

A LIST OF LESSER INCLUDED CRIMES

INTRODUCTION

This is part of my outline which addresses the issue of lesser included crimes in the state of Wisconsin. Therefore, all of the cases which are cited below are not in this outline.

Some of the Wisconsin cases in this outline are:

1. *State v. Cox*, 2007 WI App 38, 300 Wis. 2d 236, 730 N.W.2d 452.
2. *State v. Thurmond*, 2004 WI App 49, 270 Wis. 2d 477, 677 N.W.2d 655.
3. *State v. Davison*, 2003 WI 89, 263 Wis. 2d 145, 666 N.W.2d 1.
4. *State v. Barreau*, 2002 WI App 198, 257 Wis. 2d 203, 651 N.W.2d 12.
5. *State v. Hughes*, 2001 WI App 239, 248 Wis. 2d 133, 635 N.W.2d 661.
6. *State v. Smits*, 2001 WI App 45, 241 Wis. 2d 374, 626 N.W.2d 42.
7. *State v. Fitzgerald*, 2000 WI App 55, 233 Wis. 2d 584, 608 N.W.2d 391.
8. *State v. Jones*, 228 Wis. 2d 593, 598 N.W.2d 259 (Ct. App. 1999).
9. *State v. Lechner*, 217 Wis. 2d 392, 576 N.W.2d 912 (Ct. App. 1998).
10. *State v. Moua*, 215 Wis. 2d 511, 573 N.W.2d 202 (Ct. App. 1997).
11. *State v. Morgan*, 195 Wis. 2d 388, 536 N.W.2d 425 (Ct. App. 1995).
12. *State v. Eastman*, 185 Wis. 2d 405, 518 N.W.2d 257 (Ct. App. 1994).
13. *State v. Fleming*, 181 Wis. 2d 546, 510 N.W.2d 837 (Ct. App. 1993).
14. *State v. Johnson*, 178 Wis. 2d 42, 503 N.W.2d 575 (Ct. App. 1993).
15. *State v. Dauer*, 174 Wis. 2d 418, 497 N.W.2d 766 (Ct. App. 1993).

16. *State v. Rundle*, 166 Wis. 2d 715, 480 N.W.2d 518 (Ct. App. 1992).
17. *State v. Clemons*, 164 Wis. 2d 506, 476 N.W.2d 283 (Ct. App. 1991).
18. *State v. Kuntz*, 160 Wis. 2d 722, 467 N.W.2d 531 (1991).
19. *State v. Thompson*, 146 Wis. 2d 554, 431 N.W.2d 716 (Ct. App. 1988).
20. *State v. Carrington*, 134 Wis. 2d 260, 397 N.W.2d 484 (1986).
21. *State v. Verhasselt*, 83 Wis. 2d 647, 266 N.W.2d 342 (1978).
22. *State v. Randolph*, 83 Wis. 2d 630, 266 N.W.2d 334 (1978).
23. *Kirby v. State*, 86 Wis. 2d 292, 272 N.W.2d 113 (Ct. App. 1978).
24. *State v. Harris*, 68 Wis. 2d 436, 228 N.W.2d 645 (1975).

CRIMES WHICH ARE OR ARE NOT LESSER INCLUDED CRIMES

INTRODUCTION

In the section that follows, I have attempted to set forth crimes which are or are not lesser included crimes of another crime based on case law or statutory authority, especially subsections (2) through (7) of 939.66. I may not have captured all of them, but I believe that the majority of them are set forth. In some cases the crime has changed since the applicable case was decided. In those situations I have indicated this change, and what I have set forth is my opinion as to the present law. Also, the fact that a particular crime is not listed in this section only means that no case (that I have found) has addressed the lesser included crime issue as to that crime and that 939.66, especially subsection (1), must be used to determine the lesser included crime issue. Finally, what follows is arranged from the viewpoint of the charged crime—looking at a particular crime will not tell you whether it is or is not a lesser included crime of another crime.

SPECIFIC CRIMES

CHAPTER 221—STATE BANKS

Theft—Section 221.0636(a)3.

1. Lesser included crimes.

- a. A minute book violation [221.0610(5)(c)]. 939.66(1). *State v. Muentner*, 138 Wis. 2d 374, 386, 406 N.W.2d 415 (1987).
2. Not a lesser included crime.

CHAPTER 346--TRAFFIC

Misdemeanor Causing Injury OWI—Section 346.63(2)(a)1.

1. Lesser included crimes.
2. Not a lesser included crime.
 - a. OWI—felony. 939.66(1). *Smits*.

Misdemeanor Causing Injury PAC—Section 346.63(2)(a)2.

1. Lesser included crimes.
2. Not a lesser included crime.
 - a. PAC—felony. 939.66(1). *Smits*.

CHAPTER 939—INCHOATE CRIMES

Conspiracy—Section 939.31

1. Lesser included crimes.
2. Not a lesser included crime.
 - a. An attempt to commit the crime that is the objective of the conspiracy (939.32). 939.66(1). *State v. Moffett*, 2000 WI 130, ¶ 16, 239 Wis. 2d 629, 638-39, 642-44, 619 N.W.2d 918.

Attempt—Section 939.32

1. Lesser included crimes.
2. Not a lesser included crime.
 - a. A conspiracy to commit the attempted crime (939.31). 939.66(1). *State v. Moffett*, 2000 WI 130, ¶ 16, 239 Wis. 2d 629, 638-39, 642-44, 619 N.W.2d 918.

**CHAPTER 940—CRIMES AGAINST LIFE
AND BODILY SECURITY**

First-Degree Intentional Homicide—Section 940.01

1. Lesser included crimes.
 - a. A crime which is a less serious type of criminal homicide than the one charged. 939.66(2).
 - b. Second-degree intentional homicide [940.05(1)]. 939.66(2). *State v. Jenkins*, 168 Wis. 2d 175, 202, 483 N.W.2d 262 (Ct. App. 1992).
 - c. First (940.02) and second (940.06)-degree reckless homicide. *Barreau*, 2002 WI App at ¶ 17, 257 Wis. 2d at 216.
 - d. First-degree recklessly endangering safety [941.30(1)]. 939.66(1). *State v. Weeks*, 165 Wis. 2d 200, 205-06, 477 N.W.2d 642 (Ct. App. 1991).
 - e. The prior crime of injury by conduct regardless of life (940.23). 939.66(1). *Martin v. State*, 57 Wis. 2d 499, 204 N.W.2d 499 (1973).
2. Not a lesser included crime.
 - a. Burglary/battery [943.10(2)(d)]. 939.66(1). *Kuntz*, 160 Wis. 2d at 753-56.

Attempted First-Degree Intentional Homicide—
Sections 940.01 And 939.32

1. Lesser included crimes.
 - a. First-degree recklessly endangering safety [941.30(1)] (former endangering safety by conduct regardless of life—941.30). 939.66(1). *Cox*, 2007 WI App at ¶¶ 4, 8, 12-14, 300 Wis. 2d at 240, 242, 244-45.
2. Not a lesser included crime.
 - a. Reckless injury (940.23). 939.66(1) and 939.66(3). *Carrington*, 134 Wis. 2d at 273-74; *Randolph*.

- b. Endangering safety by use of dangerous weapon [941.20(1)]. 939.66(1) and 939.66(3). *Carrington*, 134 Wis. 2d at 273-74; *Randolph*, 83 Wis. 2d at 644-46.
- c. Injury by negligent handling of dangerous weapon (940.24). 939.66(1) and 939.66(3). *Randolph*, 83 Wis. 2d at 646.
- d. Conspiracy to commit first-degree intentional homicide (939.31). 939.66(1). *State v. Moffett*, 2000 WI 130, ¶ 16, 239 Wis. 2d 629, 638-39, 642-44, 619 N.W.2d 918.
- e. Aggravated battery with intent to cause great bodily harm [940.19(4)]. 939.66(1). *Johnson*, 178 Wis. 2d at 49-50.

First-Degree Reckless Homicide (Drugs)—Section 940.02(2)(a)

- 1. Lesser included crimes.
 - a. A crime which is a less serious type of criminal homicide than the one charged. Section 939.66(2).
- 2. Not a lesser included crime.
 - a. Possession of a controlled substance. 939.66(1). *State v. Clemons*, 164 Wis. 2d 506, 476 N.W.2d 283 (Ct. App. 1991).

Felony Murder—Section 940.03

- 1. Lesser included crimes.
 - a. The underlying felony. 939.66(1). *State v. Krawczyk*, 2003 WI App 6, ¶ 26, 259 Wis. 2d 843, 858, 657 N.W.2d 77.
- 2. Not a lesser included crime.

Homicide By Intoxicated Use Of Vehicle—Section 940.09

- 1. Lesser included crimes.
 - a. A crime which is a less serious type of criminal homicide than the one charged. Section 939.66(2).
 - b. Homicide by negligent operation of a vehicle (940.10). 939.66(2). *State v. Buck*, 210 Wis. 2d 115, 130, 565 N.W.2d 168 (Ct. App. 1997);

State v. Kennedy, 134 Wis. 2d 308, 324, 396 N.W.2d 765 (Ct. App. 1986).

2. Not a lesser included crime.
 - a. Second-degree reckless homicide (940.06). 939.66(1) and 939.66(2). *Lechner*.

Mutilating Or Hiding A Corpse—Section 940.11

1. Lesser included crimes.
 - a. The crime specified in subsection (2) when the crime charged is subsection (1). Section 939.66(7).
2. Not a lesser included crime.

Substantial Battery—Section 940.19(2)

1. Lesser included crimes.
 - a. Misdemeanor battery [940.19(1)]. 939.66(2m).
 - b. Abuse of vulnerable adults under circumstances that cause or are likely to cause bodily harm [940.285(2)(b)4.] or under circumstances not causing and not likely to cause bodily harm [940.285(2)(b)5.]. Section 939.66(6).
2. Not a lesser included crime.
 - a. First-degree reckless injury [940.23(1)]. 939.66(1) and 939.66(3). *State v. Dibble*, 2002 WI App 219, ¶ 12, 257 Wis. 2d 274, 282, 650 N.W.2d 908; *Eastman*.

Aggravated Battery With Intent To Cause Bodily Harm—Section 940.19(4)

1. Lesser included crimes.
 - a. Substantial battery [940.19(2)] and misdemeanor battery [940.19(1)]. 939.66(2m).
 - b. Abuse of vulnerable adults under circumstances that cause or are likely to cause bodily harm [940.285(2)(b)4.] or under circumstances not causing and not likely to cause bodily harm [940.285(2)(b)5.]. Section 939.66(6).
2. Not a lesser included crime.

- a. Attempted first-degree intentional homicide (940.01 and 939.32). 939.66(1). *Johnson*, 178 Wis. 2d at 49-50.

Aggravated Battery With Intent To Cause Great Bodily Harm—Section 940.19(5)

1. Lesser included crimes.
 - a. Aggravated battery [940.19(4)], substantial battery [940.19(2)], battery with substantial risk of great bodily harm [940.19(6)], and misdemeanor battery [940.19(1)]. 939.66(2m).
 - b. Abuse of vulnerable adults under circumstances that cause or are likely to cause bodily harm [940.285(2)(b)4.] or under circumstances not causing and not likely to cause bodily harm [940.285(2)(b)5.]. Section 939.66(6).
 - c. In *State v. Miller*, 2009 WI App ____, ¶¶ 46,49 n.19, ____ Wis. 2d ____, ____ N.W. 2d ____, the Court assumed that second-degree reckless injury [940.23(2)] was a lesser included crime of this crime since the state did not contend that it was not.
2. Not a lesser included crime.
 - a. First-degree recklessly endangering safety [941.30(1)]. 939.66(1) and 939.66(3). *State v. Dibble*, 2002 WI App 219, 257 Wis. 2d 274, 650 N.W.2d 908.

Battery With Substantial Risk Of Great Bodily Harm—Section 940.19(6)

1. Lesser included crimes.
 - a. Substantial battery [940.19(2)], aggravated battery with intent to cause bodily harm [940.19(4)], and misdemeanor battery [940.19(1)]. 939.66(2m).
 - b. Abuse of vulnerable adults under circumstances that cause or are likely to cause bodily harm [940.285(2)(b)4.] or under circumstances not causing and not likely to cause bodily harm [940.285(2)(b)5.]. Section 939.66(6).
2. Not a lesser included crime.
 - a. Battery by prisoner [940.20(1)]. 939.66(2m). *Davison*.

Battery By Prisoners—Section 940.20(1)

1. Lesser included crimes.
 - a. In *Fitzgerald*, 2000 WI App at ¶ 8, 233 Wis. 2d at 588, the State conceded that misdemeanor battery [940.19(1)] is a lesser included crime.
2. Not a lesser included crime.

Battery To Law Enforcement Officers—Section 940.20(2)

1. Lesser included crimes.
2. Not a lesser included crime.
 - a. Resisting or obstructing officer (946.41). 939.66(1). *State v. Elbaum*, 54 Wis. 2d 213, 216-17, 194 N.W.2d 660 (1972); *State v. Zdiarstek*, 53 Wis. 2d 776, 785-87, 193 N.W.2d 833 (1972).

Mayhem—Section 940.21

1. Lesser included crimes.
 - a. The prior crime of injury by conduct regardless of life (940.23). 939.66(1). *Kirby*, 86 Wis. 2d at 299-302.
 - b. Attempted battery [940.19(1) and 939.32] when the completed crime or an attempt is charged. 939.66(5).
2. Not a lesser included crime.

Sexual Assault (General Crime)—Section 940.225

1. Lesser included crimes.
 - a. The crime of attempted battery when the completed crime or an attempt is charged. 939.66(5).
2. Not a lesser included crime.

First-Degree Sexual Assault (Causing Great Bodily Harm)—Section 940.225(1)

1. Lesser included crimes.
 - a. Abuse of vulnerable adults under circumstances that cause or are likely to cause bodily harm [940.285(2)(b)4.] or under circumstances not causing and not likely to cause bodily harm [940.285(2)(b)5.]. Section 939.66(6).
2. Not a lesser included crime.
 - a. In *Hagenkord v. State*, 100 Wis. 2d 452, 480-89, 302 N.W.2d 421 (1981), the Court held that the prior crime of injury by conduct regardless of life (940.23) is not a lesser included crime pursuant to sec. 939.66(1) and (3). *See also Carrington*, 134 Wis. 2d at 270-72. My opinion is that at a minimum, based upon the Court's ruling, first-degree reckless injury [940.23(1)] is not a lesser included crime.

Second-Degree Sexual Assault—Section 940.225(2)

1. Lesser included crimes.
 - a. Abuse of vulnerable adults under circumstances that cause or are likely to cause bodily harm [940.285(2)(b)4.] or under circumstances not causing and not likely to cause bodily harm [940.285(2)(b)5.]. Section 939.66(6).
2. Not a lesser included crime.
 - a. Second-degree sexual assault of a child [948.02(2)]. 939.66(1). *State v. Selmon*, 175 Wis. 2d 155, 498 N.W.2d 876 (Ct. App. 1993).

Third-Degree Sexual Assault—Section 940.225(3)

1. Lesser included crimes.
 - a. Abuse of vulnerable adults under circumstances that cause or are likely to cause bodily harm [940.285(2)(b)4.] or under circumstances not causing and not likely to cause bodily harm [940.285(2)(b)5.]. 939.66(6).
2. Not a lesser included crime.

Reckless Injury—Section 940.23

1. Lesser included crimes.

- a. Prior endangering safety by conduct regardless of life (941.30). 939.66(1). *Kirby*, 86 Wis. 2d at 303.
 - b. In *State v. Miller*, 2009 WI App ____, ¶¶ 46,49 n.19, ____ Wis. 2d ____, ____, ____ N.W. 2d ____, the Court assumed that second-degree reckless injury was a lesser included crime of first-degree reckless injury while armed.
2. Not a lesser included crime.
 - a. Injury by negligent handling of dangerous weapon. 939.66(1) and (3). *Verhasselt*, 83 Wis. 2d at 662-65.
 - b. Is aggravated battery [940.19(5)] a lesser included crime of first-degree reckless injury? In *State v. Miller*, 2009 WI App ____. ¶¶ 46, 49 n. 19, ____ Wis. 2d ____, ____, ____ N.W. 2d ____, the court assumed that second-degree reckless injury was a lesser included crime of aggravated battery [940.19(5)]. *See also Eastman*, especially paragraph 10. The answer is probably no.

Abuse Of Vulnerable Adults—Section 940.285

1. Lesser included crimes.
 - a. A crime that is a less serious type of violation under sec. 940.285 than the one charged. 939.66(6c).

2. Not a lesser included crime.

Abuse And Neglect Of Patients And Residents—Section 940.295

1. Lesser included crimes.
 - a. A crime that is a less serious type of violation under sec. 940.295 than the one charged. 939.66(6e).

2. Not a lesser included crime.

False Imprisonment—Section 940.30

1. Lesser included crimes.
 - a. Abuse of vulnerable adults under circumstances that cause or are likely to cause bodily harm [940.285(2)(b)4.] or under circumstances not causing and not likely to cause bodily harm [940.285(2)(b)5.]. 939.66(6).

2. Not a lesser included crime.

Kidnapping—Section 940.31

1. Lesser included crimes.
2. Not a lesser included crime.
 - a. False imprisonment (940.30). 939.66(1). *State v. Burroughs*, 2002 WI App 18, ¶ 19 n.3, 250 Wis. 2d 180, 191-92 n.3, 640 N.W.2d 190.

**CHAPTER 941—CRIMES AGAINST
PUBLIC HEALTH AND SAFETY**

Recklessly Endangering Safety/While Armed—Sections 941.30/939.63

1. Lesser included crimes.
2. Not a lesser included crime.
 - a. In *State v. Van Ark*, 62 Wis. 2d 155, 163-64, 215 N.W.2d 41 (1974), the Court, using the elements only test, held that the crime of bomb scares (947.015) was not a lesser included crime of the predecessor crime of endangering safety by conduct regardless of life (941.30).
 - b. In *Carrington*, the Court held that the former crime of reckless use of a weapon [941.20(1)(a)3] was not a lesser included crime of the predecessor crimes of endangering safety by conduct regardless of life (941.30) or endangering safety by conduct regardless of life while armed (941.30 and 939.63).

CHAPTER 943—CRIMES AGAINST PROPERTY

Criminal Damage To Property—Section 943.01

1. Lesser included crimes.
2. Not a lesser included crime.
 - a. Disorderly conduct (947.01). 939.66(1). *State v. Chacon*, 50 Wis. 2d 73, 183 N.W.2d 84 (1971).

Arson—Section 943.02

1. Lesser included crimes.
 - a. Criminal damage to property (943.01). 939.66(1). *Thompson*, 146 Wis. 2d at 560-62.

2. Not a lesser included crime.

Burglary—Section 943.10

1. Lesser included crimes.
2. Not a lesser included crime.
 - a. Criminal trespass to dwellings (943.14). 939.66(1). *State v. Raymond*, 55 Wis. 2d 482, 198 N.W.2d 351 (1972).
 - b. Theft (943.20). 939.66(1). *Hebel v. State*, 60 Wis. 2d 325, 328-29, 210 N.W.2d 695 (1973).

Burglary/Battery—Section 943.10(2)(d)

1. Lesser included crimes.
2. Not a lesser included crime.
 - a. First-degree intentional homicide (940.01). 939.66(1). *Kuntz*, 160 Wis. 2d at 753-56.

Operating Vehicle Without Owner's Consent—Section 943.23

1. Lesser included crimes.
 - a. A crime which is a less serious type of violation under sec. 943.23 than the one charged. 939.66(2r).
2. Not a lesser included crime.

Threats To Injure Or Accuse Of Crime (Extortion)—Section 943.30

1. Lesser included crimes.
2. Not a lesser included crime.
 - a. Robbery (943.32). 939.66(1). *Dauer*, 174 Wis. 2d at 427 n.3.

Robbery/Armed Robbery—Section 943.32

1. Lesser included crimes.
 - a. Theft (943.20). 939.66(1). *Jones*, 228 Wis. 2d at 599.
 - b. Theft from person [943.20(3)(e)]. 939.66(1). *State v. Whitaker*, 83 Wis. 2d 368, 374, 265 N.W.2d 575 (1978); *State v. Moore*, 55 Wis. 2d 1, 197 N.W.3d 820(1972).
 - c. Attempted battery [940.19(1) and 939.32] when the crime is robbery. 939.66(5).
2. Not a lesser included crime.
 - a. Extortion [943.30(1)]. 939.66(1). *Dauer*, 174 Wis. 2d at 426-29.
 - b. Endangering safety by use of dangerous weapon—pointing a firearm [941.20(1)(c)]. 939.66(1). *Carrington*, 134 Wis. 2d at 273-74; *State v. Smith*, 55 Wis. 2d 304, 198 N.W.2d 630 (1972).

Attempted Robbery/Armed Robbery—Sections 943.32 and 939.32

1. Lesser included crimes.
 - a. Attempted battery [940.19(1) and 939.32] when the crime is attempted robbery. 939.66(5).
2. Not a lesser included crime.

CHAPTER 944—CRIMES AGAINST SEXUAL MORALITY

Keeping Place Of Prostitution (Grants Or Uses)—Section 944.34(2)

1. Lesser included crimes.
2. Not a lesser included crime.
 - a. Soliciting prostitutes (944.32). 939.66(1). *Shillcutt v. State*, 74 Wis. 2d 642, 247 N.W.2d 694 (1976).

**CHAPTER 946—CRIMES AGAINST GOVERNMENT
AND ITS ADMINISTRATION**

Bail Jumping—Section 946.49

1. Lesser included crimes.
2. Not a lesser included crime.
 - a. In *State v. Nelson*, 146 Wis. 2d 442, 432 N.W.2d 115 (Ct. App. 1988), the Court, in the context of the crime of second-degree sexual assault and using the elements test, held that the offense which forms the basis for the bail jumping is not a lesser included crime of bail jumping.

**CHAPTER 947—CRIMES AGAINST PUBLIC PEACE,
ORDER AND OTHER INTERESTS**

Harassment—Section 948.013(1r)

1. Lesser included crimes.
2. Not a lesser included crime.
 - a. Violating a harassment injunction [813.125(4)]. 939.66(1). *State v. Sveum*, 2002 WI App 105, ¶¶ 21-28, 254 Wis. 2d 868, 883-88, 648 N.W.2d 496.

CHAPTER 948—CRIMES AGAINST CHILDREN

Sexual Assault Of A Child (General Crime)—Section 948.02

1. Lesser included crimes.
 - a. The crime of attempted battery when the completed crime or an attempt is charged. 939.66(5).
2. Not a lesser included crime.
 - a. In *La Fond v. State*, 37 Wis. 2d 137, 142-43, 154 N.W.2d 304 (1967), the Court found that the prior crime of contributing to the delinquency of a child [947.15(1)(a)] was not a lesser included crime of the prior crime of sexual intercourse with a child [944.10(1)].

First-Degree Sexual Assault Of A Child—Section 948.02(1)

1. Lesser included crimes.

- a. A crime which is a less serious or equally serious type of violation under sec. 948.02 than the one charged. 939.66(2p).
 - b. Second-degree sexual assault of a child. 939.66(1) and 939.66(2p). *Moua*, 215 Wis. 2d at 519.20.
2. Not a lesser included crime.

Physical Abuse Of A Child—Section 948.03

1. Lesser included crimes.
2. Not a lesser included crime.
 - a. In *State v. Danforth*, 129 Wis. 2d 187, 189-90, 205-06, 385 N.W.2d 125 (1986) the Court, using the elements only test, held that the crime of misdemeanor battery [940.19(1)] is not a lesser included crime of the prior crime of abuse of children (former 940.201).

Intentional Child Abuse Causing Great Bodily Harm—Section 948.03(2)(a)

1. Lesser included crimes.
 - a. Reckless child abuse causing great bodily harm [948.03(3)(a)]. 939.66(3).
2. Not a lesser included crime.

Intentional Child Abuse Causing Bodily Harm—Section 948.03(2)(b)

1. Lesser included crimes.
 - a. Reckless child abuse causing bodily harm [948.03(3)(b)]. 939.66(3). *State v. Williams*, 2006 WI App 212, 296 Wis. 2d 834, 723 N.W.2d 719.
2. Not a lesser included crime.
 - a. Reckless child abuse causing great bodily harm [948.03(3)(a)]. 939.66(1) and 939.66(3). *Rundle*, 166 Wis. 2d at 719-26.

Intentional Child Abuse Causing Bodily Harm
(High Probability)—Section 948.03(2)(c)

1. Lesser included crimes.

- a. Reckless child abuse causing bodily harm (High Probability) [948.03(3)(c)]. 939.66(3).
2. Not a lesser included crime.

Failure to Support—Section 948.22

1. Lesser included crimes.
 - a. A crime of failure to timely pay child support under sec. 948.22(3) when the crime charged is failure to pay child support for more than 120 days under sec. 948.22(2). Section 939.66(4m).

CHAPTER 961—DRUGS/CONTROLLED SUBSTANCES

Possession Of A Controlled Substance
With Intent To Deliver

1. Lesser included crimes.
 - a. Possession of the same controlled substance. 939.66(1). *State v. Henning*, 2004 WI 89, ¶¶ 8, 27, 273 Wis. 2d 352, 360, 368-69, 681 N.W.2d 871; *Hughes*, 2001 WI App at ¶ 9, 248 Wis. 2d at 140.

2. Not a lesser included crime.

Possession Of Marijuana With Intent To Deliver—
Section 961.14(4)(t) and 961.41(1m)h.

1. Lesser included crimes.
 - a. Possession of marijuana. 939.66(1). *State v. Henning*, 2004 WI 89, ¶¶ 8, 27, 273 Wis. 2d 352, 360, 368-69, 681 N.W.2d 871; *Hughes*, 2001 WI App at ¶ 9, 248 Wis. 2d at 140.
2. Not a lesser included crime.
 - a. Drug tax stamp crime (139.95). 939.66(1). *State v. Jones*, 2002 WI App 196, ¶¶ 39-41, 257 Wis. 2d 319, 342-43, 651 N.W.2d 305.

LIC EXCEPT
TRIAL FOLDER