

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Committee, 1947: A number of sections are omitted from this revision of chapters 53, 54 and 55 (and in legal effect repealed) for the following reasons: 53.03 and 53.05 are not needed. 53.06 is consolidated with 46.03 (9) as new 46.066, in the bill revising ch. 46. 53.14 is covered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 and 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-

iff shall receive for "(27) Traveling to serve any criminal process * * * 10 cents per mile * * * and necessary disbursements for board and conveyance of prisoner." There is very little need for old 53.04 and none at all as to the sheriff's compensation. His pay is provided for (covered) by 59.15. Old 53.04 (2) is omitted because inadequate and of doubtful value and uncertain application. [Bill 35-A]

53.07 History: 1947 c. 519; Stats. 1947 s. 53.07.

Comment of Interim Committee, 1947: 53.07 is restated. The penalty is in effect the same. The penalty for failure to aid a sheriff in suppressing a riot is up to one year in jail or \$500 fine; 347.05. New 53.07 is so worded as to expressly cover Taycheedah and Green Bay prisons. The last sentence is from old 53.13. [Bill 35-A]

53.08 History: 1947 c. 519; Stats. 1947 s. 53.08; 1959 c. 113.

Comment of Interim Committee, 1947: 53.08 is restated. * * * It is so worded as to cover Taycheedah and Green Bay prisons. [Bill 35-A]

Inmate problems and correctional administration. Kimball, Jablonski and Martin, 1969 WLR 571.

53.09 History: 1947 c. 519; Stats. 1947 s. 53.09.

Comment of Interim Committee, 1947: 53.09 is restated. It is intended to include Taycheedah and Green Bay. [Bill 35-A]

53.095 History: 1856 c. 49 s. 36; R. S. 1858 c. 188 s. 36; R. S. 1878 s. 4493; Stats. 1898 s. 4493; 1919 c. 349 s. 10; 1925 c. 4; Stats. 1925 s. 346.43; 1955 c. 696 s. 181; Stats. 1955 s. 53.095; 1959 c. 113.

53.10 History: 1947 c. 519; Stats. 1947 s. 53.10.

Comment of Interim Committee, 1947: 53.10 is restated so as to clearly express the present practice of the department. It is intended to include Taycheedah and Green Bay. Old (2) is omitted. [Bill 35-A]

53.11 History: 1947 c. 519; Stats. 1947 s. 53.11; 1951 c. 256; 1953 c. 71; 1955 c. 42, 44.

Comment of Interim Committee, 1947: New 53.11 is from old 53.11 and 54.05 and is intended to cover inmates in all 3 prisons. The second sentence of (2) is new, but merely expresses by statute the attorney general's opinion in 20 Atty. Gen. 1137. (4) is to express in the statute the right of a prisoner to refuse credit for good conduct. The attorney general has ruled that he has that right; 24 Atty. Gen. 450. Old 54.05 (3) is omitted and the last sentence of (3) is new. This changes the rule for reckoning good time where a person is convicted while he is serving his sentence. [Bill 35-A]

After a second conviction and imprisonment the court cannot be compelled to inquire into and deduct from the second sentence the time served by the defendant under the original sentence, nor make any diminution on account of his good conduct. Baker v. State, 88 W 140, 59 NW 570.

Consecutive sentences imposed prior to

commitment to prison are aggregated but all other sentences are treated as first offenses for the purpose of computing good time allowance. State ex rel. Gegenfurtner v. Burke, 7 W (2d) 668, 97 NW (2d) 517.

In 53.11 (3) the word "committed" refers to the delivery of the custody of the defendant at the place of confinement pursuant to a sentence or sentences and to the time when one who is sentenced becomes an inmate of the prison, and it makes no difference in the application of the statute whether the defendant is brought to prison burdened with or because of several convictions by one court or because of several convictions by one court and one by another. State ex rel. Hake v. Burke, 21 W (2d) 405, 124 NW (2d) 457.

Computation of mandatory parole and conditional release time is discussed in State ex rel. Stenson v. Schmidt, 22 W (2d) 314, 125 NW (2d) 634.

The provision in 53.11 (7) entitling an inmate who has served his sentence, less good time earned, to a conditional release, applies only to inmates convicted of crimes committed after May 27, 1951; hence where petitioner served his sentence, less good time earned, for a crime committed prior thereto, he was entitled to an unconditional release. State ex rel. Eastman v. Burke, 28 W (2d) 170, 136 NW (2d) 297.

An inmate released on parole in a conditional release status is not entitled to a hearing, with advice of counsel, prior to a revocation of parole. Hughes v. Burke, 334 F (2d) 795.

A convict in the Wisconsin state prison who, during a portion of his term, has been insane and kept in a state hospital, is entitled to the same credit for good conduct as if he had been actually confined within the walls of the prison. 1906 Atty. Gen. 630.

After a prisoner's sentence is commuted, he has a right to good time he has earned prior to the time of making the order, no contrary provision being expressed. 1906 Atty. Gen. 657.

A convict who violates his parole may be deprived of all good time earned. 7 Atty. Gen. 432.

Good time earned while serving sentences concurrently results in diminution of time, of which a prisoner cannot be deprived because of such concurrent sentences. 24 Atty. Gen. 557.

The warden of the state prison, with the consent of the department of public welfare, may deprive a prisoner of all good time theretofore earned as punishment for his first or second offense as well as for third and subsequent offenses where in his judgment the facts warrant such action. A paroled prisoner may be deprived of good time theretofore earned, as punishment for violation of his parole. 29 Atty. Gen. 446.

53.12 History: 1947 c. 519; Stats. 1947 s. 53.12; 1963 c. 346.

Comment of Interim Committee, 1947: 53.12 is restated and is intended to cover all 3 prisons. Variation in the rate of wages is made optional. The provision as to contracts is omitted because prison contracts have been abolished. [Bill 35-A]

See note to 56.01, citing 41 Atty. Gen. 199.

53.13 History: 1947 c. 519; Stats. 1947 s. 53.13; 1953 c. 71.

Comment of Interim Committee, 1947: New 53.13 is from old 53.15. The committee recommends \$10 in place of \$5 on discharge or parole and makes the donation absolute; likewise the transportation. "Prison" is substituted for "Waupun" in the transportation clause, to extend the statute to Taycheedah and Green Bay. The provision for employment in the prison is omitted. [Bill 35-A]

The warden of the Wisconsin state prison is not required to furnish transportation or the means to procure transportation when the convict upon discharge or parole is met by a peace officer or by friends or relatives with an automobile, since it was the legislative intent that transportation be furnished only when necessary. 41 Atty. Gen. 249.

53.14 History: 1953 c. 71 s. 3; Stats. 1953 s. 53.14; 1955 c. 43; 1969 c. 366 s. 117 (2) (b), (3) (b).

53.15 History: 1955 c. 558; Stats. 1955 s. 53.15; 1963 c. 349; 1969 c. 492.

53.17 History: 1947 c. 519; Stats. 1947 s. 53.17.

Comment of Interim Committee, 1947: New 53.17 is a restatement of old 54.06. The provision for semiannual entries is deleted. The section is extended to cover "any state penal institution." [Bill 35-A]

53.18 History: 1947 c. 519; Stats. 1947 s. 53.18; 1955 c. 575 s. 9; 1959 c. 113; 1965 c. 218.

Comment of Interim Committee, 1947: New 53.18 restates and broadens old 54.07. The provision for approval by the governor is deleted from old 54.07 (1) and (3). The age of inmates to be transferred from the industrial schools is changed to 16 years for both boys and girls. (4) is made general. Old (5) has been combined with new (1). A new (5), relating to transferees, is created. [Bill 35-A]

53.19 History: 1963 c. 348; Stats. 1963 s. 53.19.

53.20 History: 1961 c. 314; Stats. 1961 s. 53.20.

53.30 History: 1947 c. 519; Stats. 1947 s. 53.30; 1961 c. 540.

Comment of Interim Committee, 1947: Old ch. 55 is entitled "County jails and other municipal prisons" and its provisions relate almost entirely to county jails. It is intended to confine 53.30 to 53.43 to the scope of ch. 55. 53.30 is intended to indicate that purpose. [Bill 35-A]

53.31 History: 1947 c. 519; Stats. 1947 s. 53.31.

Comment of Interim Committee, 1947: New 53.31 is from old 55.01. The duties of the county board, generally, are in ch. 59. Hence the introduction to old 55.01 belongs in ch. 59. It is in 59.68 and is omitted here. Temporary detention of persons in the custody of the department of public welfare is provided for. [Bill 35-A]

53.32 History: 1947 c. 519; Stats. 1947 s. 53.32; 1961 c. 200.

Comment of Interim Committee, 1947: New 53.32 is from old 55.02. The provision that the jail shall not be constructed in the basement of any other building is in 59.68 and is omitted here. The provision limiting the location is made general. [Bill 35-A]

The 300-foot distance between a jail and "school building" is to be measured from the school building, not the land boundary. A building containing a jail and rooms used for other purposes is not in violation if the jail entrance and jail part of the building are 300 feet or more from the school, even though other parts of the building are closer. A building used for Sunday school purposes is not a "school building" under 53.32. 45 Atty. Gen. 239.

The 300-foot distance between a jail and school building must be measured in a straight line between the nearest points of the 2 buildings. Where a school building has been constructed within 300 feet of an existing jail, the jail building may be enlarged, but not in the direction of the school building. An existing jail 300 feet or more from a school building may not be enlarged so as to bring it within the prohibited distance. 45 Atty. Gen. 244.

53.33 History: 1947 c. 519; Stats. 1947 s. 53.33; 1955 c. 76.

Comment of Interim Committee, 1947: New 53.33 is a restatement of old 55.03 without change of meaning. [Bill 35-A]

The county is liable to the sheriff for the expense of maintaining prisoners committed to the county jail after violation of a village ordinance. Interest is recoverable on the amount of the sheriff's account from the time of its disallowance. *Nickell v. Waukesha County*, 62 W 469, 22 NW 737. (See 62.24.)

A sheriff can recover only the actual expense of boarding or maintaining prisoners, and in order to recover more than was allowed by the county board must show that such expense was in excess thereof. *Doty v. Sauk County*, 93 W 102, 67 NW 10.

In order to recover expense the sheriff must keep accurate accounts and present them to the county board; if he neglects to keep accounts he can recover by action against the county only such expenses as he shows he incurred and such as are reasonable. *Deissner v. Waukesha County*, 95 W 588, 70 NW 668.

The sheriff is entitled to reimbursement from a county for maintenance of prisoners committed to the county jail in civil contempt proceedings as well as in criminal proceedings. 10 Atty. Gen. 561.

In the absence of any special agreement between a county and a city or village, expense incidental to transportation of a person convicted for violation of a municipal ordinance and sentenced to a county jail is paid by the city or village whose ordinance was violated. 24 Atty. Gen. 65.

A county is not liable to a city for maintenance of prisoners arrested on the initiative of city police and confined in a city jail. 38 Atty. Gen. 642.

While a county board has no statutory authority to compel a sheriff to maintain and

furnish records of his expenditures for expense of feeding prisoners in the county jail, he must nevertheless be able to furnish such records in order to substantiate any claim he may present to the county under 53.33, or to attack the fairness of any schedule of compensation for maintenance of prisoners adopted by the board under 59.15 (3). 39 Atty. Gen. 218.

53.34 History: 1947 c. 519; Stats. 1947 s. 53.34; 1969 c. 255 s. 64.

Comment of Interim Committee, 1947: New 53.34 restates old 55.04 without change of meaning. See also 359.06. [Bill 35-A]

If the county to which a prisoner is sent by an officer of another county pays its sheriff for maintaining him in jail, without the request of the other county, the payment is gratuitous, and an action by the county which makes it cannot be maintained against the other county. *Portage County v. Waupaca County*, 15 W 361.

53.35 History: 1947 c. 519; Stats. 1947 s. 53.35.

Comment of Interim Committee, 1947: New 53.35 is a restatement of old 55.05 without change of meaning. [Bill 35-A]

A county whose prisoners are transferred to the jail of another county for safekeeping is not liable to the latter county for damage to its jail incidental to the escape of such prisoners. 11 Atty. Gen. 102.

53.36 History: 1947 c. 519; Stats. 1947 s. 53.36.

Comment of Interim Committee, 1947: New 53.36 is from old 55.06 without change of meaning. [Bill 35-A]

53.37 History: 1947 c. 519; Stats. 1947 s. 53.37; 1953 c. 71; 1957 c. 610.

Comment of Interim Committee, 1947: Old 55.07 (except (4)) is renumbered 53.37 and restated. The provision that the county board shall fix the maximum compensation for board of prisoners is omitted. [Bill 35-A]

53.375 History: R. S. 1858 c. 187 s. 6, 7; R. S. 1878 s. 4497; Stats. 1898 s. 4497; 1919 c. 350 s. 12; 1925 c. 4; Stats. 1925 s. 346.47; 1947 c. 519; 1955 c. 696 s. 183; Stats. 1955 s. 53.375.

53.38 History: 1947 c. 519; Stats. 1947 s. 53.38.

Comment of Interim Committee, 1947: New 53.38 is a restatement of old 55.07 (4). The reference to 49.10 is corrected, as the provisions of that section were moved to 49.08 by ch. 585, laws of 1945. The limitation on liability for medical and hospital care of a prisoner held on body execution or civil arrest is omitted. * * * [Bill 35-A]

It is the duty of the county board to procure and furnish all needful medical aid and attendance to persons confined in its jail; and it may engage a physician by the year for that purpose. *Rider v. Ashland County*, 87 W 160, 58 NW 236.

53.39 History: 1947 c. 519; Stats. 1947 s. 53.39.

Comment of Interim Committee, 1947: New

53.39 replaces old 55.08. Instead of repeating that separate special provision on the furnishing of Bibles and religious ministrations in county jails, new 46.066 (in Bill 394-S revising ch. 46) is incorporated here by reference. [Bill 35-A]

53.40 History: 1947 c. 519; Stats. 1947 s. 53.40.

Comment of Interim Committee, 1947: New 53.40 is derived from old 55.09. In substance, 53.40 is like 53.10 relating to state prisons. Ten days is substituted for 20 days. [Bill 35-A]

53.41 History: 1947 c. 519; Stats. 1947 s. 53.41.

Comment of Interim Committee, 1947: 53.41 is a new and needed provision. [Bill 35-A]

There must be a matron present in the jail and awake at all times while there is a female prisoner therein. 45 Atty. Gen. 31.

53.42 History: 1947 c. 519; Stats. 1947 s. 53.42.

Comment of Interim Committee, 1947: 53.42 is a new and needed provision. [Bill 35-A]

There must be a jailer present and awake at all times while a prisoner is lodged therein. 45 Atty. Gen. 31.

53.43 History: 1947 c. 519; Stats. 1947 s. 53.43; 1959 c. 504.

Comment of Interim Committee, 1947: 53.43 is a new provision. [Bill 35-A]

53.44 History: 1961 c. 21; Stats. 1961 s. 53.44; 1969 c. 366 s. 117 (1) (c).

CHAPTER 54.

Youth Service Act.

54.01 History: 1947 c. 546, 560; Stats. 1947 s. 54.01; 1955 c. 575 s. 10.

Legislative Council Note, 1955: The amendments to this section and to other sections in ch. 54 are necessitated by the fact that all provisions relating to delinquents and community services are now covered by ch. 48. These amendments will leave ch. 54 containing only provisions on the treatment of convicted youthful offenders.

This section deals with the purposes of ch. 54 and, since that chapter, as stated above, will be restricted to convicted youthful offenders, the purpose clause must also be so restricted. The provisions deleted from this purpose section are restated in proposed s. 48.01 of section 7 of this bill. [Bill 444-S]

54.02 History: 1947 c. 546, 560; Stats. 1947 s. 54.02.

54.03 History: 1947 c. 546, 560; Stats. 1947 s. 54.03; 1949 c. 376; 1951 c. 245; 1955 c. 575 s. 11; 1969 c. 255, 366.

54.06 History: 1947 c. 546, 560; Stats. 1947 s. 54.06; 1949 c. 376; 1955 c. 575 s. 14.

54.08 History: 1947 c. 546, 560; Stats. 1947 s. 54.08.

54.10 History: 1947 c. 546, 560; Stats. 1947 s. 54.10; 1955 c. 575 s. 17.