISTRICT OFFICERS AND EMPLOYEES.
- (a)** In this subsection:
1. "School district" has the meaning given in s. 115.01 (3).
 2. "Technical college district" means a district established under ch. 38.
- (b)** Whoever intentionally causes bodily harm to a technical college district or school district officer or employee acting in that capacity, and the person knows or has reason to know that the victim is a technical college district or school district officer or employee, without the consent of the person so injured, is guilty of a Class I felony.
- (6)** BATTERY TO PUBLIC TRANSIT VEHICLE OPERATOR, DRIVER OR PASSENGER.
- (a)** In this subsection, "public transit vehicle" means any vehicle used for providing transportation service to the general public.
- (b)** Whoever intentionally causes bodily harm to another under any of the following circumstances is guilty of a Class I felony:
1. The harm occurs while the victim is an operator, a driver or a passenger of, in or on a public transit vehicle.
 2. The harm occurs after the offender forces or directs the victim to leave a public transit vehicle.
 3. The harm occurs as the offender prevents, or attempts to prevent, the victim from gaining lawful access to a public transit vehicle.
- (7)** BATTERY TO EMERGENCY MEDICAL CARE PROVIDERS.
- (a)** In this subsection:
- 1e. "Ambulance" has the meaning given in s. 256.01 (1).
 - 1g. "Emergency department" means a room or area in a hospital, as defined in s. 50.33 (2), that is primarily used to provide emergency care, diagnosis or radiological treatment.
 2. "Emergency department worker" means any of the following:
 - a. An employee of a hospital who works in an emergency department.
 - b. A health care provider, whether or not employed by a hospital, who works in an emergency department.

- 2g.** "Emergency medical technician" has the meaning given in s. 256.01 (5).
- 2m.** "First responder" has the meaning given in s. 256.01 (9).
- 3.** "Health care provider" means any person who is licensed, registered, permitted or certified by the department of health services or the department of regulation and licensing to provide health care services in this state.
- (b)** Whoever intentionally causes bodily harm to an emergency department worker, an emergency medical technician, a first responder or an ambulance driver who is acting in an official capacity and who the person knows or has reason to know is an emergency department worker, an emergency medical technician, a first responder or an ambulance driver, by an act done without the consent of the person so injured, is guilty of a Class H felony.

History: 1977 c. 173; 1979 c. 30, 113, 221; 1981 c. 118 s. 9; 1983 a. 189 s. 329 (4); 1989 a. 336; 1993 a. 54, 164, 491; 1995 a. 27 s. 9126 (19); 1995 a. 77, 145, 225, 343; 1997 a. 35, 143, 283; 1999 a. 85; 2001 a. 109; 2005 a. 434; 2007 a. 20 s. 9121 (6) (a); 2007 a. 27, 130.

Resisting or obstructing an officer, s. 946.41, is not a lesser-included offense of battery to a peace officer. *State v. Zdiarstek*, 53 Wis. 2d 776, 193 N.W.2d 833 (1972).

A county deputy sheriff was not acting in an official capacity under s. 940.205 [now s. 940.20 (2)] when making an arrest outside of his county of employment. *State v. Barrett*, 96 Wis. 2d 174, 291 N.W.2d 498 (1980).

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