

45.42 History: 1925 c. 60; Stats. 1925 s. 45.215; 1929 c. 383; 1945 c. 580; Stats. 1945 s. 45.42; 1963 c. 326; 1965 c. 648; 1967 c. 29 s. 1; 1967 c. 66; 1969 c. 276 ss. 591 (1), 611.

45.43 History: 1945 c. 550, 587; Stats. 1945 s. 45.43; 1959 c. 115; 1963 c. 326; 1965 c. 222; 1967 c. 31; 1969 c. 276 s. 611.

The county board may act at any time to fill a vacancy in the office of county veterans' service officer which results from an original vacancy or a holding over after expiration of a term. 39 Atty. Gen. 7.

Under stated conditions, employment of a non-veteran as "Administrative Secretary" in the office of the county veterans' service officer does not violate 45.43, Stats. 1957. The county board has power to make employment regulations under 59.15 (2). 47 Atty. Gen. 256.

See note to 45.12, citing 35 Atty. Gen. 148.

See note to 66.11, citing 55 Atty. Gen. 260.

45.48 History: 1931 c. 95; Stats. 1931 s. 343.729; 1955 c. 696 s. 145; Stats. 1955 s. 45.48; 1965 c. 295.

45.50 History: 1941 c. 238; Stats. 1941 s. 21.70; 1943 c. 430; 1945 c. 310, 433, 506; 1947 c. 600; 1949 c. 299; 1951 c. 719 s. 3 to 5; Stats. 1951 s. 45.50; 1953 c. 576; 1955 c. 185; 1961 c. 652, 660; 1967 c. 92 s. 22; 1969 c. 158 ss. 82, 106; 1969 c. 276 ss. 582 (13), 584 (1)(b).

45.50, Stats. 1951, relating to reemployment of veterans, applies to an undersheriff. 40 Atty. Gen. 453.

45.51 History: 1941 c. 171; Stats. 1941 s. 66.52; 1943 c. 242; 1951 c. 719 s. 7; Stats. 1951 s. 45.51; 1953 c. 61 s. 13; 1961 c. 660; 1969 c. 443.

45.52 History: 1945 c. 266; Stats. 1945 s. 21.705; 1951 c. 719 s. 6; Stats. 1951 s. 45.52.

45.53 History: 1943 c. 419, 574; Stats. 1943 s. 21.80; 1945 c. 33; 1951 c. 719 s. 6; Stats. 1951 s. 45.53; 1961 c. 660; 1969 c. 443.

45.60 History: 1957 c. 678; Stats. 1957 s. 45.60; 1963 c. 307; 1965 c. 295; 1969 c. 276 ss. 306, 307, 308, 591 (5).

CHAPTER 46.

Social Services.

General Comment of Interim Committee, 1947: In recommending this bill to the 1947 legislature for adoption, the Joint Interim Committee on Revision of Public Welfare Laws, appointed pursuant to Jt. Res. No. 72, S., 1945 session, hereby calls special attention to some of the principal features of the bill:

The Committee has combined old Chapter A58, entitled "Public Welfare," and old Chapter 46, entitled "State Board of Control," into a new Chapter 46, entitled "Public Welfare."

There was great need for this change. The State Board of Control was virtually abolished by chapter 9, special session 1937, following which only the skeleton of the board remained; and that disappeared by the enactment of chapter 435, Laws of 1939, creating the State Department of Public Welfare and transferring the functions of the former board

to it. Notwithstanding these changes in the administrative set-up, no changes had been made in the language of Chapter 46, so that much of it no longer has any application. This bill revises the language of Chapter 46 to bring the law up to date and to make such improvements in it as appear advisable.

* * *

The absence of a note to a section indicates that the meaning is not changed by this bill. [Bill 394-S]

46.001 History: 1949 c. 376; Stats. 1949 s. 46.001; 1957 c. 672; 1961 c. 183.

46.011 History: 1939 c. 435; Stats. 1939 s. 58.31; 1947 c. 268 s. 3; Stats. 1947 s. 46.011; 1949 c. 376; 1969 c. 366.

46.013 History: 1939 c. 435; Stats. 1939 s. 58.33 (1) to (3); 1947 c. 268 s. 5; Stats. 1947 s. 46.013; 1949 c. 376; 1951 c. 97 s. 32; 1951 c. 319 s. 231; 1963 c. 225; 1969 c. 366.

46.014 History: Stats. 1945 s. 46.03 (4) to (6), 58.34; 1947 c. 268 s. 6; Stats. 1947 s. 46.014; 1949 c. 376; 1951 c. 319 s. 231; 1951 c. 396; 1953 c. 96; 1955 c. 204 s. 58; 1957 c. 681; 1967 c. 206; 1969 c. 366 ss. 15, 16, 117 (3) (a).

46.016 History: 1939 c. 435; Stats. 1939 s. 58.39; 1947 c. 268 s.8; Stats. 1947 s. 46.016; 1951 c. 245; 1967 c. 43.

Comment of Interim Committee, 1947: 46.016 is from 58.39. Co-operation is made optional. * * * Mention of services for the blind is included to satisfy the federal requirement. [Bill 394-S]

46.017 History: 1939 c. 435; Stats. 1939 s. 58.40; 1947 c. 268 s. 9; Stats. 1947 s. 46.017; 1969 c. 366.

Comment of Interim Committee, 1947: 46.017 is from 58.40. * * * [Bill 394-S]

46.018 History: 1965 c. 555; Stats. 1965 s. 46.018; 1969 c. 366 s. 117 (3)(a).

46.03 History: Stats. 1945 s. 46.03 (1) to (3), (7), (8), (10) to (12), 46.04, 46.28, 58.33 (4), 58.37; 1947 c. 268 s. 11; 1947 c. 540, 546, 560; Stats. 1947 s. 46.03, 54.04; 1949 c. 52, 376, 471, 637; 1951 c. 245, 448, 641; 1953 c. 31; 1953 c. 251 s. 61; 1953 c. 385; 1955 c. 377, 457; 1955 c. 575 s. 12, 13; Stats. 1955 s. 46.03; 1957 c. 672, 696; 1959 c. 113, 628; 1961 c. 185, 637; 1963 c. 226; 1965 c. 433 s. 121; 1965 c. 520; 1967 c. 43, 110; 1967 c. 291 s. 14; 1969 c. 55, 154; 1969 c. 366 ss. 20, 21, 117 (1)(c), 118(1).

Comment of Interim Committee, 1947: The duties of the department are here collected. Old 46.03 (4), (5) and (6) are moved to new 46.014 by this bill, and old (9) to 46.066. Old (7), (8) and (10) are omitted. New 46.03 is intended to cover the rest of 46.03 and all the transfers recited in 58.37. Those parts of 58.37 which relate to the date of transfer, appropriations, transfer of records and supplies, etc., are no longer needed and are omitted. (1) is limited to institutions now under the department's jurisdiction. (4) is new. The text of new (5) and (6) is chiefly from 58.36 and 58.44 as created by ch. 9, Spl. S. 1937. The provision in 58.44 (2), Spl. S. 1937 as to closing jails is omitted. Provision

is made for closing jails in proposed new 53.355 in the bill revising chs. 53 to 55. The word "apprehension" is omitted from new (6) on the ground that apprehension is not now a function of the department. (6) (e) expressly empowers the department to examine "places of juvenile detention". (6) (g) and (h) are added to 46.03 to make more complete the summary of the powers of the department. New (7) comes from old 46.03 (11) and (12) and 46.04. Old 46.04 (1), (2), (3) and (5) and the last sentence of (4) are omitted. * * * 14.71 (1) gives the director power to appoint all needed subordinates, designate their titles, prescribe their duties and fix their compensation. * * * (10) is really a department and not a board function and is so changed by this transfer from 58.33 to 46.03. (11) is from 46.28, with no change in meaning. [Bill 394-S]

The board of control has no authority to transfer inmates of institutions for feeble-minded to a farm not connected with said institutions, to be used as farm laborers. 14 Atty. Gen. 35.

The state department of public welfare possesses no authority to collect and disseminate information to induction centers for the purpose of assisting in examination of selectees under the selective service act. 32 Atty. Gen. 377.

As to corporal punishment see note to 940.29, citing 33 Atty. Gen. 127.

The state department of public welfare does not have authority under 46.03 (1) and (2), Stats. 1947, or otherwise to enter into a cooperative arrangement with the town board of a town where a state hospital is located to form a fire protection district and furnish men or facilities for fighting fires on private property. 37 Atty. Gen. 263.

Except in the case of commitments to county asylums under 319.24, court permission for specific types of treatment for the insane is not required. In the absence of express statutory provision the care and treatment of inmates in state mental institutions is discretionary in the duly appointed officers of the institution. Performance of prefrontal lobotomy or psychosurgery permanently destroying function of portion of the brain as a therapeutic procedure should be done in the case of inmates of state mental institutions only in instances where such drastic therapy is strongly indicated and, except in extreme emergency, it is a matter of sound precaution to obtain consent of nearest relative or guardian in such cases as well as that of the patient himself if he is rational enough to understand what is involved. 37 Atty. Gen. 502.

The state department of public welfare has no general power to convey real estate. 38 Atty. Gen. 168.

The state department of public welfare has no authority to remove the Wisconsin school for boys from its established site without legislative action. 40 Atty. Gen. 422.

The state department of public welfare has power to enact reasonable police regulations for the government of state institutions operated by the department. Violation of such a regulation is a crime under 946.73. Primary responsibility rests with institutional officers and employees. Local law enforcement officers have the duty to render aid for law enforce-

ment purposes when called upon by institutional officers and employees. 46 Atty. Gen. 280.

The state department of public welfare may procure malpractice insurance for state mental hospitals and employees. 50 Atty. Gen. 127.

46.035 History: 1961 c. 267; Stats. 1961 s. 46.035; 1963 c. 224; 1969 c. 366 s. 117 (1)(c).

46.041 History: 1967 c. 43; Stats. 1967 s. 46.041.

46.042 History: 1959 c. 318; Stats. 1959 s. 46.042; 1969 c. 276 s. 603 (2); 1969 c. 366 s. 117 (1)(c), (3)(a).

46.043 History: 1965 c. 520; Stats. 1965 s. 46.043; 1969 c. 255 s. 65; 1969 c. 366 s. 117 (1)(c).

46.044 History: 1967 c. 315; Stats. 1967 s. 46.044.

46.046 History: 1961 c. 637; Stats. 1961 s. 46.046; 1965 c. 520; 1969 c. 366 s. 117 (3)(a).

46.047 History: 1959 c. 113; Stats. 1959 s. 46.047; 1965 c. 520.

46.048 History: 1953 c. 385; Stats. 1953 s. 46.048; 1955 c. 457 s. 2; 1969 c. 366 s. 117 (1)(c).

46.049 History: 1965 c. 162; Stats. 1965 s. 46.049.

46.05 History: 1872 c. 66; 1874 c. 188 s. 1, 4; 1876 c. 414 s. 5 to 8, 11, 12, 14; 1877 c. 69; 1878 c. 58; R. S. 1878 s. 565, 609, 609a; 1881 c. 298; 1882 c. 15; 1883 c. 291; 1885 c. 56; 1887 c. 101; Ann. Stats. 1889 s. 563a, 565 sub. 7, 565b; Ann. Stats. 1889 s. 567a sub. 8, 9, 11, 13, 14; Ann. Stats. 1889 s. 609, 609a; 1891 c. 221 s. 7; 1895 c. 183 s. 3; 1895 c. 202 s. 6, 7 sub. 1; 1897 c. 346; Stats. 1898 s. 561g, 561j, 561L, 564, 609; 1899 c. 226 s. 1; 1899 c. 228 s. 1; Supl. 1906 s. 564, 609; 1907 c. 236; 1909 c. 409; 1913 c. 416; 1913 c. 773 s. 121; 1917 c. 105; 1917 c. 333; 1919 c. 328 s. 9; Stats. 1919 s. 46.05; 1925 c. 402; 1927 c. 23; 1929 c. 349; 1929 c. 465 s. 1, 3; 1939 c. 59, 233, 473; 1945 c. 158; 1947 c. 268 s. 16; 1969 c. 255; 1969 c. 366 s. 117 (3)(a).

Comment of Interim Committee, 1947: 46.05 is a revision. Old 46.05 (1) and (3) are covered by 14.71 (1) and are omitted. The addition of a provision for a "position bond" is new. (1) is to take care of positions that are filled by a shifting personnel. Old (5) is made (2) and the police power therein mentioned is given to the superintendent and those to whom he delegates the power. The limitation as to location within a village or city is eliminated. Old (6) is made (3) and amended to conform to the present organization of the department. [Bill 394-S]

The board of control may from time to time change the requirements as to the amount of the surety bond required of a particular employe or officer whose bond is not otherwise fixed by law. 26 Atty. Gen. 360.

46.06 History: 1872 c. 156 s. 1 to 6; 1873 c. 55; R. S. 1878 s. 605, 606, 607; 1881 c. 298; 1885 c. 56; 1887 c. 87; Ann. Stats. 1889 s. 567a sub. 18, 567c, 605, 606, 607; Stats. 1898 s. 561h, 605, 606, 607; 1907 c. 290; 1917 c. 476, 551; 1919 c. 328 s. 11; Stats. 1919 s. 46.06; 1929 c. 45,

319; 1937 c. 386; 1939 c. 31, 417; 1945 c. 158, 184; 1947 c. 10, 233, 268, 275, 560; 1969 c. 78.

Comment of Interim Committee, 1947: 46.06 (1) is restated without change of meaning. (2) is new and covers old (2), (3) and (4) and they are omitted. (3) is new. Old (8), (9) and (11) are omitted. Their purpose has been served. [Bill 394-S]

46.062 History: 1959 c. 331; Stats. 1959 s. 46.062; 1969 c. 366 s. 117 (1)(c).

46.064 History: 1951 c. 451; Stats. 1951 s. 46.064; 1955 c. 385 s. 59; 1961 c. 365; 1965 c. 625; 1969 c. 55 s. 113.

46.065 History: 1929 c. 415; Stats. 1929 s. 46.035; 1947 c. 268 s. 18; Stats. 1947 s. 46.065; 1963 c. 346.

Comment of Interim Committee, 1947: 46.065 is from 46.035. No change of meaning is intended, except that the forfeit provision is amended in the interest of dependents. [Bill 394-S]

46.066 History: Stats. 1945 s. 46.03 (9), 53.06; 1947 c. 268 s. 19; Stats. 1947 s. 46.066.

Comment of Interim Committee, 1947: New 46.066 is a consolidation and revision of old 46.03 (9) and 53.06. New (3) is suggested by old 55.08, relating to jails. The appointment of chaplains and their duties are left to the rules and regulations of the department. Old 53.06 was created by ch. 193, laws of 1873 and is the same as sections 4905 and 4906, R. S. 1878. It seems advisable to omit mention of any denomination, faith or form of worship. Old 53.06 does not harmonize with sec. 18, Art. I, Wis. Const. New 46.066 is submitted as a fair solution of the problem and as sufficient for the purpose in hand. [Bill 394-S]

46.07 History: 1881 c. 298; 1882 c. 15; 1885 c. 56; Ann. Stats. 1889 s. 567a sub. 16; Stats. 1898 s. 561p; 1913 c. 659; Stats. 1913 s. 172—67 sub. 47; 1917 c. 14 s. 26; Stats. 1917 s. 561em, 561p; 1919 c. 328 s. 12; Stats. 1919 s. 46.07; 1937 c. 181 s. 3; 1945 c. 254; 1947 c. 9 s. 31; 1947 c. 268 s. 20; 1959 c. 659 s. 79; 1963 c. 346; 1965 c. 433 s. 121; 1967 c. 291 s. 14.

Comment of Interim Committee, 1947: No change in meaning except to provide under new (2) (a) that property is transmitted to and used under the direction of the department rather than "the cashier of the bureau of probation and parole" and "the probation officer", and that under (2) (c) a 5-year limit is placed on claims. Old (1) is omitted. Most of it is covered by 14.68 and the rest is not needed. [Bill 394-S]

For discussion of responsibility of the state department of public welfare for care of funds of inmates held by it see 44 Atty. Gen. 257.

46.08 History: 1881 c. 298; 1885 c. 56; Ann. Stats. 1889 s. 567a sub. 13; Stats. 1898 s. 561n; 1919 c. 328 s. 13; Stats. 1919 s. 46.08; 1947 c. 268 s. 21.

Comment of Interim Committee, 1947: 46.08 is restated. The estimate should be made by the superintendent and approved by the department. [Bill 394-S]

46.09 History: 1881 c. 298; 1882 c. 15; 1885 c. 56; Ann. Stats. 1889 s. 567a sub. 12, 14; 1891

c. 165 s. 7; 1895 c. 202 s. 6; Stats. 1898 s. 561m, 561o; 1919 c. 328 s. 14; Stats. 1919 s. 46.09; 1929 c. 468 s. 3; 1947 c. 9 s. 31; 1947 c. 268 s. 22; 1949 c. 179; 1959 c. 228 s. 66; 1969 c. 366 s. 117 (1) (d).

46.10 History: Stats. 1945 s. 46.10 (7) to (11); 1947 c. 268 s. 23; 1947 c. 411 s. 6; Stats. 1947 s. 46.10; 1951 c. 507; 1953 c. 514; 1955 c. 305; 1961 c. 394; 1963 c. 166, 479; 1967 c. 43, 120, 323; 1969 c. 366 s. 117 (1)(c), (3)(a).

Comment of Interim Committee, 1947: New 46.10 embodies in substance old 46.10 (7) to (11). Subsections (7) to (10) have been revised to clarify the present law so as to establish direct liability for maintenance against the patient or designated relatives, to clarify procedure for securing payment, to provide for court determination after considering ability to pay, to provide for modification of court orders and an action for recovery of amounts due. Formal changes only are made in old 46.10 (11) which appears in this draft as 46.10 (12). The committee's revision of chapter 51 provides, under 51.27, for free care for the tuberculous insane. Therefore a reference to 51.27 is inserted in new 46.10 (2). New (11) states specifically in the statutes what is undoubtedly the law, since the legislature, by ch. 67, laws of 1941, struck out of old 46.10 the provision that "the statutes of limitation shall not be pleaded in defense," and the provision that the state or county, in claims for support, "shall be deemed a preferred creditor." See 31 Atty. Gen. 63.

Under the common law, statutes of limitation did not run against the state, and it is therefore advisable to express the present rule in the statute. 37 C. J. sec. 28, pp. 710, 711. [Bill 394-S]

Editor's Note: On pleading the statute of limitations see the opinion of the supreme court in Estate of Cameron, 249 W 531, 25 NW (2d) 504.

The estate of a person held for a criminal offense was not liable to the state for care and maintenance furnished to the accused while he was committed to a hospital for observation as to his sanity, although he was subsequently adjudged insane. The amount of recovery from the estate of an insane person for care and maintenance furnished to him at the central state hospital was governed by 46.10, Stats. 1935, and not by 51.08. Guardianship of Sprain, 219 W 591, 263 NW 648.

The estate of an insane person, who was sentenced to the state prison and subsequently ordered transferred to the central state hospital for the insane on a finding of insanity made by the state board of control, was not liable to the state for his maintenance while confined in such hospital, since he was confined therein pursuant to his sentence. Guardianship of Gardner, 220 W 490, 264 NW 647.

The estate of a person charged with a criminal offense is liable to the state for his care and maintenance while confined in the central state hospital for the insane pursuant to an order of commitment which, although not containing an express finding of insanity, found in effect that the accused was presently insane, and disclosed that the commitment was for hospitalization and treatment; as against the

contention that the order was one for commitment merely for purposes of observation, in which case there would have been no such liability. *Guardianship of Radoll*, 222 W 539, 269 NW 305.

The provisions of 46.10, Stats. 1935, authorizing recovery of the actual per capita cost of maintenance furnished inmates of state and county institutions, from estates of deceased inmates, vested discretion as to collection solely in the board. *Estate of Sletto*, 224 W 178, 272 NW 42.

46.10 (7), (8) and (9) does not impose a fixed or absolute liability against a relative so as to attach to his estate, but requires that an investigation and determination be made during his lifetime, and hence where this was not done during the lifetime of the wife of an insane person the state had no claim for maintenance against the estate of the deceased wife. *Estate of Hahto*, 236 W 65, 294 NW 500.

In the absence of an authorizing statute, labor and services performed by an individual while confined in a public institution for the insane cannot be set off against the charge for care and maintenance which the law requires the estate of such person to pay. *Estate of Buxton*, 246 W 97, 16 NW (2d) 399.

A husband has no common-law obligation to support a wife committed to a state institution for the insane; his statutory liability in such case is not governed by 247.095, Stats. 1949, relating to actions to compel support by husbands, but is governed by 46.10 (2), (3), making the husband conditionally liable to the state for the cost of the wife's maintenance in a state institution, but not imposing liability by the husband to his wife or to any other party; hence, the husband is not liable over to the wife's separate estate for amounts which her guardian has paid to the state as the result of collection proceedings brought by the state under 46.10. *Steffenson v. Steffenson*, 259 W 51, 47 NW (2d) 445.

There is no liability on the father of a mentally deficient minor child for the maintenance of such child in a public institution, except as such liability flows from 46.10, Stats. 1951. Parents become liable for the maintenance of a minor child in a public institution for the mentally deficient as soon as and from the time when the child enters the institution, if committed after July 30, 1943. [The question of liability for maintenance furnished prior to that date is not passed on.] The state did not waive its claim against a father for the cost of maintenance and hospitalization of a mentally deficient minor child in a public institution from July 31, 1943, by failing to commence proceedings therefor in the county court until 8 years after such date. *Derouin v. State Dept. of Public Welfare*, 262 W 559, 55 NW (2d) 871.

46.10 (2), Stats. 1955, making the husband of a patient liable for maintenance in specified public institutions, is in derogation of the common law as to the husband, and must be strictly construed in favor of the husband, imposing on him no more liability than a strict reading of the statute, and a strict compliance with it, demand. Under 46.10 (3) and (12), in a county having a population of 500,000 or more, the corporation counsel's opinion that the patient is best able to pay is final, and is

not subject to review or alteration by the county court in proceedings to collect from the estate in guardianship of such incompetent patient the cost of her maintenance. *Guardianship of Sykora*, 271 W 455, 74 NW (2d) 164.

Charities embrace all public and private institutions organized not only to relieve the poor and destitute but also other unfortunates, including those with physical or mental disabilities. The word "curative," employed in 46.10 (2), Stats. 1955, refers to the type of institution and not to the patient. Where it appeared that a person was found to be both mentally deficient and an epileptic in the proceedings committing her to the Southern Wisconsin Colony and Training School, her estate was not relieved from liability for her maintenance on the ground that it was a commitment solely for epilepsy carrying with it no liability for maintenance. *Guardianship of Dach*, 272 W 120, 74 NW (2d) 766.

See note to 272.18, on war pension, citing *Guardianship of Bemowski*, 3 W (2d) 133, 88 NW (2d) 22.

Under 46.10 (2) the computation of the amount due for maintenance must be on the basis of a separate per capita cost for each institution. *State ex rel. Racine County v. Schmidt*, 7 W (2d) 528, 97 NW (2d) 493.

Where a divorce judgment gave the custody of a minor child to the mother, and ordered the father to pay \$75 per month support money, but the child was subsequently committed to a state hospital for the mentally deficient, the father, by operation of 46.10 (2), became liable to the state for the cost of care and maintenance during the child's hospitalization. *State Dept. of Public Welfare v. Sem*, 8 W (2d) 46, 98 NW (2d) 428.

Under 46.10 (2) the estate of a deceased wife is liable for the maintenance afforded to her husband in any one of specified public institutions unless someone is lawfully dependent on the assets of the estate and entitled to release of part or all of it as specified in 46.10 (2), and efforts to collect during the lifetime of the person is not a condition precedent. *Estate of Bartels*, 9 W (2d) 147, 100 NW (2d) 568.

See note to 312.16, citing *State Dept. of Public Welfare v. LeMere*, 19 W (2d) 412, 120 NW (2d) 695.

Parents of a minor committed to the central state hospital pursuant to 957.11 (3), Stats. 1963, following acquittal of a charge of murder by reason of insanity, were not liable for his maintenance costs while he was confined, because the commitment was for the protection of the public and for his rehabilitation and treatment, the nontreatment factors involved in his commitment and the public safety requirements for his release militating against requiring his parents to pay for his maintenance costs while confined. *Treglown v. Dept. of H. & S. S.* 38 W (2d) 317, 156 NW (2d) 363.

See note to 893.18, citing *Estate of Allen*, 43 W (2d) 260, 168 NW (2d) 869.

The board of control is a creditor of an inmate of central state hospital for the insane. 22 Atty. Gen. 20.

The board of control may compromise state claims for care and maintenance of incompe-

tents in state or county institutions. 24 Atty. Gen. 794.

The Wisconsin orthopedic hospital for children is not a charitable or curative institution maintained by the state within the meaning of 46.10, Stats. 1941. 30 Atty. Gen. 329.

Under the amendment by ch. 67, Laws 1941, a claim of the department of public welfare against the estate of a husband or wife of an inmate of certain state and county institutions for per capita cost of his maintenance is no longer a preferred claim and statutes of limitation are now available as defense. 31 Atty. Gen. 63.

Parents are liable for care of children in the Wisconsin child center only if made so by some express statutory provision, or by judgment or agreement entered pursuant to statute. 39 Atty. Gen. 470.

See note to 142.01, citing 45 Atty. Gen. 104.

For discussion of the statutory amendments effected by ch. 620, Laws 1959, regarding prorating of charges, see 49 Atty. Gen. 105.

46.105 History: 1939 c. 535 s. 2; Stats. 1939 s. 46.10 (12); 1947 c. 268 s. 24; Stats. 1947 s. 46.105; 1955 c. 385 s. 60; 1965 c. 433 s. 121; 1967 c. 291 s. 14; 1969 c. 154 s. 377.

Comment of Interim Committee, 1947: 46.105 is old 46.10 (12) with formal changes only. [Bill 394-S]

46.106 History: Stats. 1945 s. 46.10 (1) to (6); 1947 c. 268 s. 25; 1947 c. 472; Stats. 1947 s. 46.106; 1953 c. 270; 1955 c. 506; 1957 c. 361; 1959 c. 103, 266; 1959 c. 659 s. 79, 84; 1969 c. 276 s. 582 (17); 1969 c. 366 s. 117 (1)(c).

Comment of Interim Committee, 1947: Old 46.10 (1) to (6) are restated and renumbered 46.106. A reference to 51.27 is inserted in (1). See note to new 46.10. The specific provision in (1), for approval and certification by the department to the superintendent in cases where the patient does not have a legal settlement in the state, is omitted. The provision in (4) that the department may on its own motion order a hearing is substituted for an application on behalf of the state by the attorney general. [Bill 394-S]

Legislative Council Note, 1959, with reference to amendments to 46.106 (1), 51.05 (3) and 51.10 (2): The purpose is to provide for initial summary finding of legal settlement by the judge rather than by the court, so as to co-ordinate with administrative correction of erroneous charges under s. 46.106 (4) which is subject to judicial review under s. 46.106 (5). [Bill 15,A]

Ch. 229, Laws 1881, was enacted for the purpose of having speedily determined the question as to what county in the state, or whether the state at large, should pay for the support of the insane in its hospital. The only question to be settled to fix the charge upon a county or the state is the question of residence at the time of commitment. State ex rel. Grant County v. State Board, 72 W 108, 39 NW 350.

Error in charging expenses of an inmate of a public institution to a county may be corrected under 46.10 (4), (5) and (6), Stats. 1935, and the statute of limitations does not run thereon. 24 Atty. Gen. 360.

Provisions of 46.10 (2), Stats. 1943, relating

to payments by the state to counties of special charges for care, maintenance and treatment in county institutions were construed and applied in 33 Atty. Gen. 59.

The collection and deportation counsel may be authorized by the department of public welfare under 46.106 (1), Stats. 1949, to receive and distribute moneys received for the care of children housed in the Wisconsin child center or placed in foster homes by the staff of such institution. 39 Atty. Gen. 470.

A county does not have a right, under 46.106 (1), Stats. 1955, to collect from the county of legal settlement for the maintenance of persons sentenced to its county jail. 44 Atty. Gen. 87.

Failure to furnish the certification or transcript required by 46.106 (1), Stats. 1955, does not prevent the county of legal settlement from being liable for institutional charges. 44 Atty. Gen. 87.

46.11 History: 1897 c. 12; Stats. 1898 s. 561jj; 1919 c. 328 s. 17; Stats. 1919 s. 46.11; 1947 c. 268 s. 26; 1947 c. 508, 602; 1955 c. 506; 1957 c. 53, 610.

The board of control should not make transfer of a person confined in the central state hospital at Waupun to the Wisconsin state hospital at Mendota, where such person was committed while imprisoned on a criminal charge, without an order of the court authorizing such transfer and without notice to the district attorney. 16 Atty. Gen. 607.

46.115 History: Spl. S. 1920 c. 17; Stats. 1921 s. 46.115; 1927 c. 318; 1947 c. 268 s. 27; 1969 c. 276 s. 603 (2).

This section applies to parolees from state penal institutions, and to those persons committed to the department of public welfare who are entitled to maintenance at public cost. It does not apply to persons placed on probation to the department. 42 Atty. Gen. 202.

46.12 History: 1913 c. 693; Stats. 1913 s. 561jm; 1915 c. 599; 1919 c. 328 s. 19; Stats. 1919 s. 46.12; 1947 c. 268 s. 28; 1955 c. 457, 534.

Comment of Interim Committee, 1947: The meaning is not changed except to make the per diem \$10 instead of not to exceed \$10 as fixed by the board. In practice it is \$10 now and there is no likelihood of a reduction. [Bill 394-S]

Notice required by 46.12 (4), Stats. 1923, need not be personally served, but delivery of notice by registered mail is sufficient. 12 Atty. Gen. 483.

46.13 History: 1915 c. 307; Stats. 1915 s. 561jn; 1919 c. 328 s. 20; Stats. 1919 s. 46.13; 1947 c. 268 s. 29; 1953 c. 54; 1969 c. 276 s. 603 (5).

46.14 History: 1881 c. 298; 1885 c. 56; Ann. Stats. 1889 s. 567a sub. 18; Stats. 1898 s. 562; 1919 c. 328 s. 21; Stats. 1919 s. 46.14; 1947 c. 268 s. 30.

46.16 History: 1872 c. 66; 1874 c. 188 s. 4; 1876 c. 414 s. 5 to 8, 11, 12, 14; R. S. 1878 s. 566; 1883 c. 291; 1887 c. 101; Ann. Stats. 1889 s. 563a, 565, 565b, 566; 1891 c. 221 s. 7; Stats. 1898 s. 564, 565; 1899 c. 226 s. 1; Supl. 1906 s. 564; 1907 c. 236; 1913 c. 416; 1913 c. 773 s. 121;

tients on a per capita cost basis, nor rent the portion of the building occupied by such aged persons to the trustees of the county home for the aged. If a portion of a county tuberculosis sanatorium is to be used as a unit of the county home for the aged, the county board must transfer jurisdiction for that portion and equipment from the trustees for the sanatorium to the trustees for the home for the aged. 43 Atty. Gen. 338.

46.18 (1), Stats. 1955, authorizes a county board to adopt such regulations relating to the management of the county home and hospital as will result in priority of admission for indigents and recipients of public assistance. 44 Atty. Gen. 284.

A county board may provide for the purchase of furniture for a county institution and delegate acceptance of the bid to the trustees. 46 Atty. Gen. 9.

It is permissible under 46.18 (1), Stats. 1957, for a county board to elect a trustee for a county institution for a term of 3 years beginning January next, thereafter at its April meeting. 47 Atty. Gen. 34.

A separate "hospital account" is not authorized; an annual appropriation for a county hospital is mandatory under 46.18 (11); a non-budgeted appropriation requires a two-thirds vote under 65.90 (5) (a); trustees of a county hospital can be authorized to buy machinery. 47 Atty. Gen. 69.

Trustees of a county hospital have no authority to remodel hospital facilities. Such power is in the county board under 59.07 (1) (d), Stats. 1957. Funds accumulated therefor are part of general funds unless segregated as building reserve under 46.18 (13). 47 Atty. Gen. 315.

46.19 History: Stats. 1917 s. 604h, 697b, 697y-5 sub. 1, 2, 1421-11 sub. 2, 1421-16, 1522; 1919 c. 328 s. 26; Stats. 1919 s. 46.19; 1947 c. 268 s. 35; 1965 c. 91.

The board of trustees of county institutions, under 46.18 and 46.19, Stats. 1937, has sole authority to appoint the superintendent of the county workhouse. An appointment of such officer by the county board is void. The question of providing housing and maintenance for the superintendent of a county workhouse is a matter which lies wholly within the discretion of the board of trustees provided it acts under regulations approved by the county board. 28 Atty. Gen. 19.

See note to 59.15, on appointing officials, etc., citing 36 Atty. Gen. 539.

Under 46.19, Stats. 1947, the board of trustees of county institutions may appoint one individual as superintendent for the county poorhouse and farm and another as superintendent for the county insane asylum, or may in their discretion appoint a single person as superintendent of both institutions. The trustees may not appoint the manager of the farm on which the poorhouse is located; 46.19 (3) vests the power to make such appointment in the superintendent of the institution subject to approval of the trustees and any other applicable provision of said subsection. 38 Atty. Gen. 158.

46.20 History: Stats. 1917 s. 604i to 604m, 697f to 697k, 1421-17 to 1421-24; 1919 c. 328 s. 29; Stats. 1919 s. 46.20; 1921 c. 250; 1927 c.

23; 1939 c. 233, 473; 1947 c. 268 s. 36; 1951 c. 724; 1955 c. 575 s. 2; 1965 c. 39; 1965 c. 659 s. 24 (12); 1969 c. 366 s. 117 (1) (b).

Legislative Council Note, 1955: It is necessary to amend this section to provide the procedure for the establishment of joint county detention homes which are authorized by s. 48.31. [Bill 444-S]

Compensation and reimbursement for traveling expenses of the trustees of a tri-county tuberculosis sanatorium are properly chargeable to the operation of the institution so as to be included in an apportionment of "expenditures for repairs, maintenance and operation" to counties interested as provided by 46.20 (6) (b), Stats. 1921. 11 Atty. Gen. 765.

46.205 History: 1949 c. 8; Stats. 1949 s. 46.205.

46.206 History: 1953 c. 513; Stats. 1953 s. 46.206; 1967 c. 9.

46.21 History: Stats. 1917 s. 697-45 to 697-49n; 1919 c. 328 s. 30; 1919 c. 459; 1919 c. 671 s. 15b; 1919 c. 686; Stats. 1919 s. 46.21; 1921 c. 416, 584; 1921 c. 590 s. 9; 1923 c. 228 s. 2; 1939 c. 177; 1945 c. 588; 1947 c. 192; 1947 c. 268 s. 37; 1947 c. 560; 1949 c. 393; 1951 c. 314; 1953 c. 31 s. 44; 1957 c. 398; 1959 c. 348; 1961 c. 101; 1965 c. 462; 1967 c. 101, 345; 1969 c. 366 s. 117 (1) (c).

On uniform town and county government see notes to sec. 23, art. IV.

Legislation by which it is proposed to delegate the administration of social security aids to the director of institutions and departments of Milwaukee county does not by implication repeal the provisions of 46.21 (2) (c), Stats. 1947, relating to the selection of such director, and place him automatically under the merit system provisions of 49.50 (2) and (5), in the absence of language indicating such intent on the part of the legislature. 38 Atty. Gen. 40.

Supervision of county mental hospitals, mental health clinics, and day care programs rests with authorities established in 51.25, 51.36, and 51.38 respectively, notwithstanding 46.21, Stats. 1965. 55 Atty. Gen. 265.

46.22 History: 1953 c. 513, 631; Stats. 1953 s. 46.22; 1955 c. 10, 504, 653; 1957 c. 296 s. 15; 1963 c. 265; 1965 c. 590 s. 24 (1); 1967 c. 9; 1969 c. 154; 1969 c. 366 s. 117 (1) (c).

See note to 59.15, on appointing officials, etc., citing Kenosha County C. H. Local 990 v. Kenosha County, 30 W (2d) 279, 140 NW (2d) 277.

The director of a county department of public welfare, which administers social security aids in accordance with 49.50, Stats. 1945, and rules adopted pursuant thereto by the state department of public welfare, may be dismissed only by the body which under such rules constitutes the county agency charged with the administration of such aids. Any dismissal of such director may not be summary but must be for cause and, unless the cause is conviction of a felony, the director may appeal to the state bureau of personnel for a hearing as provided in the rules and regulations of the state department of public welfare. 35 Atty. Gen. 379.

Prior to enactment of ch. 584, Laws 1947,

1917 c. 333; 1919 c. 328 s. 23; Stats. 1919 s. 46.16; 1927 c. 23; 1929 c. 439 s. 8, 11; 1939 c. 233, 473; 1947 c. 268 s. 32; 1951 c. 724; 1953 c. 69; 1969 c. 333.

Comment of Interim Committee, 1947: The power to administer oaths should be in the director and those delegated by him. (10) is new. [Bill 394-S]

46.165 History: 1951 c. 725 s. 19m; Stats. 1951 s. 49.50 (10); 1953 c. 354; 1959 c. 604; Stats. 1959 s. 46.165; 1963 c. 479; 1965 c. 528.

46.17 History: Stats. 1917 s. 564 (3), 566a, 566b, 603, 604, 604x-1, 697a, 1421-9, 1421-10, 1518, 1523; 1919 c. 328 s. 24; Stats. 1919 s. 46.17; 1923 c. 228 s. 2; 1927 c. 23; 1939 c. 233, 473; 1945 c. 155; 1947 c. 268 s. 33; 1951 c. 242, 724; 1953 c. 61 s. 35; 1957 c. 202; 1965 c. 39; 1969 c. 333.

Comment of Interim Committee, 1947: 46.17 is restated. (1) is made to cover "juvenile detention homes". That is new but is deemed advisable. "County hospitals" include asylums for the insane. Old (3) has been consolidated with (2) and old (4) is renumbered (3). [Bill 394-S]

A building, plans of which were not approved, may, if found suitable, be used by a county to house the chronic insane, and the county is entitled to state aid if it cares for the chronic insane in such building. 9 Atty. Gen. 40.

Where proper authorities fail to comply with an order of board of control with respect to improvement or replacement of a jail, such order may be enforced by court action. 21 Atty. Gen. 81.

The board of control has authority, under 46.17, Stats. 1931, to approve for use as a county sanatorium a building which was constructed as an isolation hospital. 21 Atty. Gen. 996.

See note to 49.14, citing 43 Atty. Gen. 338.

46.18 History: Stats. 1917 s. 15.17 to 15.20, 604a, 604g, 604h, 604ha, 697y-1 to 697y-4, 697y-5 sub. 3, 4, 1421-9 sub. 2, 1421-11, 1421-15, 1518, 1520, 1521, 1526; 1919 c. 328 s. 25; Stats. 1919 s. 46.18; 1927 c. 23; 1931 c. 71; 1935 c. 229; 1939 c. 75; 1947 c. 268 s. 34; 1951 c. 724; 1965 c. 39, 154; 1965 c. 659 s. 24 (12); 1969 c. 154.

Comment of Interim Committee, 1947: 46.18 is restated. It could well go to ch. 59. It relates almost wholly to counties. "Hospital" is substituted for "asylum for the chronic insane" in (1) and "or similar institution" is inserted. Reports are required under (8) and details omitted. Under (9) audits by the department of institution books are made permissive, not mandatory. The department has had the duty but not the means to make these audits. [Bill 394-S]

The offices of chairman of a town and trustee of a county asylum and poor board are incompatible; the trustee vacates his office on becoming town chairman. 10 Atty. Gen. 471.

The superintendent of the county sanatorium should be ex officio secretary of the trustees. 10 Atty. Gen. 1077.

Until a county board has specifically provided for raising, by taxation or bond issue, the money necessary to build and install a new heating plant for a county asylum, no

contract may lawfully be made for such purpose, where there are no funds in the county treasury available therefor. This is so even though the state board of control has ordered such improvement to be made. 12 Atty. Gen. 245.

A vacancy in the office of trustee of a county asylum for the chronic insane is caused by failure of one elected to the office to file the official oath and bond required by 46.18 (4), Stats. 1923, within a reasonable time. Such trustee cannot later cure his failure to qualify and prevent a vacancy by now filing the oath and bond. Such vacancy may be filled by temporary appointment by the chairman of the county board. 12 Atty. Gen. 624.

A county board has no power to direct the board of trustees to appoint visiting physicians of county institutions, and the board of trustees has no power to appoint such physicians. Such appointment is made by the superintendent with the approval of the trustees. 13 Atty. Gen. 83.

A board of county asylum trustees may use for construction of a building only funds appropriated by the county board for that purpose. 20 Atty. Gen. 130.

A county board has power to direct disbursement or to appropriate funds earned by the county hospital for the insane for the benefit of the institution. 21 Atty. Gen. 59.

This section does not prevent a county board from naming an auditing committee of its own members to check on poor relief. 24 Atty. Gen. 75.

A member of the board of trustees of a county asylum and poor farm may not receive per diem compensation for time spent in assisting the acting superintendent in performance of the latter's duties. The limitation, if any, upon compensation which a member of the board of trustees of a county asylum and poor farm may receive in a year on per diem basis must be found in the county ordinance establishing the rate of compensation. 29 Atty. Gen. 118.

It is the duty of the district attorney to advise the trustees of county institutions appointed under 46.18, Stats. 1943, and they may not employ independent counsel for that purpose under 46.18 (6). 33 Atty. Gen. 92.

See note to 59.07 (1), citing 36 Atty. Gen. 646.

The county hospital must be managed by the board of trustees. Their responsibility cannot be delegated to others. 37 Atty. Gen. 100.

The management of a county hospital by the trustees is subject to the regulations of the county board. A rule of that board giving the supervision of repairs of county institutions to an institution committee of the board gives that committee the right to let contracts for repairs caused by wind damage. 39 Atty. Gen. 330.

If a farm is maintained in connection with a county hospital under 46.18 and 46.19, Stats. 1951, the county board may not remove the farm from the jurisdiction of the superintendent of the hospital or from the application of statutory provisions governing operation of the hospital. 41 Atty. Gen. 162.

Trustees of the tuberculosis sanatorium may not care for non-tuberculous aged pa-

amending 49.51 (1), Stats. 1945, the county board had no authority to allocate a portion of the county judge's salary to his duty as administrator of social security aids. Upon being relieved of such duties, the judge retains the right to the entire salary notwithstanding the attempt by the board to make such allocation in the previous resolution. 36 Atty. Gen. 618.

The county agencies charged with administration of social security aids have authority, under proper circumstances, to institute guardianship proceedings in behalf of recipients of such aids; and in such cases it is the duty of the district attorney to furnish legal service. 42 Atty. Gen. 231.

See note to 48.56, citing 43 Atty. Gen. 295.

A county may not under 46.22 (5) (g), or otherwise, make a voluntary contribution to a private social welfare agency which cares for unwed mothers during confinement and for a short time thereafter and which makes such service available to anyone free of charge regardless of the county of residence and regardless of any appropriation to the agency by the county of residence. 45 Atty. Gen. 44, 133.

See note to 49.19, citing 45 Atty. Gen. 235.

Under 46.22 (3) and regulations adopted by the state department of public welfare pursuant to 49.50 (2), the power of appointing employes of the county department of public welfare is vested in the county board of public welfare, which must appoint persons selected by the county director of public welfare (or the county judge). The county board of supervisors has neither the power to appoint such employes nor the power to fix their compensation, under 59.15 (2). 46 Atty. Gen. 137.

See note to 946.13, citing 46 Atty. Gen. 215.

Counties must abide by the salary schedule fixed by the state department of public welfare, but may not exclude employes from being represented at negotiations relative to salaries. 52 Atty. Gen. 117.

46.25 History: 1969 c. 450; Stats. 1969 s. 46.25.

46.36 History: 1969 c. 1; Stats. 1969 s. 46.36.

46.37 History: 1947 c. 20; Stats. 1947 s. 46.37; 1969 c. 366 s. 117 (1) (c).

46.50 History: 1947 c. 170; Stats. 1947 s. 46.50; 1969 c. 366 s. 117 (1) (c).

46.80 History: 1969 c. 366; Stats. 1969 s. 46.80.

CHAPTER 47.

Rehabilitation and Relief of Blind and Deaf Persons.

47.01 History: 1947 c. 379; Stats. 1947 s. 47.01.

Comment of Interim Committee, 1947: This definition harmonizes with that in new 41.72 (3). [Bill 392-S]

47.02 History: 1947 c. 379; Stats. 1947 s. 47.02.

Comment of Interim Committee, 1947: This

is new in form only. It is part of old 47.01, the rest of which is made 41.72 by this bill. [Bill 392-S]

47.05 History: 1903 c. 432; 1905 c. 345; Supl. 1906 s. 572a; 1907 c. 506; 1913 c. 773 s. 23; 1917 c. 14 s. 31; 1917 c. 361; 1919 c. 81 s. 7; Stats. 1919 s. 47.05; 1925 c. 402; 1935 c. 309; 1939 c. 59; 1943 c. 93; 1947 c. 379; 1949 c. 376; 1965 c. 163; 1967 c. 121; 1969 c. 154, 366.

Comment of Interim Committee, 1947: The revision of 47.05 preserves the substance of that section. Even the language, in the main, is retained. The purpose of 47.05 is to afford aids outside of the school at Janesville. The name of this state service is changed from "field agency and workshop" to "division for the blind," in keeping with the general scheme of calling the several branches of the work of the department of public welfare "divisions" and making the divisions statutory. The functions of the two separate "divisions" of the field agency are retained as functions of the division for the blind. "Adult blind" is changed to "blind" because federal aid extends to minors over 16 years old. Appointment of the director of the division is covered by new 46.014 (6) in the bill revising ch. 46. [Bill 392-S]

47.06 History: 1903 c. 432 s. 2; 1905 c. 345 s. 2; Supl. 1906 s. 572b; 1907 c. 506; 1919 c. 81 s. 8; Stats. 1919 s. 47.06; 1935 c. 309; 1943 c. 93; 1947 c. 379; 1969 c. 366.

47.07 History: 1957 c. 400; Stats. 1957 s. 47.07; 1969 c. 366.

47.08 History: 1947 c. 379; Stats. 1947 s. 47.08; 1949 c. 118; 1959 c. 341; 1969 c. 366.

47.09 History: 1945 c. 588; Stats. 1945 s. 47.09; 1947 c. 379; 1949 c. 118; 1957 c. 515; 1959 c. 341; 1969 c. 366.

47.095 History: 1947 c. 305; Stats. 1947 s. 47.095; 1949 c. 294; 1969 c. 366.

47.10 History: 1947 c. 379; Stats. 1947 s. 47.10; 1969 c. 366.

CHAPTER 48.

Children's Code.

Editor's Note: Ch. 48 was revised by ch. 575 (Bill 444-S), Laws 1955, effective July 1, 1956. Many sections previously in chs. 54 and 322 were revised and included in this chapter. The following conversion table was prepared by the revision committee and accompanied the printed bill and act. (48.991 to 48.997, the interstate compact on juveniles, were created by a separate act, ch. 300, Laws 1955.)

This table is intended as an aid in correlating the present law with the proposed children's code. It shows what sections in the proposed code cover the present sections in chs. 48, 54 and 322. It does not cover miscellaneous sections (for example, 58.01) which are affected by the bill. Also, it does not show (except in the case of complete repeals) what specifically happened to the present section; i.e., whether it was restated or substantially changed. It is necessary to turn to the pro-