is an omnibus provision to make sure that chapter 51 extends to the mentally infirm and mentally deficient and epileptics. [Bill 19-S]

51.32 History: 1947 c. 485; Stats. 1947 s. 51.32; 1955 c. 506.

Comment of Interim Committee, 1947: 51.32 is new. * * * [Bill 19-S]

51.33 History: 1965 c. 616; Stats. 1965 s. 51.33.

51.35 History: 1947 c. 485; Stats. 1947 s. 51.35.

Comment of Interim Committee, 1947: 51.35 is new. (1) is an adaptation of the Illinois statute. [Bill 19-S]

51.35 (1), Stats. 1963, providing for the unexamined forwarding of communications from patients in public mental hospitals to "licensed attorneys" means attorneys licensed to practice in Wisconsin. 53 Atty. Gen. 135.

51.36 History: 1959 c. 317, 618; Stats. 1959 s. 51.36; 1965 c. 631; 1969 c. 154; 1969 c. 366 s. 117(1)(c), (h), (3)(a), (4).

For discussion of provisions of 20.670 (24) and 51.36, Stats. 1959, regarding appropriation of county funds, as well as state grants-in-aid, see 48 Atty. Gen. 267.

See note to 51.08, citing 50 Atty. Gen. 127.

51.37 History: 1961 c. 394; Stats. 1961 s. 51.37; 1969 c. 366 ss. 45, 117(3)(a).

51.38 History: 1961 c. 591, 622, 635; Stats. 1961 s. 51.38; 1969 c. 154; 1969 c. 366 s. 117 (1)(c), (h), (3) (a), (4).

51.39 History: 1965 c. 176; 1965 c. 433 s. 121; Stats. 1965 s. 51.39; 1967 c. 291 s. 14.

51.40 History: 1967 c. 43; Stats. 1967 s. 51.40; 1969 c. 154, 332, 452.

51.50 History: 1949 c. 86; Stats. 1949 s. 51.50.

51.75 History: 1965 c. 611; Stats. 1965 s. 51.75.

51.76 History: 1965 c. 611; Stats. 1965 s. 51.76; 1969 c. 366 s. 117(3)(a).

51.77 History: 1965 c. 611; Stats. 1965 s. 51.77; 1967 c. 26; 1969 c. 336 s. 176.

51.78 History: 1965 c. 611; Stats. 1965 s. 51.78.

51.79 History: 1965 c. 611; Stats. 1965 s. 51.79.

51.80 History: 1965 c. 611; Stats. 1965 s. 51.80.

51.81 History: 1919 c. 277; Stats. 1919 s. 4854—1; 1925 c. 4; Stats. 1925 s. 365.01; 1955 c. 660 s. 13; Stats. 1955 s. 965.01; 1969 c. 255 s. 61; Stats. 1969 s. 51.81.

Editor's Note: For foreign decisions construing the "Uniform Extradition of Persons of Unsound Mind Act" see Uniform Acts, Annotated.

51.82 History: 1919 c. 277; Stats. 1919 s. 4854—2; 1925 c. 4; Stats. 1925 s. 365.02; 1955 c. 660 s. 13; Stats. 1955 s. 965.02; 1969 c. 255 s. 61; Stats. 1969 s. 51.82.

51.83 History: 1919 c. 277; Stats. 1919 s. 4854—3; 1925 c. 4; Stats. 1925 s. 365.03; 1955 c. 660 s. 13; Stats. 1955 s. 965.03; 1969 c. 255 s. 61; Stats. 1969 s. 51.83.

51.84 History: 1919 c. 277; Stats. 1919 s. 4854—4; 1925 c. 4; Stats. 1925 s. 365.04; 1955 c. 660 s. 13; Stats. 1955 s. 965.04; 1969 c. 255 s. 61; Stats. 1969 s. 51.84.

51.85 History: 1919 c. 277; Stats. 1919 s. 4854—5; 1925 c. 4; Stats. 1925 s. 365.05; 1955 c. 660 s. 13; Stats. 1955 s. 965.05; 1969 c. 255 s. 61; Stats. 1969 s. 51.85.

CHAPTER 52.

Support of Dependents.

52.01 History: 1945 c. 585; Stats. 1945 s. 49.07; 1953 c. 31 s. 2 to 5; 1953 c. 275; Stats. 1953 s. 52.01; 1957 c. 187; 1963 c. 580.

Revisor's Note, 1967: Senate Bill No. 7, which became Ch. 9, Laws of 1967, contained the following note:

"**NOTE:** This change in language is in conformity with the definition in Title 42 USC 606 (b). Public Law 87-543 (1962) ss. 104 (a) (3) (D), 156 (b) substituted 'aid to families with dependent children' for 'aid to dependent children.'

It is unclear whether this amendment will change the result in the case *In re Spigner* (1965) 26 Wis. (2d) 190. However, it could be argued that a change in language relatively soon after this decision was for the purpose of changing the results in this case. The court held in *In re Spigner* that the director of public welfare of Milwaukee county could not collect from the father, as a responsible relative under s. 52.01, any portion of ADC payment made to his daughter, since the daughter's child was the 'dependent person' on which the payments were based."

After the divorce of parents the father's duty of maintenance of minor children remains as before, in the absence of any decree on the subject, especially if their custody is not taken from him. Zilley v. Dunwiddie, 98 W 428, 74 NW 126.

1502 et seq., Stats. 1898, are prospective in character and do not allow a town to relieve a pauper and afterwards recover the amount expended from the proper relative, but contemplate that the supervisors upon failure of the relative to maintain the pauper may apply to the county judge to fix the manner and amount of the relief to be given by the relative, and upon a failure to comply with that order they may recover the amounts unpaid. Saxville v. Bartlett, 126 W 655, 105 NW 1052.

A son being legally bound to relieve and support his father if the latter should so dissipate his property as to be unable to maintain himself, may appeal from an order denying his petition to appoint a guardian for the father. Merrill v. Merrill, 134 W 395, 114 NW 784.

There is no jurisdiction to enforce, upon the application of town officers, the support of poor persons by relatives, in counties that

have adopted the county system of poor relief. In such counties the application must be made by the county superintendent of the poor. Berryman v. Larmer, 172 W 572, 179 NW 748.

The liability of a child to support its parent is purely statutory. Where the statutory procedure for enforcing such liability was not followed in a proceeding against a son's estate, the order charging him with support of his mother was invalid. Guardianship of Heck, 225 W 636, 275 NW 520.

One may not be considered a legal dependent of another until a legal obligation to support the former has been imposed, and the legal liability of a relative to maintain a dependent person is not established under 52.01, Stats. 1953, until proceedings have been had and the court has issued an order pursuant thereto. Estate of Seely, 268 W 498, 67 NW (2d) 836.

This is a "special proceeding" by statute in derogation of the common law and the statute must be strictly complied with. Although findings are required they may be separate from the order. There is no objection to the petition being signed by the director of the county welfare department, the district attorney appearing for and representing the petitioner throughout the proceeding. The order is void for indefiniteness where it requires payment of the sum of $75 "or such other sum as may be required so to maintain her" and does not specify the periods of payment. Spies v. Peterson, 271 W 505, 74 NW (2d) 148.

Neither 52.01 (4), relating to the support of dependent children, nor 6.015 (1), known as the Married Women's Act, affects the rule that a father is primarily liable for the support of his minor children. Schade v. Schade, 274 W 519, 80 NW (2d) 416.

An order imposing the whole burden of support on a single relative when the county court is shown that there are others of equal ability to contribute and of equal kinship, and equally amenable to the process of the court, would be an abuse of discretion requiring reversal. Hansis v. Brougham, 10 W (2d) 629, 102 NW (2d) 679.

Social security and state retirement benefits should be excluded in determining a daughter's ability to contribute to a parent's support, even though the daughter's husband can otherwise support her. Ponath v. Hedrick, 22 W (2d) 382, 126 NW (2d) 28.

Under 49.01 (4) a mother is not a "dependent person" if she can work and support herself if not required to stay home and care for her child. Her father cannot be compelled to assume payment of aid to dependent children even though allocated to the mother, his daughter. In re Spigner, 26 W (2d) 190, 132 NW (2d) 242.

A father's duty to support his child rests not only upon moral law but legally upon the voluntary status of parenthood which the father assumed. Emancipation, which may be partial or total, is personal to the parties and does not shift the responsibility to support from the father to the public. Niesen v. Niesen, 38 W (2d) 599, 157 NW (2d) 660.

Grandparents cannnot be compelled to support grandchildren. The fact that parents of a mother, having dependent children, might be ordered to support her does not deprive her children of the benefits of aid to dependent children. 5 Atty. Gen. 100.

A wife having no separate estate and no property except her inchoate dower and homestead rights is under no legal obligation to support her indigent parents. The persistent refusal of the husband to give his wife money in order that she may comply with the order of the court asking her to contribute to the support of her indigent parents does not place him in contempt of court, there being no legal duty upon him to support the parents of his wife. 8 Atty. Gen. 29.

An only child if of sufficient ability is liable for the support of a parent. One of several children is liable for the support of a parent under 49.07, Stats. 1951, if he is of sufficient ability and the other children are not. 41 Atty. Gen. 299.

A district attorney has no authority under 52.01, Stats. 1953, to compromise the amount of support which authorities in charge of a dependent person have found should be furnished by the specified relatives. 43 Atty. Gen. 224.

See note to 49.19, citing 46 Atty. Gen. 74.

52.03 History: 1945 c. 585; Stats. 1945 s. 49.13; 1953 c. 31 s. 6; Stats. 1953 s. 52.03; 1961 c. 495.

52.05 History: 1882 c. 200 s. 1; 1885 c. 422 s. 1; 1887 c. 318 s. 1, 8; 1889 c. 321; Ann. Stats. 1889 s. 4587c, 4587j; Stats. 1898 s. 4587c; 1905 c. 131 s. 1; Supl. 1906 s. 4587c; 1911 c. 576; 1911 c. 664 s. 124; 1925 c. 4; Stats. 1925 s. 351.30; 1939 c. 524 s. 2; 1945 c. 265; 1949 c. 67, 589; 1953 c. 31 s. 7, 9, 10; Stats. 1953 s. 52.05; 1957 c. 296 s. 15; 1959 c. 595 s. 2; 1963 c. 463; 1969 c. 366 s. 117 (1) (c), (3) (a).

Editor's Note: For foreign decisions construing the "Uniform Desertion and Nonsupport Act" consult Uniform Laws, Annotated.

A father who has sufficient ability to support his children is not relieved from the obligation to do so by a wrongful refusal of his wife to surrender to him the custody of such children. Beilfus v. State, 142 W 665, 126 NW 33.

Ch. 131, Laws 1905, imposes upon the father of an illegitimate child a duty similar to that which is imposed upon the father of a legitimate child, but such duty is imposed only in case where the relationship is established by a valid judgment. State v. Beilke, 146 W 515, 131 NW 891.

A wife is in necessitous circumstances within the meaning of sec. 4587c, Stats. 1915, when she does not have property or money with which to procure such necessities or ordinary comforts as her husband can reasonably furnish, even though she has the clothing, furniture and ornaments usually owned by a woman in her station of life or receives aid from others; and an able-bodied man of presumably some business ability in good health, who contributed only $12 during 17 months to the support of his wife and child did not contribute to the extent of his ability. Brandel v. State, 161 W 532, 154 NW 997.

The proper venue for the prosecution of a father for neglect to provide for his children is the place where the children are when so

neglected, and not where the father was or formerly had been. And in such a prosecution evidence of neglect by the father both before and after the time charged may be introduced. Adams v. State, 164 W 223, 159 NW 726.

A judgment of divorce and for alimony and support is not such a modification of the legal obligation of a former husband to support his children as to free him from prosecution under sec. 4587c, Stats. 1915, for failure to meet that obligation. Watke v. State, 166 W 41, 163 NW 258.

351.30, Stats. 1933, penalizing wilful neglect or refusal to support one's wife or children without just cause, applies to one whose only asset is a capacity for work. Zitlow v. State, 213 W 493, 252 NW 358.

As used in 351.30, Stats. 1951, the term "wilfully" means an intent on the part of the defendant to evade his parental duty to support and maintain his minor child. State v. Schlueter, 262 W 602, 55 NW (2d) 878.

To justify conviction for nonsupport under 52.05, Stats. 1963, the defendant must not only have had the capacity to work but must have wilfully and without just cause neglected and refused to adopt this means of supporting his family. State v. Freiberg, 35 W (2d) 480, 151 NW (2d) 1.

Punishment for wilful failure to support one's own children should not be stayed by the fortuitous existence of public or private charity or by a divorced spouse's industry in providing some measure of the child support that might have been expected from the defaulting father. State v. Freiberg, 35 W (2d) 480, 151 NW (2d) 1.

To justify conviction for wilful nonsupport, a felony under 52.05 (1), Stats. 1967, there must be a showing that defendant wilfully and without just cause refused or neglected to provide support for his family. Galvin v. State, 40 W (2d) 679, 162 NW (2d) 622.

An agreement of separation between a husband and wife, by the terms of which the wife releases her husband from all his marital liabilities to her, is no bar to a criminal prosecution under sec. 4587c, Stats. 1913. 3 Atty. Gen. 188.

Where, in divorce proceedings, the custody of a minor child is awarded the mother, with a provision for payment by the father of fixed amounts for its support, failure to pay such support money constitutes a violation of sec. 4587c, Stats. 1913. Where such judgment provides for custody of the child by the father upon the happenings of certain events, failure of the father to demand such custody does not constitute such violation. 3 Atty. Gen. 227.

A conviction under sec. 4587c, Stats. 1915, bars a prosecution for a similar offense occurring prior to the filing of the information, unless the information charges the offense between specific dates. 4 Atty. Gen. 748.

A divorced husband not required by the decree of divorce to support his minor children, who were committed to the care of the divorced wife, cannot be subjected to criminal prosecution for abandonment of such minor children. 5 Atty. Gen. 119.

A bond given under sec. 4587c, Stats. 1915, is not released by an agreement between husband and wife without the approval of the public authorities. 6 Atty. Gen. 137.

Sec. 4587c, Stats. 1917, includes offenses committed by a mother where facts show that her unjustified abandonment of her children caused them to be in necessitous circumstances. 6 Atty. Gen. 640.

The fact that a general guardian has been appointed for minor children does not affect the liability of the father to prosecution for failure and neglect to support them. 6 Atty. Gen. 749.

A father is liable for support of his minor child after divorce where jurisdiction in the divorce case was obtained by publication and custody of the child was given to the mother, and no provision was made for support of the child by the father for the reason that the court could not do so in a case where jurisdiction has been obtained by publication; if he neglects to support a child he may be prosecuted under 351.30, Stats. 1927. 16 Atty. Gen. 379; 17 Atty. Gen. 176.

A sentence of 4 years on 4 counts predicated on violation of 351.30, Stats. 1929, is in compliance with the statutory provisions. 19 Atty. Gen. 129.

The provisions outlined in the last sentence of 166.14, Stats. 1929, do not nullify the provisions contained in 351.30 (1). 19 Atty. Gen. 152.

Extradition may be had for the alleged father of an unborn illegitimate child if he has abandoned the same. 19 Atty. Gen. 589.

A tribal Indian who is a ward of the U. S. government and who contracts marriage pursuant to Wisconsin law may not be criminally prosecuted in state courts for subsequent nonsupport or abandonment of his family. 28 Atty. Gen. 603.

A Wisconsin court would not have jurisdiction under 351.30 and 351.31, Stats. 1949, to penalize a father residing in Wisconsin for failure to support his children during periods when the latter were residing in another state with their mother. 39 Atty. Gen. 164.

See note to 49.53, citing 46 Atty. Gen. 316.

52.055 History: 1959 c. 595 s. 2a; Stats. 1959 s. 52.055; 1963 c. 463; 1965 c. 129, 249; 1967 c. 220; 1969 c. 236.

The statutory presumption of wilfulness could be rebutted by proof that defendant is an alcoholic in the medical sense and therefore lacks the physical capacity to work. Proof that defendant has been a heavy drinker for years and has lost many jobs is not sufficient. State v. Freiberg, 35 W (2d) 480, 151 NW (2d) 1.

Domestic relations—wage assignment after divorce. 1968 WLR 261.

52.06 History: 1887 c. 318 s. 2 to 4; Ann. Stats. s. 4587d to 4587f; Stats. 1898 s. 4587d; 1925 c. 4; Stats. 1925 s. 351.31 (1); 1933 c. 159 s. 33; 1953 c. 31 s. 11; Stats. 1953 s. 52.06; 1961 c. 495; 1969 c. 255 s. 65; 1969 c. 352.

52.07 History: 1887 c. 318 s. 4 to 7; Ann. Stats. 1889 s. 4587g to 4587i; Stats. 1898 s. 4587d; 1925 c. 4; Stats. 1925 s. 351.31 (2); 1953 c. 31 s. 11; Stats. 1953 s. 52.07.

52.10 History: 1951 c. 23; Stats. 1951 s. 49.135; 1953 c. 31 s. 12; 1953 c. 247, 587;

Stats. 1953 s. 52.10; 1955 c. 575 s. 8; 1957 c. 663; 1959 c. 321; 1961 c. 495; 1969 c. 40; 1969 c. 276 s. 585 (1).

Revisor's Notes, 1959: These changes [by Bill 541,S—Ch. 321] in the Uniform Act were approved by the National Conference of Commissioners on Uniform State Laws and by the American Bar Association in 1958. They also have the approval of the attorney general's office. The notes following the sections were prepared by the Commissioners.

[Note to Sub. (6)] This [sub] section suggests that, before going through the criminal procedure of extradition, which is unlikely to produce actual support money for the family, the governor allow enough time for the family to take advantage of the available civil remedy.

[Note to Sub. (9)] This [sub] section makes it clear that under the act not only current support but also arrearages may be recovered.

[Note to Sub. (19)] This [sub] section permits the forwarding of the plaintiff's papers not only to another county in the same state but also to another county in another state where the defendant or his property may be found. Heretofore it was necessary to file a new initiating petition in such a case.

[Note to Sub. (21)] The changes made by this [sub] section are important. Heretofore courts and prosecuting attorneys were uncertain how to proceed in a case where the defendant filed his answer and gave evidence. The plaintiff was in another state. The judge had before him nothing but the complaint. It was not evidence and the defendant having produced evidence sufficient for a defense the judge would often dismiss the case. Under the new provision, the judge now must "continue the case for further hearing and the submission of prosecuting attorney or other representative of the plaintiff shall use the machinery of deposition and interrogatories, as permitted by the law of the state, to obtain evidence from the absent plaintiff, or her witnesses, then permit the defendant to give further oral evidence in reply and possibly use the machinery of deposition and interrogatories again to obtain further evidence from the plaintiff, etc."

[Note to Sub. (32)] This [sub] section permits the act to be used when the parties are not in different states but merely in different counties of the same state.

[Note to Subs. (33) to (38)] Subsections (33) to (38) are entirely new. They provide for the registration in the courts of one state of support orders issued by the courts of another state. The support order, so registered, has the same effect and may be enforced as if it had been originally issued by a court of the registering state. Of course the defendant may oppose the registration, but he may assert only a defense available to a defendant in an action on a foreign judgment. He cannot oppose registration on the ground that the support order is not a final judgment, because a "support order" is defined as "any judgment, decree or order of support whether temporary or final, whether subject to modification, revocation or remission regardless of the kind of action in which it is entered." Thus these subsections are very important. They permit enforcement in the courts of every state passing this act of support orders from other states as if they were locally issued.

Editor's Note: For foreign decisions construing the "Uniform Reciprocal Enforcement of Support Act" consult Uniform Laws, Annotated.

52.21 History: 1913 c. 329; Stats. 1913 s. 1533b; 1923 c. 291 s. 3; Stats. 1923 s. 166.06; 1929 c. 439 s. 10; 1933 c. 428 s. 1; 1933 c. 432 s. 4; Spl. S. 1933 c. 9; 1953 c. 31 s. 15; Stats. 1953 s. 52.21; 1961 c. 495; 1963 c. 426; 1969 c. 352.

Paternity proceedings are civil proceedings, purely statutory in origin, and they must be tried in the manner fixed by the legislature. State ex rel. Sowle v. Brittich, 7 W (2d) 353, 96 NW (2d) 337.

52.22 History: 1907 c. 648; Stats. 1911 s. 1533m; 1923 c. 291 s. 3; Stats. 1923 s. 166.07; 1929 c. 439 s. 10; Stats. 1929 s. 166.08; 1941 c. 259; 1945 c. 408; 1953 c. 31 s. 16; Stats. 1953 s. 52.22; 1957 c. 296; 1961 c. 495.

See note to sec. 11, art. I, on limitations imposed by the Fourteenth Amendment, citing State ex rel. White v. Simpson, 28 W (2d) 590, 137 N W(2d) 391.

Under sec. 1533m, Stats. 1915, it is mandatory for the district attorney to prosecute paternity cases. 5 Atty. Gen. 425.

52.23 History: R. S. 1849 c. 31 s. 10; 1854 c. 26 s. 1; R. S. 1858 c. 34 s. 37; R. S. 1858 c. 37 s. 10; R. S. 1878 c. 1539; Stats. 1898 s. 1539; 1923 c. 291 s. 3; Stats. 1923 s. 166.13; 1929 c. 439 s. 10; Stats. 1929 s. 166.19; 1953 c. 31 s. 17; Stats. 1953 s. 52.23; 1957 c. 296 s. 15.

52.24 History: R. S. 1849 c. 31 s. 11; R. S. 1858 c. 37 s. 11, 12; R. S. 1878 s. 1540; Stats. 1898 s. 1540; 1905 c. 136 s. 3; Supl. 1906 s. 1540; 1923 c. 291 s. 3; Stats. 1923 s. 166.14; 1929 c. 439 s. 10; Stats. 1929 s. 166.20; 1953 c. 31 s. 18; Stats. 1953 s. 52.24; 1957 c. 296 s. 15; 1961 c. 495, 614.

In paternity proceedings, omission of the court to examine the mother as to the place where the child was begotten was not fatal to the validity of a warrant issued under the statute, where all other pertinent inquiry was made which disclosed probable cause for the issuance thereof. State ex rel. Werlein v. Elamore, 33 W (2d) 288, 147 NW (2d) 252.

After a paternity proceeding is commenced on complaint of a mother, an unapproved settlement with the mother does not bar prosecution. Settlement does not bar action on the initiative of the district attorney to prevent the child from becoming a public charge. 20 Atty. Gen. 364.

In order to recover lying-in, medical, and funeral expenses paid by the county in connection with an illegitimate birth, the district attorney may proceed under 52.23 and 52.24, Stats. 1967. The court cannot substitute its judgment for that of the district attorney, but may refuse under certain circumstances to issue a warrant. 56 Atty. Gen. 188.

52.25 History: R. S. 1849 c. 31 s. 1; R. S. 1858 c. 37 s. 1; R. S. 1878 s. 1530; Stats. 1898 s. 1530; 1923 c. 291 s. 3; Stats. 1923 s. 166.01; 1929 c. 439 s. 10; 1949 c. 73; 1953 c. 31 s. 19;

1953 c. 481; Stats. 1953 s. 52.25; 1957 c. 296; 1961 c. 495, 614; 1967 c. 181; 1969 c. 255 ss. 64, 65.

The complaint in a paternity proceeding is good if it conforms to the statute; it need not state that the prosecutrix is a resident of the county where the action is brought, nor at what time and place the child was begotten nor that complainant and defendant were not married at that time nor at the commencement of the action. Zweifel v. State, 27 W 396.

The action may be brought after the death of the child. Jerdee v. State, 36 W 170.

A nonresident female may prosecute a paternity proceeding against a resident of this state and such prosecution may be by a married woman. State ex rel. Reynolds v. Flynn, 180 W 556, 193 NW 651; State v. Olson, 198 W 197, 223 NW 449.

A paternity proceeding action may be brought in Wisconsin although the illegitimate child of defendant was born and lives in Minnesota. 25 Atty. Gen. 504.

For discussion of 52.21 to 52.45 and 328.39, Stats. 1959, regarding paternity proceedings and settlement agreements, wherein a child is born to a married woman, see 48 Atty. Gen. 248.

52.26 History: R. S. 1849 c. 31 s. 12; R. S. 1858 c. 37 s. 12; R. S. 1878 s. 1541; Stats. 1898 s. 1541; 1923 c. 291 s. 3; Stats. 1923 s. 166.15; 1929 c. 439 s. 10; Stats. 1929 s. 166.21; 1953 c. 31 s. 20; Stats. 1953 s. 52.26; 1957 c. 296; 1961 c. 495, 614; 1969 c. 87; 1969 c. 255 s. 65.

52.27 History: R. S. 1849 c. 31 s. 2; R. S. 1858 c. 37 s. 2; 1862 c. 108 s. 1; 1868 c. 79; 1874 c. 284; R. S. 1878 s. 1531; Stats. 1898 s. 1531; 1905 c. 136 s. 1; Supl. 1906 s. 1531; 1923 c. 291 s. 3; Stats. 1923 s. 166.02; 1929 c. 439 s. 10; 1953 c. 31 s. 21; Stats. 1953 s. 52.27; 1957 c. 296; 1961 c. 495, 614.

Where a defendant in a paternity proceeding waives examination and enters into a recognizance to appear before a circuit court and does appear the court has jurisdiction. Rindskopf v. State, 34 W 217.

52.28 History: 1929 c. 439 s. 10; Stats. 1929 s. 166.07; 1939 c. 524; 1953 c. 31 s. 22; Stats. 1953 s. 52.28; 1957 c. 296.

Any payment made to the mother of an illegitimate child, which is not approved as provided by law, will not relieve the father of obligation to support the child. State v. Olson, 198 W 197, 223 NW 449.

Under 166.07, Stats. 1933, providing for entry of judgment on agreement in settlement of a paternity action when there is a default of payment, judgment was authorized where the defendant had been in default for several months. Gardner v. State, 224 W 549, 272 NW 478.

A settlement agreement entered into pursuant to 166.07, Stats. 1947, is a contract and subject to the law of contracts. The defendant was not entitled to have the agreement set aside and be granted a trial on merits, where there was no showing of mistake but only that the defendant entered into the agreement, denying paternity, for reasons appealing to him and because in the uncertainty he considered it the wiser course, and where there was no claim of fraud or duress. A denial of paternity in a settlement agreement prevents the illegitimate child from being considered as the heir of the alleged father, 237.06. State ex rel. Ullrich v. Giese, 257 W 242, 43 NW (2d) 18.

52.28 furnishes the exclusive procedure for a valid contract for the support of an illegitimate child. Smazal v. Estate of Dassow, 23 W (2d) 336, 127 NW (2d) 234.

Where settlement is proposed it is not necessary to issue a summons or quasi criminal warrant in order to bring an agreement into court for approval; the parties may appear voluntarily. Rules governing civil procedure apply. 25 Atty. Gen. 349.

A minor male entering into a settlement in illegitimacy proceedings must appear by guardian ad litem as provided in 260.22 and 260.23, Stats. 1945, since this is a civil action. 34 Atty. Gen. 169.

See note to 59.42, citing 45 Atty. Gen. 128.

52.29 History: R. S. 1849 c. 31 s. 13; R. S. 1858 c. 37 s. 13; R. S. 1878 s. 1542; Stats. 1898 s. 1542; 1905 c. 136 s. 4; Supl. 1906 s. 1542; 1923 c. 291 s. 3; Stats. 1923 s. 166.16; 1929 c. 439 s. 10; Stats. 1929 s. 166.22; 1953 c. 31 s. 23; Stats. 1955 s. 52.29; 1957 c. 296 s. 15.

52.30 History: R. S. 1849 c. 31 s. 3; 1854 c. 26; R. S. 1858 c. 37 s. 3; R. S. 1878 s. 1532; Stats. 1898 s. 1532; 1915 c. 258; 1923 c. 291 s. 3; Stats. 1923 s. 166.03; 1929 c. 439 s. 10; 1953 c. 31 s. 24; Stats. 1953 s. 52.30; 1961 c. 495, 614.

52.31 History: R. S. 1849 c. 31 s. 4; R. S. 1858 c. 37 s. 4; 1862 c. 108 s. 3; R. S. 1878 s. 1533; Stats. 1898 s. 1533; 1905 c. 136 s. 2; Supl. 1906 s. 1533; 1923 c. 291 s. 3; Stats. 1923 s. 166.04; 1929 c. 439 s. 10; 1953 c. 31 s. 25; Stats. 1953 s. 52.31; 1957 c. 296 s. 5, 15; 1961 c. 495, 614.

Where a justice requires the defendant to enter into a recognizance to appear at the circuit court it will be implied that he had probable cause to believe that the defendant was the father of the child; a formal adjudication, in the nature of a judgment, is not necessary to give the circuit court jurisdiction. Rindskopf v. State, 34 W 217.

Where, in default of bail, the defendant was committed, and a settlement for his discharge was made upon his executing a mortgage to the father of complainant, whereupon the justice assumed, in his official capacity, to discharge the defendant from custody, such discharge was void, and after commitment the justice had no further jurisdiction. Getzlaff v. Zeliger, 43 W 297.

When defendant has given a recognizance the circuit court has jurisdiction of his person and of the subject matter, and if he fails to appear the court may proceed to judgment without his presence. Baker v. State, 65 W 50, 26 NW 167.

The examining magistrate has no jurisdiction to bind a defendant over in a paternity proceeding unless there is sufficient competent evidence to sustain a finding that there is probable cause to believe the defendant is the father of the child. The power to proceed in the absence of such evidence cannot be conferred by any waiver or consent by the

defendant. A child born in lawful wedlock is presumed legitimate. State ex rel. Reynolds v. Flynn, 180 W 556, 193 NW 651.

52.32 History: 1887 c. 469; Ann. Stats. 1889 s. 1533a; Stats. 1898 s. 1533a; 1923 c. 291 s. 3; Stats. 1923 s. 166.05; 1929 c. 439 s. 10; 1953 c. 31 s. 26; Stats. 1953 s. 52.32; 1957 c. 296.

52.33 History: R. S. 1849 c. 31 s. 5; R. S. 1858 c. 37 s. 5; R. S. 1878 s. 1534; Stats. 1898 s. 1534; 1923 c. 291 s. 3; Stats. 1923 s. 166.08; 1929 c. 439 s. 10; Stats. 1929 s. 166.09; 1953 c. 31 s. 27; Stats. 1953 s. 52.33.

52.34 History: 1929 c. 439 s. 10; Stats. 1929 s. 166.16; 1953 c. 31 s. 28; Stats. 1953 s. 52.34.

52.35 History: R. S. 1849 c. 31 s. 6, 7; R. S. 1858 c. 37 s. 6, 7; 1862 c. 108 s. 2; R. S. 1878 s. 1535; Stats. 1898 s. 1535; 1915 c. 258; 1923 c. 291 s. 3; Stats. 1923 s. 166.09; 1925 c. 426 s. 2; 1929 c. 439 s. 10; Stats. 1929 s. 166.10; 1953 c. 31 s. 29; Stats. 1953 s. 52.35; 1957 c. 296; 1959 c. 298.

The child alleged to be the child of the defendant may not be exhibited to the jury for the purpose of showing its resemblance to the defendant. Hanawalt v. State, 64 W 84, 24 NW 489.

The accused cannot impeach the reputation of the prosecutrix for chastity. Bookhout v. State, 66 W 415, 28 NW 179.

The jury may believe the complainant's witness and disbelieve the defendant's witness where there is nothing in the physical acts to make such evidence incredible. The defense of an alibi if sufficiently established is a good defense. However, owing to the ease with which persons may be mistaken in dates long after the occurrence of a particular event, the ease with which an alibi may be made, and the difficulty of refuting it, the evidence of an alibi is not conclusive. It is merely evidence to be weighed by the jury. An instruction that it is not necessary to prove the exact date of pregnancy, but the act of intercourse must be shown to have occurred on such a date as will satisfy the jury that the infant was the result of it, is correct. State ex rel. Dewey v. Kibbe, 186 W 210, 202 NW 333.

As to the nature of paternity proceedings, and the rule that evidence of defendant's good reputation for chastity and morality is admissible, see Windahl v. State, 189 W 424, 207 NW 694 (1926).

Where a defendant pleads guilty, the court must take testimony as to the financial condition of the parties to determine the amount of judgment and security, but cannot determine any other issues. Francken v. State, 190 W 424, 209 NW 766.

In a case involving the paternity of one seeking to establish himself as an heir, proof of family reputation, or the common knowledge in the family as to his pedigree, is admissible. Estate of Dexheimer, 197 W 145, 221 NW 737.

An instruction, in a paternity proceeding, that the defendant was to be presumed innocent "until" evidence convinced the jury of the contrary beyond a reasonable doubt was a prejudicial error, in view of the inconclusiveness of the evidence. An instruction on presumption of innocence must be given in every case involving a charge of unlawful parentage. Nelson v. State, 210 W 441, 245 NW 676.

The denial of a new trial in a paternity proceeding, upon the ground of newly discovered evidence, was not an abuse of discretion, where affidavits concerning alleged relations of the complaining witness with others did not fix the times within the period during which conception took place, such evidence as one of the affiants could give could, with proper diligence, have been produced upon the trial, and the defendant did not testify, and there was nothing inherently improbable in the testimony of the complaining witness. State v. Debs, 217 W 164, 258 NW 173.

In an action to establish the paternity of an illegitimate child, the use of the word "until" in an instruction stating that the defendant is presumed innocent until the contrary is proved constitutes error, which will be considered so prejudicial as to necessitate a reversal if the proof that the defendant was the father of the child is not persuasively established. Vogel v. State, 220 W 677, 265 NW 567.

The defendant in a paternity proceeding is entitled to the presumption of innocence which attends throughout the trial, and the defendant is not required to prove that some other man is the father of the child, but it is the state's burden to prove that the defendant is the father. Timm v. State, 262 W 162, 54 NW (2d) 46.

Where, at the close of the state's case, there was testimony establishing every circumstance essential to conviction, the fact that the complaining witness had never accused the defendant of being responsible for her pregnancy until she swore to the complaint was not a sufficient ground in itself for dismissing the complaint at the close of the state's case. (State v. Van Patten, 236 W 186, distinguished.) State ex rel. Syarto v. Barber, 268 W 74, 66 NW (2d) 696.

In paternity proceedings the testimony of the complaining witness that she had timely intercourse with the defendant, and that she had none with anyone else, is sufficient to support a verdict that the defendant is the father of her child, if the jury believed it. Her testimony, together with that of her mother as to admissions by the defendant, supported the jury's finding that the defendant was the father of the complaining witness' child, as against the testimony of the defendant and alibi witnesses. State ex rel. Kurtz v. Knutson, 5 W (2d) 609, 93 NW (2d) 348.

The defendant in a paternity proceeding has no vested rights in the procedure regulating the waiver of a jury trial or in the burden of proof in such statutory proceeding, and he could not validly object to applying to an existing cause of action the provisions of 52.35, Stats. 1957, merely establishing a new procedure for exercising the right of trial by jury, and of 52.355, changing a rule of evidence relating to the burden of proof. State ex rel. Sowle v. Brittich, 7 W (2d) 353, 96 NW (2d) 337.

The manner in which the right to a jury trial is exercised or waived is a matter of procedure, and a provision that the failure to demand a jury in writing at a certain point in a paternity proceeding constitutes a waiver

of the right, is not an unreasonable regulation. State ex rel. Sowle v. Brittich, 7 W (2d) 353, 96 NW (2d) 337.

Under 166.10, Stats. 1951, a defendant in a paternity case is entitled to have testimony of the mother given at the preliminary examination read in evidence at the trial even though she is not dead, insane or beyond the jurisdiction of the court. Denial of said right is not a ground for a new trial unless her testimony at the preliminary examination contained matter favorable to defendant and not brought out at the trial, in view of 274.37. 40 Atty. Gen. 104.

The trial of a paternity case. Holz, 50 MLR 450.

52.355 History: 1957 c. 296; Stats. 1957 s. 52.355; 1959 c. 298.

Editor's Note: In the following cases (among others), all decided before the enactment of ch. 296, Laws 1957, questions concerning the burden of proof in paternity proceedings were considered: Dingman v. State, 48 W 485, 4 NW 668; Windahl v. State, 189 W 424, 207 NW 694; and State ex rel. Mahnke v. Kablitz, 217 W 231, 258 NW 840.

52.355, Stats. 1957, changing the burden of proof in paternity proceedings, is procedural or a matter of evidence, and the defendant has no vested rights in the rules of evidence. State ex rel. Sowle v. Brittich, 7 W (2d) 353, 96 NW (2d) 337.

An earlier statement by the complaining witness in court that she did not know who the father of her child was did not necessarily overcome her present testimony and other evidence that defendant was the father. State ex rel. Burns v. Vernon, 26 W (2d) 563, 133 NW (2d) 292.

52.36 History: 1935 c. 351; Stats. 1935 s. 166.105; 1939 c. 524; 1953 c. 31 s. 30; Stats. 1953 s. 52.36; 1957 c. 180; 1959 c. 298.

In view of the several unsatisfactory and improbable aspects of the testimony and in view of the fact that a blood test, however irregularly offered, pointed to the innocence of the defendant, the court in the interest of justice in this paternity case will order a new trial to give the defendant an opportunity to present in proper form a medical conclusion based upon blood tests. Euclide v. State, 231 W 616, 286 NW 3.

Consideration of blood tests which did not exclude the defendant in a paternity proceeding would be prejudicial error constituting ground for a new trial. State ex rel. Isham v. Mullally, 15 W (2d) 249, 112 NW (2d) 707.

52.37 History: 1929 c. 439 s. 10; Stats. 1929 s. 166.11; 1931 c. 352 s. 2; 1939 c. 524; 1941 c. 259; 1949 c. 73, 634; 1953 c. 31 s. 31; Stats. 1953 s. 52.37; 1957 c. 296 s. 9, 15.

The judgment upon a verdict of guilty must distinctly adjudge that the defendant is the father of the child. Speiger v. State, 32 W 400.

The court may properly consider the wealth of the defendant as well as the condition in life of the complainant in making the allowance. Rindskopf v. State, 34 W 217.

If found guilty the defendant is liable for the expenses of the mother relating to the birth. The amount of the allowance is left to the discretion of the court, and its decision will not be reversed except for abuse. Jerdee v. State, 36 W 170.

A judgment may be entered charging the accused with the support and maintenance of the child from its birth. A direction to pay costs forthwith means as soon as taxed. Sonnenberg v. State, 124 W 124, 102 NW 233.

Where parties to a paternity proceeding entered into a settlement agreement containing an unequivocal admission by the defendant of his paternity of the child, the defendant could not refute the fact stated in the contract on a motion for judgment in the absence of a timely impeachment of the contract for duress, coercion, fraud or mistake. Gardner v. State, 224 W 549, 272 NW 478.

A trustee in a paternity agreement and judgment should make payment to the person having legal custody of the child, pursuant to an order of the court. It is immaterial whether such child is within or without the state or whether he is in the custody of his mother or some other person. 27 Atty. Gen. 364.

Costs in paternity proceedings are to be taxed under 353.25, Stats. 1955, as in criminal cases. Under this section there is no authority for taxing the cost of the transcript of the preliminary hearing. 45 Atty. Gen. 2. See also 45 Atty. Gen. 128.

52.38 History: 1929 c. 439 s. 10; Stats. 1929 s. 166.12; 1941 c. 259; 1953 c. 31 s. 32 to 34; Stats. 1953 s. 52.38; 1957 c. 296 s. 15.

A judgment in a paternity proceeding providing for monthly payments entered prior to passage of ch. 259, Laws 1941, cannot be modified. 36 Atty. Gen. 222.

52.39 History: R. S. 1849 c. 31 s. 7; R. S. 1858 c. 37 s. 7; R. S. 1878 s. 1536; Stats. 1898 s. 1536; 1905 c. 110 s. 1; Supl. 1906 s. 1536; 1923 c. 291 s. 3; Stats. 1923 s. 166.10; 1929 c. 439 s. 10; Stats. 1929 s. 166.13; 1953 c. 31 s. 35; Stats. 1953 s. 52.39; 1957 c. 296.

Allowing a defendant 20 days to give bond is not an error of which he can complain. Sonnenberg v. State, 124 W 124, 102 NW 233.

A bond securing performance of a judgment requiring the father to contribute to the support of an illegitimate child properly ran to the county. State v. Olson, 198 W 197, 223 NW 449.

52.40 History: R. S. 1849 c. 31 s. 8; R. S. 1858 c. 37 s. 8; R. S. 1878 s. 1537; Stats. 1898 s. 1537; 1923 c. 291 s. 3; Stats. 1923 s. 166.11; 1929 c. 439 s. 10; Stats. 1929 s. 166.14; 1953 c. 31 s. 36; Stats. 1953 s. 52.40; 1957 c. 296.

52.41 History: R. S. 1849 c. 31 s. 9; R. S. 1858 c. 37 s. 9; R. S. 1878 s. 1538; Stats. 1898 s. 1538; 1923 c. 291 s. 3; Stats. 1923 s. 166.12; 1929 c. 439 s. 10; Stats. 1929 s. 166.15; 1953 c. 31 s. 37; Stats. 1953 s. 52.41.

52.42 History: 1929 c. 439 s. 10; Stats. 1929 s. 166.17; 1953 c. 31 s. 38; Stats. 1953 s. 52.42.

52.43 History: 1929 c. 439 s. 10; Stats. 1929 s. 166.18; 1931 c. 352 s. 2; 1939 c. 524; 1953 c. 31 s. 39, 40; Stats. 1953 s. 52.43.

In case of the death of an illegitimate child after a judgment against the father and while monthly payments are still to be made, only

installments not for future support of the child need be paid. In case of the death of an illegitimate child pending payment of settlement agreement with paternity denied and without judgment, all portions of the judgment should be paid except those attributable to future support of the child and the burden should be upon the defendant to show that any portion of the settlement is so attributable. 20 Atty. Gen. 704.

52.44 History: 1939 c. 524; Stats. 1939 s. 166.185; 1953 c. 31 s. 41; Stats. 1953 s. 52.44; 1957 c. 296 s. 15.

52.45 History: 1929 c. 439 s. 10; Stats. 1929 s. 166.23; 1953 c. 31 s. 42; Stats. 1953 s. 52.45; 1957 c. 296.

In view of 358.13, Stats. 1935, giving the right of appeal in criminal cases, paternity actions are reviewable by appeal as well as by writ of error. (Contrary statement in State ex rel. Mahnke v. Kablitz, 217 W 231, corrected.) Lang v. State ex rel. Bunzel, 227 W 276, 278 NW 467.

The 60-day requirement of 270.49, Stats. 1935, for acting on a motion for a new trial is applicable to a paternity action because it is a civil action. State ex rel. Zimmerman v. Euclide, 227 W 279, 278 NW 535.

A motion to dismiss on the basis that the arrest was invalid, to be timely must be made when the defendant appears in court and before he is arraigned and enters a plea. State ex rel. La Follette v. Moser, 30 W (2d) 56, 139 NW (2d) 632.

CHAPTER 53.

Prisons; State, County and Municipal.

Comment of Interim Committee, 1947: A number of sections are omitted from this revision of chapters 53, 54 and 55 (and in legal effect repealed) for the following reasons: 53.03 and 53.05 are not needed. 53.06 is consolidated with 46.03 (9) as new 46.066, in the bill revising ch. 46. 53.14 is covered by the bill revising ch. 51 which consolidates all provisions for disposing of the bodies of dead inmates of public institutions and makes the same part of ch. 155, repealing 53.14. 53.16, 53.17 and 53.18, relating to U. S. convicts, are no longer needed. 53.28 authorized the department of public welfare to purchase the Milwaukee county house of correction. The building has since been sold to the United States. 55.11 is omitted but new 59.081 takes its place. (Bill 35-A)

53.01 History: 1947 c. 519; Stats. 1947 s. 53.01; 1959 c. 113; 1961 c. 637; 1965 c. 520.

53.02 History: 1947 c. 519; Stats. 1947 s. 53.02; 1959 c. 113; 1961 c. 637; 1965 c. 520; 1969 c. 238.

Comment of Interim Committee, 1947: New 53.02 (1) is derived from old 53.01 (2); (2) is derived from old 54.01 (4); (3) is based on old 54.015 (2); and (4) is derived from 53.01 (3), 54.01 (3) and 54.015 (4). Old 53.01 (3) exempts all officers and employes of the prison from military duty. No military duty to the state is compulsory and hence that provision is omitted. It also exempts them from jury duty, but they are so exempted under 255.02 (1), so that provision is omitted. Old 54.015 (3) is omitted because the transfers have been made and the inmates become subject to the laws and rules of the home upon such transfer. [Bill 35-A]

One who escapes from a prison farm, whether located within or without Dodge county, may be prosecuted in the courts of that county. 26 Atty. Gen. 259.

53.03 History: 1947 c. 519; Stats. 1947 s. 53.03; 1959 c. 113.

Comment of Interim Committee, 1947: The oath of office and bond of the warden is required by old 53.02 (2). There is no explicit requirement for an oath or bond from the superintendents at Taycheedah and Green Bay. The Constitution requires an oath of office from all public officials, art. IV, sec. 28. Old 54.015 (4) implies that the Taycheedah superintendent must take the oath and file a bond; "(4) All provisions of chapter 53 in so far as applicable shall apply to the Wisconsin home for women * * *." Old 54.05 (1) may be construed to cover the oath and bond of the superintendent at Green Bay. Under new 53.03 (2) the amount of the bond will be fixed by the department. [Bill 35-A]

53.04 History: 1947 c. 519; Stats. 1947 s. 53.04.

Comment of Interim Committee, 1947: New 53.04 is extended to apply expressly to Green Bay and Taycheedah. It is derived from old 53.02 (1), 54.05 (1) and 54.015 (4). This revision omits the provision in old 53.02 (1) that the warden or other officer or employe of the prison shall have no interest in any contract entered into for any purpose connected with prison business. Contracts (in the sense the word was formerly used) are not made by the warden or other officer of the prison. The general statute on the subject of public officers or agents having an interest in public contracts is section 348.28. That general statute governs. [Bill 35-A]

It is the general rule that only in exceptional circumstances will a federal court interfere with matters that involve the internal management of state prisons. Taylor v. Burke, 278 F Supp. 868. See also: Goodchild v. Schmidt, 279 F Supp. 149; and Medlock v. Burke, 285 F Supp. 67.

The state board of control and wardens of the state prison and of the Green Bay reformatory have power to grant interviews with prisoners without the presence of an officer of the institution. 27 Atty. Gen. 305.

53.06 History: 1947 c. 519; Stats. 1947 s. 53.06; 1951 c. 279; 1965 c. 520; 1969 c. 255.

Comment of Interim Committee, 1947: New 53.06 is derived from old 53.04 and is extended to cover Green Bay annd Taycheedah. The contents of a "certificate of conviction" are prescribed by section 359.02 and the form of the certificate is prescribed by 359.03. For sheriff's duties generally, see 59.23, and for his fees, 59.28. 59.23 provides: "The sheriff shall * * * (4) serve or execute according to law all processes, writs, precepts and orders issued or made by lawful authority and to him delivered." 59.28 sheriff's fees, says the sher-