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-

posed section covering the present one to find that information. The table is merely a guide to that information.

In some cases when a section is shown as repealed, another section number is given in brackets. This means that the section is repealed because it is covered by the one which is given in the brackets. For example, 54.04 (1) which creates a division for children and youth in the department of public welfare is repealed because 46.015 specifies the various divisions which make up the department. Therefore, no reason for the repeal of 54.04 (1) is given but 46.015 is shown in brackets on the table.

Some difficulty was experienced in dealing with ch. 54, since most of that chapter remains unchanged, although in some cases similar sections will also appear in ch. 48. Therefore, the table shows only those provisions where chapter 54 itself has been changed. Thus, present 54.01 is shown because part of it remains in 54.01 as amended by this bill and part is restated in 48.01 of the proposed children's code.

CONVERSION TABLE

Stats. 1953	*Stats. 1955*
48.01 (1) (a) and (b)	48.13
(1) (c)	48.12
(1) (c) last sentence	Repealed[1]
(2)	48.03
(3)	48.04
	48.05 (7)
	48.25
	48.26 (2)
	48.34 (3) (b)
	48.35 (2) (b)
	48.43 (3)
(4)	48.04
(5) (a)	48.12
	48.13
	48.14
(5) (am)	48.16
	48.18
(5) (am) last part of third sentence	Repealed[1]
(5) (am) last sentence	48.15
(5) (ar)	48.17
(5) (b)	48.34 (2) and (3)
(5) (c)	48.44
	48.45
(5) (d) and (e)	48.14
48.013	48.05
[48.015	48.09]
48.02 (1)	48.06 (1)
(1) last sentence	48.31 (3)
(2), (3), (4)	48.06 (2)[2]
(5)	48.06
(6)	48.08 (3)
(7)	48.06[2]
48.03	48.07 (1)
48.04 (1)	48.08
(2)	Repealed[3]
48.05	Repealed[3]
48.06 (1)	Repealed[4]
	48.19
	48.20
(2)	48.21
(3)	48.22
(4)	48.23
(5) and (6)	48.29
(7)	48.28
48.07 (1) (a) and (b)	48.34
	48.35
(1) (c) and (d)	Repealed[5]
(1) (e) and (1a)	48.36
(2)	48.25 (3)
(2a)	48.46
(3)	48.38
(3) last sentence	48.37
(4)	48.01
(5)	48.34 (3)
	48.35 (2)
(6)	48.27
(7) (a) (introductory par.)	48.43
(7) (a) 1	48.14
(7) (a) 2 to 4	48.40 (2)
(7) (am)	48.42
(7) (b)	48.43 (2)
(7) (c)	48.40 (1)
(7) (d)	48.43 (3)
	48.46[6]

[1]This provision giving the juvenile court jurisdiction over persons over 18 years of age but under 21 who are charged with certain nonviolent sex offenses is repealed because the committee was of the opinion that this type of crime did not merit special attention.

[2]Not all of the provisions in the present statutes are included in the proposed sections because they are amply covered by general provisions in ch. 59. See 59.07 (5) and 59.15.

[3]The provision in (1) relating to the appointment of individuals as probation officers is repealed on the ground that the statutes should provide only for professional service to the court; in those cases where the court feels that an individual in the community can provide better service on a given case, there is no need for special statutory authorization to call upon him.

(2) relating to the appointment of referees is repealed because they have never been used and because the advisory committee of juvenile court judges felt the use of referees is undesirable.

[4]This section prohibiting the sending of children as poor persons to county homes is repealed because it is obsolete.

[5](c) is repealed because the disposition, which the juvenile court may make of cases before it, is spelled out in detail in the revised chapter.

See footnote 1 for the reasons for the repeal of (d).

[6]The provision in this paragraph providing that all orders for the termination of parental rights are "valid and conclusive and binding" after 2 years is dropped in favor of the general provision that judgments are subject to direct attack on appeal for 40 days and then are subject only to collateral attack for lack of jurisdiction by the court. There is no reason why a judgment of a juvenile court in a termination of parental rights should not have the same status as any other court judgment.

Stats. 1953	*Stats. 1955*
(8)	48.47
(9)	48.34 (1) (c)
	48.35 (1) (b)
48.08 (1)	48.45 (2)
(2)	48.45 (3)
48.09	48.51
	48.52
48.10 (1)	48.24
(2)	Repealed[7]
(3)	48.34 (1) (f)
	48.35 (1) (c)
(3) last sentence	48.27
48.11	48.29 (2)
48.12 (1) and (2)	48.30
(3) (a)	48.31
(3) (b)	48.29 (3)
(4)	48.32
48.13	48.11
48.14	48.52
48.15	Repealed[8]
48.16 (1)	48.53[9]
(2)	48.51 (2)
	48.53
(3)	48.52
	48.55
48.17 (1)	48.48
(2)	Repealed[10]
48.18	48.55
48.19	48.48 (4) and (5)
48.20 (1)	48.52
(2)	48.35 (2)
	48.51
	48.52
(3) and (4)	Repealed[11]
48.22 (1)	48.48 (4)
(2)	48.48 (4) and (7)
	48.52
	48.55
	48.64
(3)	48.48 (8)
	48.84 (1) (c)
(4)	Repealed
	[46.014 (5)]
(5)	48.48 (6)
48.23	48.54
48.24	Repealed
	[40.77 (1) (b)]
48.28	48.58
48.29	48.56 (1) (b)
	and (2)
48.30	48.57
	48.59 (2)
48.31	48.48 (1) and (2)
	48.59
48.315	48.56 (1) (a)
	48.57
	48.75
48.32	48.48 (2)
48.34	48.99
48.35 (1)	48.60
(2)	48.61 (1) and (3)
(3)	48.61 (2)
(4)	48.61 (3)
(5)	48.61 (4)
48.36 (1)	48.61 (5)
(2)	48.61 (3) and (5)
	48.62
	48.64
	48.84 (1) (c)
(3) and (4)	48.64
48.37 (1)	48.63
(2)	48.67
	48.68
	48.71
(3)	48.70
	48.71
(4)	48.34 (3)
	48.35 (2)
	48.64
	48.67
48.38 (1) (a) and (b) first sentence	48.62
(1) (b)	48.64 (3)
(2)	48.62
	48.71
(3)	48.75
(4)	48.64 (2)
	48.67
48.385	48.57[12]
	48.75
48.39 (1) and (2)	48.71
(3)	48.71 (2)
	48.72
(4)	48.72
48.40 (1) (a)	48.74
(1) (b)	48.77
(2)	48.74
	48.68
	48.13 (1) (g)
48.41	48.76
48.42	48.98
48.43	rn. 140.35
48.44	rn. 140.36
48.45 (1)	48.63
(2)	rn. 140.37
48.46	rn. 140.38

[7]This provision is repealed because lack of an examination is not used as a ground for refusing a commitment at the Milwaukee county children's home, which is the only existing children's home.

[8]This section is repealed because it is amply covered by provisions in ch. 54.

[9]The power of the department to return a delinquent child to the juvenile court because the department cannot control him or because he is a bad influence at the training school is not retained. The court has no other source to draw upon if the department cannot handle the child and, in practice, the department never returns children.

[10]This section is repealed because persons who transport children to the department are in the employ of the county and receive their usual pay.

[11](3) is repealed because the superintendent of the child center is now under the division for children and youth of the department and, of course, reports frequently to the department.

(4) is repealed for the reason stated in footnote 10.

[12]48.385 is not completely covered by 48.57 because in a couple of counties the officer or agency administering public assistance is not the county welfare department. However, a check with the state department revealed that in those counties this section is not used. Therefore, 48.385 is amply covered by 48.57.

Stats. 1953	Stats. 1955
48.47	rn. 140.39
48.50 (1)	48.65 (1)
	48.70
	48.71
(2) and (3)	48.67
(4) (a), (b) and (c) first sentence	48.71
(4) (c) last sentence	48.72
(5)	48.73
(6)	48.65 (2)
(7)	48.76
54.01	48.01 (2)
	54.01
54.03 (2), (3), (4) and (5)	Repealed[13]
54.04 (1)	Repealed [46.015]
(2)	rn. 46.03 (2a)
54.06	48.79
	54.06
54.07	48.80
54.08	No change
54.09	48.34
	48.49
54.10 last sentence	Repealed[13]
54.11 second sentence	48.07
54.12 to 54.31 (1)	No change
54.31 (2)	48.53
54.32 to 54.38	No change
322.01	48.81
	48.82
	48.83
	322.01
	322.02
	322.03
322.02 (1) and (2)	48.88 (2) (a)
(2) last sentence	48.87
(3)	48.88 (3)
	48.02 (8)
(4)	48.90
322.03 (1)	48.88 (1)
(2) and (3)	48.91 (1)
	322.04
322.04 (1)	48.84 (1), (2) (b), and (3)
	48.02 (8)
(2) and (3)	48.84 (1)
	48.89 (1)
(4)	48.84 (2) (a)
(5)	48.84 (1) (c)
	48.88 (2) (b)
(6)	48.84 (1) (b)
	48.89 (1) (a)
(7)	322.02
(8)	48.40
(9) (a)	48.84 (2) (a)
(b)	Repealed[14]
(10)	48.89 (2)
(11)	48.84 (4)
322.05	48.91 (2)
	322.04
	48.94
322.055	48.95
322.06	48.93
322.07	48.92
322.08	48.96
322.09	Repealed[15]

[13]The provisions, which are repealed, were necessary in ch. 54 when that chapter applied to the treatment of delinquents and to the coordination of community services as well as to convicted offenders. Now that the chapter will apply only to the latter it would be confusing to leave the provisions in the chapter.

[14]This paragraph was inserted in the law for one particular case, which has been decided, and, therefore, is no longer necessary. See In re Adoption of Morrison, 267 W 625, 66 NW (2d) 732 (1954).

[15]This provision was dropped by the committee on the ground that an adoption order should have the same status as any other final order of the court, i.e., it is subject to direct attack on appeal for a very limited period, and then is subject to collateral attack only on ground of lack of jurisdiction. There is no good reason for allowing attack for procedural errors on an adoption order for 2 years after the adoption is granted.

Legislative Council Note, 1955: This bill is the result of nearly 1½ years of study by the legislative council child welfare committee of the laws relating to children. The principal part of the bill appears in section 7. That section contains a revision of ch. 48, which includes not only those sections now in ch. 48 but also those provisions in ch. 54 which relate to the treatment of delinquents and to community services and those provisions in ch. 322 which relate to the adoption of minors. Therefore, a number of sections in ch. 54 and most of the sections in ch. 322 appear in ch. 48 in this bill. These changes are made in response to the directive to the committee by the 1953 legislature to study "all present laws relating to children and youth with a view to systematic and unified codification." [Bill 444-S]

48.01 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.01.

Legislative Council Note, 1955: Sub. (1) is self-explanatory.

A statement of the intent of a legislative enactment is always helpful. Sub. (2) contains such a statement. It states the over-all purpose of the sections contained in this chapter relating to juvenile courts, child welfare services, community services, and adoptions. In the present statutes there is a statement of legislative intent buried in s. 48.07 (4) which apparently was taken from the Standard Juvenile Court Act. However, ch. 48 covers more than the juvenile court provisions.

Sub. (3) contains a statement regarding the construction of ch. 48 taken from the opinion of the supreme court in In re Aronson, 263 W 604, 610, 58 NW (2d) 553 (1953) that ". . . the interest of the child is of paramount consideration in construing these statutes . . ." It is pretty clear, however, that the courts do and should take into consideration the interests of the child's parents or guardian and the interests of the public, so in sub. (2) these were added. See Sayre, Awarding Custody of Children, 160 Annals 66 (1932), who advocates best-interests-of-persons-involved test. The interests of the public will probably be most evident in delinquency cases.

Sub. (3) is intended to effect a change in

the construction of the adoption statutes. Although the courts have said that in adoption statutes the principal consideration is the best interests of the child [see for example, Adoption of Jackson, 201 W 642, 231 NW 158 (1930); Adoption of Morrison, 260 W 50, 49 NW (2d) 763 (1951)], they have also held that the adoption procedure, since it was unknown to the common law, is purely statutory and the statutes must be strictly followed. See Adoption of Bearby, 185 W 33, 200 NW 686 (1924); Adoption of Morrison, 260 W 50, 49 NW (2d) 763 (1951). Sub. (3) provides that the sections in ch. 48 including those on adoption should be liberally construed. The concept of adoption has become so firmly embedded in our law that to treat the adoption sections as some type of new law is unrealistic. In addition, the juvenile court law is not strictly construed although it also is not a common-law institution and it seems inconsistent to construe sections equally intended to promote the best interests of the child in different ways. [For a discussion of changing views on the construction of adoption statutes see 1 Am. Jur., Adoption of Children, ss. 5, 6 and 77.] [Bill 444-S]

Nothing but the best interests of the child will warrant a juvenile court in depriving a child of a home, or a parent of the care and custody of a child. Even though the home is imperfect, doubt should be resolved in favor of the home. In re Alley, 174 W 85, 182 NW 360.

In proceedings in the juvenile court involving the right of a parent to the custody of his or her child, such right must be considered paramount until circumstances show that the parent has forfeited it. In re Fish, 246 W 474, 17 NW (2d) 558.

The Children's Code. Melli, 1956 WLR 431.

48.02 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.02; 1959 c. 306; 1969 c. 333, 351; 1969 c. 366 s. 117 (1) (c).

Legislative Council Note, 1955: In this section certain terms used throughout the chapter are defined. When any of these terms appears in a section, reference should be made to the definition. This device—defining a term and using it with that same meaning throughout the chapter—not only decreases the amount of repetition necessary but also makes for uniformity in interpretation of the chapter.

Sub. (1) merely provides a term which can be used for convenience in referring to all types of agencies performing child welfare services.

Subs. (2) and (3) need no explanation. The definitions in subs. (4) and (5) and (7) are used for convenience. The terms "child welfare agency," "day care center," and "foster home" are used throughout the proposed chapter and the present law, but they are restricted to those persons, facilities, associations and corporations which must be licensed in accordance with the requirements of the sections specified in the definitions. Sub. (6) is self-explanatory.

The definition of "guardian ad litem" in sub. (8) is included because there apparently has been some difficulty in distinguishing the guardian ad litem from a general guardian. See, for example, the provision in s. 322.04 (1). The last sentence of the definition probably does not properly belong in a definition but there was no other logical place to put it; and it seemed better to have the provision in this section rather than to repeat it in every section where guardian ad litem is mentioned.

The definitions of "guardian" and "legal custody" in subs. (9) and (10) are very important. These definitions attempt to clarify 2 of the most perplexing legal terms in the field of legislation involving children. Both terms are used to describe certain rights of adults in regard to the control of children. But unfortunately the distinction between the 2 terms has not been too clearly defined and, in some cases, the terms are used synonomously. This situation arises principally from the fact that right to custody of the child usually accompanies guardianship. The distinction between the terms becomes important in a field like that of the juvenile court where frequently the custody of the child is taken from his parent without disturbing any of the basic, major rights which a parent has because he is the natural guardian of his child. Subs. (9) and (10) define the rights and duties involved by the use of each term. Guardianship is the more inclusive concept and includes the rights and duties involved in legal custody unless legal custody is placed elsewhere by court action. The person having legal custody does not always have physical custody of the child. For example, a parent having legal custody may place his child in a boarding school or camp which will then have custody of the child. But, the parent, because he has legal custody, has the right to take that child from the custody of the school or camp at any time he chooses. This is true also in the case where the court has vested legal custody with a child welfare agency. The agency may place the child in a foster home and the foster parents then have custody of the child. But the agency, because it has legal custody of the child, may remove the child without going back to court.

The problem in regard to the distinction between "legal custody" and "guardianship" is aggravated in our present statutes by the fact that the term "commitment" is frequently used to cover the transfer of legal custody or guardianship. "Commitment" is also a term with varied meanings (see 7A Words and Phrases, Commitment) and research has shown that judges in Wisconsin have differing views regarding what they are doing when they "commit" a child to a child welfare agency or the state department of public welfare. Therefore, this term is dropped and "transfer of guardianship" or "transfer of legal custody" is used instead.

The definitions of "legal custody" and "guardianship" are patterned after suggestions in Standards for Specialized Courts Dealing with Children, Children's Bureau Publication No. 346 (1954).

The definition of parent in sub. (11) is present law. [Regarding the mother as the "parent" of an illegitimate child, see: Adoption of Morrison, 260 W 50, 49 NW (2d) 763 (1951); 30 Ops. Atty. Gen. 282 (1941).]

The definition of relative in sub. (12) is new. At present the term "relative" is defined

in 2 different ways in ch. 48 [see ss. 48.35 (1) and 48.50 (6)] and in other places is used without definition [see s. 48.07 (1)]. The committee felt that "relative" should mean the same throughout the chapter. This definition is unlike any definition presently in ch. 48; it is less restrictive than the definition in s. 48.50 (6) and more restrictive than the one in s. 48.35 (1).

The term "consanguinity" means relationship by blood. "Direct affinity" means the relationship between one spouse and the blood relatives of the other spouse; this relationship is the same as that which the spouse has with his blood relatives. Therefore, the wife's nephew is her husband's nephew; but that nephew is not related to the husband's blood relatives by direct affinity. See Black's Law Dictionary (4th ed.); 2 Words and Phrases, Affinity. [Bill 444-S]

Re putative father as the "natural" parent an illegitimate child for purposes of the foster home license requirement under ch. 48, Stats. 1953, see In re Aronson, 263 W 604, 58 NW (2d) 553.

48.03 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.03; 1957 c. 317; 1959 c. 19; 1961 c. 495; 1967 c. 226.

Legislative Council Note, 1955: This section corresponds to s. 48.01 (2) (a) and (b). Sub. (1) is very similar to the present provision except that it provides that once a court is designated as juvenile court it shall continue to serve as such until the judges designate another one. Present law requires the designation be made once a year. Sub. (1) makes it clear that the "juvenile court" is merely an already established court to which certain jurisdiction has been given and which, when it is exercising that jurisdiction, must follow certain procedures. This, of course, is not peculiar to the juvenile court since our courts frequently employ different procedures for different types of cases as, for example, the difference in procedure between criminal and civil cases.

Sub. (2) represents no change from the present provision.

The first sentence of sub. (3) is the same as the present provision except that it provides for the designation of a temporary judge by the circuit judge for the county in cases where the juvenile court judge is unable to make the designation; for example, where he is totally incapacitated. Present law provides for such designation by the juvenile court judge. In addition, the wording has been changed slightly to emphasize the fact that it is preferable that the judge called in be a juvenile court judge. The second sentence of sub. (3) is new. It contains provision for payment of the judge who temporarily acts for a juvenile court judge. The provision is similar to that in s. 253.07 on county judges.

Sub. (4) makes it clear that the court of record, designated to exercise juvenile court jurisdiction, does not lose its character as a court of record when exercising that jurisdiction. [Bill 444-S]

Under ch. 48, Stats. 1921, the court of record which is designated by the judges in each county as the court for the exercise of juvenile jurisdiction conferred on all courts of record is not a separate juvenile court, and the venue and other papers on appeal therefrom should be stated as from the county court or other court designated and not as from the juvenile court. In re Johnson, 173 W 571, 181 NW 741.

In the interest of justice and rights of a minor alleged to be delinquent, a juvenile court has inherent power to order a post mortem on the application of a minor's attorney even though the district attorney and coroner refuse to order such post mortem. 26 Atty. Gen. 335.

48.035 History: 1959 c. 259; Stats. 1959 s. 48.035.

48.037 History: 1969 c. 352; Stats. 1969 s. 48.037.

48.04 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.04.

Legislative Council Note, 1955: Subs. (1) and (2) rearrange and restate certain provisions now contained in subs. (3) and (4) of s. 48.01. The provisions dealing with appointment of a temporary clerk in case of illness or disability have been dropped on the ground that they are unnecessary.

Sub. (3) is a new statutory provision although it appears to be the law at the present time. See, for example, 7 Ops. Atty. Gen. 625 (1918); 25 Ops. Atty. Gen. 549 (1936); 34 Ops. Atty. Gen. 337 (1945). [Bill 444-S]

48.05 History: 1955 c. 575 s. 7; 1955 c. 653; Stats. 1955 s. 48.05; 1961 c. 495.

48.06 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.06; 1957 c. 374; 1965 c. 462, 590; 1967 c. 345; 1969 c. 55; 1969 c. 366 s. 117 (1) (c).

Legislative Council Note, 1955: This section requires that each county provide personnel to investigate and supervise cases for the juvenile court. Sub. (1) covers only Milwaukee county and is a restatement of present law contained in s. 48.02 (1) and (5). Sub. (2) covers the other counties in the state and differs from present law in that it requires all counties to furnish services for the court. At present such provision is discretionary with the county. For approximately 50 years the Wisconsin statutes have placed the responsibility for services to the juvenile court on the local governments without requiring them to shoulder that responsibility. The result has been that children in certain areas of the state receive inadequate service from their juvenile court.

The county may provide the services for its juvenile court in a number of ways. Par. (a) of sub. (2) deals with what is usually regarded as the ideal way of furnishing services to a juvenile court—by means of workers on the court staff. About 10 counties at present employ such workers. In most counties, however, there is not sufficient caseload to warrant having special workers to handle court cases only and, therefore, par. (b) provides that workers with the county welfare department or county children's board may be authorized to give those services to the court. These agencies will also be providing other child welfare services. See s. 48.57 as proposed in this bill.

In sub (2) (a), dealing with juvenile court workers on the staff of the juvenile court, provision is made that, where possible, juvenile

court workers shall have the qualifications required for state social workers under civil service law who perform similar types of duties. At present, the statutes require that all probation officers have the same qualifications as state probation officers (who are classified as social workers), but it is well known that many do not. Therefore, in the revised section the qualification is stated as a desirable objective and not as a mandatory requirement.

Another change made in the law by sub. (2) (a) is in the third sentence which provides for the appointment of a supervisor when there is more than one juvenile court worker. This is similar to a provision in the present law which apparently applies to Milwaukee county only. See s. 48.02 (5).

In sub. (2) (a) the term "juvenile court worker" is used instead of "probation officer." The term "probation officer" has been criticized as an inaccurate description of the work done by persons furnishing services to the juvenile court. The comment to s. 5 of the Standard Juvenile Court Act states: "There has been considerable dissatisfaction with this title for worker with children. Probation officers seldom arrest children; the word 'probation' is an inadequate description of social casework and is more appropriately applied to work with convicted adults in the criminal courts. The term 'probation counselor' has been adopted in Rhode Island, 'youth counselor' in Mississippi, and simply 'counselor' in Toledo." In view of these criticisms, the committee decided to use the term now used by Dane county for the professional caseworkers with its juvenile court. No change was recommended for the Milwaukee children's court since officials of that court preferred to retain the old terminology. [Bill 444-S]

48.07 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.07; 1969 c. 94; 1969 c. 366 s. 117 (1) (c).

Legislative Council Note, 1955: This section deals with supplementary services for the juvenile court. They are to be used by the juvenile court when other services are inadequate for a particular case or type of cases. The fact that these services are available does not relieve the county of the duty of furnishing its own services because, by law, the supplementary services may not be used unless the county board has complied with s. 48.06.

Sub. (1) covers services provided by the state department of public welfare. At present the state department provides services under s. 48.02 (7). The proposed provision differs from the present one in that the state department must furnish services when requested while at present the department does not have to furnish the services unless it has certified that it has adequate personnel and facilities to do so.

Sub. (2) provides for the use of private agencies for investigating cases and supervising children. There is no direct provision in the present law for the use of such agencies but they clearly can be appointed as special probation officers under s. 48.04 (1). That provision relating to special probation officers was dropped on the ground that the statutes should provide only for professional service to the court; in those cases where the court feels that an individual in the community can provide better service on a given case, there is no need for special statutory authorization to call upon him. [Bill 444-S]

48.08 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.08; 1965 c. 462; 1967 c. 345.

Legislative Council Note, 1955: Subs. (1) and (2) deal with the duties and powers of persons who are investigating or supervising cases for the juvenile court. They are quite similar to the provision in s. 48.03, except that that provision apparently applies only to persons serving on the staff of the juvenile court.

Sub. (3) (b) allows a juvenile court worker on the staff of any juvenile court to order detention of a child or to determine whether a petition should be filed in a particular case, if he is authorized to do so by the judge. In practice, this undoubtedly happens now but under present law only the chief probation officer of the Milwaukee Children's Court is authorized to do so. See s. 48.03, which is contained in sub. (3) (a) of the proposed section. The language of the present statute has been retained since it has already stood a Supreme Court test. See Harry v. State, 246 W 69, 16 NW (2d) 390 (1944). [Bill 444-S]

A petition alleging that a child was delinquent, filed with the juvenile court by a probation officer of Milwaukee county, was filed in accordance with ch. 48, Stats. 1943, so as to give the court jurisdiction, without the court's previously making a preliminary inquiry or authorizing a petition to be filed. Harry v. State, 246 W 69, 16 NW (2d) 390.

48.09 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.09.

48.10 History: 1961 c. 495 s. 88; Stats. 1961 s. 253.21 (2); 1963 c. 459 s. 56; Stats. 1963 s. 48.10.

See note to 48.03, citing In re Johnson, 173 W 571, 181 NW 741.

48.11 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.11.

Legislative Council Note, 1955: This section replaces s. 48.13 dealing with the board of visitation. Some courts have found this type of committee is very helpful in informing the community of the problems confronting the court. The section is patterned after Va. Code s. 16-172.22 (1954 cum. supp.). [Bill 444-S]

48.12 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.12.

Legislative Council Note, 1955: This section covers s. 48.01 (1) (c). The committee has retained as much as possible the language of the present law. However, the provision giving the juvenile court jurisdiction over persons beyond 18 years of age but under 21 who are charged with certain nonviolent sex offenses is repealed. The committee was of the opinion that this type of crime did not merit special attention by the courts. Replies to a questionnaire sent to all the juvenile court judges in the state indicated that many of them were of the same opinion. Of the 63

who replied, 34 were in favor of dropping this provision in the law.

"Child" is defined in s. 48.02 of this bill as a person under 18 years of age. "Guardian" and "legal custody" are also defined in s. 48.02 of this bill. [Bill 444-S]

Under 573-1, Stats. 1917, a child who has intentionally absconded from or refused to attend a vocational school may be treated as a delinquent child. State v. Freudenberg, 166 W 35, 163 NW 184.

See note to 48.24, citing Winburn v. State, 32 W (2d) 152, 145 NW (2d) 178.

The term "child" in 48.12, Stats. 1965, when read with 48.02 (3), is construed as setting up two requisites before jurisdiction attaches; hence, in order for a juvenile court to have jurisdiction over a child, he must be charged with delinquency while still a child. State ex rel. Koopman v. Waukesha County Court Judges, 38 W (2d) 492, 157 NW (2d) 623.

Under ch. 48, Stats. 1945, a juvenile court has jurisdiction of acts of delinquency committed off the reservation by tribal Indian children. (28 Atty. Gen. 455 explained). 34 Atty. Gen. 330.

Civil courts are without jurisdiction to handle prosecutions of minors under 18 for violation of any ordinance other than traffic ordinances conforming with state law. 46 Atty. Gen. 204. See also 46 Atty. Gen. 306.

48.13 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.13; 1959 c. 566.

Legislative Council Note, 1955: Sub. (1) covers the jurisdiction of the court over the neglected child. The first six paragraphs are taken from the present law. See s. 48.01 (1) (a).

Par. (g) is quite similar to the present provision [ss. 48.01 (1) (a) and 48.40 (2)] except that it includes all foster homes which any agency authorized by law to license foster homes has refused to license. The present law is limited to cases where the state department of public welfare refuses a license.

Par. (h) is a new provision. It is necessitated by the requirement in s. 48.63 that the juvenile court shall approve all nonrelative homes in which a parent or guardian places a child for adoption. If the court finds that the home is not desirable for adoption, it should have the power to remove the child and make other arrangements for it. Of course, if the parents of the child have placed the child for adoption and then disappeared the court may find grounds of abandonment to terminate parental rights and appoint an agency as guardian of the child so that a suitable adoptive home may be found for the child.

Par. (i) is also a new provision in the law. It is included to fill a gap in the present law which arises when an adoption petition is denied. Unless an agency has legal custody of the child, the county court is supposed to refer the case to the juvenile court for proper disposition. Yet, under present law, although the county court may find that the home is not a suitable one for adoption, the juvenile court may find that the home is not sufficiently bad to come within the provisions of the present law on neglect and the child may be allowed to remain in the home. Yet, everyone will agree that the child is entitled to a permanent arrangement and should be removed from the home so that he can be placed in a desirable adoptive home. Par. (i) gives the juvenile court the authority to do this.

Par. (j) is another new provision. It attempts to provide some overlapping between the grounds for a finding of delinquency or neglect. Children frequently are brought before the juvenile court for violations of law or other conduct which constitutes delinquency, but the court finds that, on all the evidence, their conduct results more from parental neglect. This provision clearly gives the court the authority to find the child neglected. Frequently, also, the courts will want to find a child neglected rather than delinquent because such a finding will enable the court to use certain facilities which are not open to children adjudged delinquent. This provision for overlapping between the findings of delinquency and neglect may aid the court in this respect.

Sub. (2) on the dependent child represents a substantial change from the present provision which includes a child who is "destitute or without proper support through no fault of his parent, guardian or custodian." [s. 48.01 (1) (b)]. Today, such a child would not have to be brought into court, but his family would be able to receive some type of public assistance, probably aid to dependent children, which would enable him to remain with his family. Pars. (b) and (c) cover a provision in s. 48.01 (5) (a) 2.

"Child" is a person under 18 years of age. See s. 48.02 of this bill. "Guardian" and "legal custody" are defined in s. 48.02 of this bill. [Bill 444-S]

Under ch. 48, Stats. 1923, an infant born in a state hospital for the insane, whose parents are confined in such hospital, may be committed to a state school as a dependent and neglected child. 13 Atty. Gen. 565.

Ch. 48, Stats. 1939, does not authorize a juvenile court to commit to the state public school a dependent Indian child who resides on the reservation and who maintains his tribal relations, such child being under the exclusive jurisdiction of the U. S. government. 28 Atty. Gen. 455.

48.14 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.14; 1957 c. 468.

Legislative Council Note, 1955: This section states the jurisdiction of the juvenile court over 3 very different types of proceedings relating to children. In general, they are proceedings now before the juvenile court.

Sub. (1) merely states that the juvenile court has jurisdiction over the termination of parental rights in accordance with the procedures set forth in ss. 48.40 to 48.43. It is similar to s. 48.01 (5) (a) 2. One change is made from the present law: the juvenile court has the jurisdiction to terminate parental rights of minors, i. e., persons under 21, while at present, its jurisdiction extends only to those who are under 18. Under present law, apparently the only time that parental rights to a person between 18 and 21 can be terminated is in an adoption proceeding. See s. 322.04 (8). There may be other reasons for terminating parental rights in the case of an

older youngster as there is in the case of one under 18. This provision places all termination of parental rights in the juvenile court.

Sub. (2) (a) provides that the juvenile court has jurisdiction over the appointment and removal of a guardian for a minor where parental rights have been terminated. Under present law [s. 48.07 (7)] the juvenile court has this jurisdiction over children and the provision has been enlarged to include minors because of the increase in the jurisdiction over termination of parental rights to include minors. The provision regarding the removal of the guardian is taken from s. 48.07 (7) (a) 1., which apparently is intended to allow the court to remove one guardian and appoint another. Section 48.07 (7) (a) 1. refers to the appointment of a new guardian when the person or agency is not fitted to have the care, control and custody of the child. This is not stated in the proposed provision because, in addition to removal for cause, the court should have jurisdiction to remove a guardian and appoint a new one merely because the guardian wishes to be relieved of his charge. The problem of the removal of a guardian for cause has been discussed by the supreme court at length in In re Bagley's Guardianship, 203 W 89, 233 NW 563 (1930). Although that case involved a guardian appointed by the county court, the same rules would apply to a guardian appointed in juvenile court:

"The courts have a superintending control but will not interfere with the guardian's control unless there is a failure in some particular showing a purpose to serve a selfish interest, an inclination to be indifferent to the interests of the ward, or some act detrimental to the ward's welfare. Merely because the judge of the county court, if acting as a guardian, might have followed a different course does not warrant the removal of a guardian, . . .

To justify interference with a guardian's control there must be some positive misbehavior, want of integrity, or negligence affecting the ward's welfare."

Sub. (2) (b) covers the case under the present law where an orphan is committed to the permanent care, control, and custody of an agency. Apparently, a permanent commitment is the same as the appointment of a guardian. See, for example, s. 48.22. Since the term "permanent commitment" is not used in this revision, the provision in par. (b) is necessary. Furthermore, if the court is appointing the agency as guardian, it seems more desirable to have that clearly stated.

Sub. (3) restates provisions in s. 48.01 (5) (a) 3., (d) and (e), except that now the juvenile court order may serve in lieu of an application under ch. 51 in cases of hearings on mental illness as well as mental deficiency and in cases where the child is alleged to be dependent as well as those where a delinquent or neglected child is involved.

"Child" is a person under 18 years of age. See s. 48.02 of this bill. "Guardian" means a guardian of the person and is more fully defined in s. 48.02 of this bill. So is "legal custody." [Bill 444-S]

48.01, Stats. 1943, and the procedure provided by 51.01 et seq., give to judges of juvenile courts jurisdiction to commit children under 18 who are suffering from epilepsy involving mental disorder or from mental disorder resulting from epilepsy. In re Ziegler, 245 W 453, 15 NW (2d) 34.

See note to 51.05, citing 38 Atty. Gen. 615.

48.15 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.15.

Legislative Council Note, 1955: The first sentence of this section is now the last sentence of s. 48.01 (5) (am). It clearly preserves the jurisdiction of other courts over the awarding of legal custody in habeas corpus proceedings or in other proceedings before them, as for example, the right of the divorce court to award legal custody of a child of divorced parents. The second sentence is necessary, however, because problems have arisen regarding the extent of the right of other courts to determine the legal custody of children. Problems have arisen principally in relation to the divorce court since that court has continuing jurisdiction over the legal custody of the children of divorced couples [s. 247.24]. For example, some persons have questioned the right of the juvenile court to take jurisdiction over a child alleged to be delinquent when that child is under the continuing jurisdiction of the divorce court because his parents are divorced. This section makes it clear that the jurisdiction of other courts over the legal custody of children does not interfere when facts have arisen which support the exclusive jurisdiction of the juvenile court as spelled out in ss. 48.12, 48.13, and 48.14. [Bill 444-S]

The subject of jurisdiction of other courts to make custody orders where a juvenile court has made an order is discussed in State ex rel. Rickli v. County Court, 21 W (2d) 89, 123 NW (2d) 908.

48.16 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.16.

Legislative Council Note, 1955: The provisions relating to the county where a case should be heard are venue provisions not jurisdictional ones and, therefore, should be placed in a section separate from the one on jurisdiction. Present statutes apparently treat these provisions as jurisdictional requirements. See s. 48.01 (5) (am).

This provision applies only to delinquency, dependency and neglect proceedings under ss. 48.12 and 48.13. Venue for the termination of parental rights is covered in s. 48.41 and for the commitment of mentally ill or deficient children in ch. 51. The appointment of a guardian will be covered by the venue provisions for dependency proceedings or termination of parental rights proceedings depending on the type of proceeding in which the guardian is appointed.

This section drops one ground of venue in the present statutes and adds another. Under present law [s. 48.01 (5) (am)], the county where the parent, guardian or custodian is present has "concurrent jurisdiction." This provision is dropped. But, in the case of a violation of law, an additional ground for venue is included, i. e., the county where the violation of law occurred. Although this ground is not included in the present law, the attorney general has outlined for district at-

torneys a means of effecting the same result by issuing a warrant for the youngster if he resides in another county, thus giving the authorities the power to return him to the county where the violation occurred. The juvenile court of that county would then have jurisdiction because the child would be present within the county. See 34 Ops. Atty. Gen. 48 (1945). [Bill 444-S]

Editor's Note: On the subject of venue see 47 Atty. Gen. 99.

48.17 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.17; 1957 c. 260 s. 7; 1963 c. 490; 1969 c. 352, 469.

Editor's Note: On the subject of jurisdiction of criminal courts and juvenile courts in cases involving alleged violations of state traffic laws, see 46 Atty. Gen. 204 and 306.

48.18 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.18; 1959 c. 447; 1963 c. 490; 1969 c. 469.

Legislative Council Note, 1955: This section covers a provision in s. 48.01 (5) (am), but differs considerably from that provision. It provides that in the case of a child 16 years of age or older who has violated a state law, the juvenile court may transfer the case to the criminal court which will then have jurisdiction to dispose of it. The present statute merely provides for concurrent jurisdiction, so the case is heard by the court first obtaining jurisdiction. In addition, the present statute is not clear on what type of cases should be tried by the criminal courts. It refers to any child over 16 who is delinquent, which includes children who are truant from school or who run away from home, neither of which is criminal conduct. This provision clearly requires that there must be a violation of state law which, undoubtedly, is the type of case now heard by the criminal courts. [Bill 444-S]

Editor's Note: In Kent v. United States, 383 U. S. 555, the U. S. supreme court held that the provision of the D. C. Juvenile Court Act which authorizes the D. C. Juvenile Court to waive jurisdiction over cases involving children gives the court a substantial degree of discretion but does not authorize the court to waive jurisdiction over one charged with delinquent conduct without according a hearing, without allowing effective assistance of counsel, without preparing a statement of reasons for the waiver, and in disregard of counsel's motion for a hearing.

Under ch. 48, Stats. 1935, a juvenile court has no jurisdiction in a case involving crime of a minor over 18, although the minor was previously committed as delinquent. 24 Atty. Gen. 754.

Waiver of jurisdiction in Wisconsin juvenile courts. Buss, 1968 WLR 551.

48.19 History: 1955 c. 575 s.7; Stats. 1955 s. 48.19.

Legislative Council Note, 1955: This section amplifies the provision in s. 48.06 (1), under which the juvenile court makes "informal" disposition of cases of children alleged to be delinquent, neglected, or dependent. The purpose of the provision is to outline in the statutes the rights of a child in cases of informal disposition. For example, the court should not have the right to make informal disposition of a case if the child has not done some act or is not in a condition which would bring him before the juvenile court on a formal petition. In addition, if the child's parents object to the obligations imposed, they should have the right to file a petition and to make a record so they may appeal. The parents may feel, for example, that their child did not do the acts for which he is placed on "unofficial probation."

This section is patterned after Idaho Code s. 16-1706 (as am. Idaho Laws 1953 c. 260, s.6) and Va. Code s. 16-172.30 (1954 cum. supp.). See also Cal. Wel. & Inst. Code s. 721 (1953 supp.).

Informal disposition of a case may be handled by the probation department of the court. See s. 48.08 as proposed in this bill. [Bill 444-S]

Editor's Note: On the applicability of the due-process clause of the Fourteenth Amendment to juvenile court proceedings, the following decisions of the U. S. supreme court are relevant: Haley v. Ohio, 332 US 596; Gallegos v. Colorado, 370 US 49; In re Gault, 387 US 1; In re Whittington, 391 US 341; and De Backer v. Brainard, 396 US 29. In the Gault case the U. S. supreme court held that the commitment of a boy (aged 15 years) to a state institution under authority of the Juvenile Code of Arizona was invalid under the due-process clause of the Fourteenth Amendment because the proceedings leading to the commitment involved the denial of the following: (1) the right to have notice of the charges; (2) the right to counsel; (3) the right of confrontation and cross-examination of witnesses; and (4) the privilege against self-incrimination.

The institution of a juvenile delinquency proceeding under ch. 48, Stats. 1937, maliciously and without probable cause, by complaining in writing to a juvenile court that a schoolboy is a delinquent child in that he had caused a disturbance in the school, had defaced the building, had sent threatening letters to the teacher and is incorrigible, is ground for an action for malicious prosecution. Lueptow v. Schraeder, 226 W 437, 277 NW 124.

Proceedings under ch. 48, Stats. 1943, relating to the protection of neglected, dependent and delinquent children, are in no sense criminal proceedings, and thereunder the juvenile court has great power, which is not restricted by the rules of procedure followed in criminal courts. Harry v. State, 246 W 69, 16 NW (2d) 390.

Under 48.19, which contemplates a preliminary consideration of a child's case by the juvenile court before the court authorizes the filing of a petition, and which provides that "an investigation shall be made by persons designated by the court to determine the facts," the judge has discretion to treat his own consideration of the information presented to him as a sufficient preliminary investigation and, where he has done so, failure to have some other person make an investigation is therefore not deemed to be a jurisdictional defect. State ex rel. Rickli v. County Court, 21 W (2d) 89, 123 NW (2d) 908.

In the procedure prescribed in 48.19 and 48.20, it is contemplated that the child charged

with delinquent behavior be physically present in juvenile court, before that court can commit him to the custody of the department of public welfare, and such physical presence gives the juvenile court jurisdiction over the custody of the child. State ex rel. LaFollette v. Circuit Court, 37 W (2d) 329, 155 NW (2d) 141.

The role of the juvenile court in our legal system. Yehle, 41 MLR 284.

In re Gault and the privilege against self-incrimination in juvenile court. Duffy, 51 MLR 68.

Habeas corpus review. Parins, 42 WBB, No. 5.

The juvenile court and the adversary system: problems of function and form. Handler, 1965 WLR 7.

Wisconsin juvenile rights after Gault. Zillman, 1968 WLR 1219.

48.20 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.20; 1957 c. 260 s. 8; 1969 c. 469.

Legislative Council Note, 1955: This section describes the type of petition necessary in delinquency, neglect, or dependency proceedings. Sub. (1) is a new provision. Subs. (2) and (3) cover most of the material now found in s. 48.06 (1). Sub. (4) is a new provision in the law. It eliminates the necessity of a petition in the case of a traffic violation. [Bill 444-S]

Under ch. 48, Stats. 1943, a juvenile court is not limited to the charge contained in the original petition and, once the child is brought before the court and the facts are presented, the court may order the petition to be amended and adjudge the child to be a neglected, a dependent or a delinquent child, as the facts warrant. Harry v. State, 246 W 69, 16 NW (2d) 390.

48.21 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.21.

48.22 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.22; 1965 c. 252.

Legislative Council Note, 1955: This section is largely a restatement of s. 48.06 (3). Sub. (1) deals with the service of summons or notice in a delinquency, neglect or dependency proceeding. The time limits for such service are new. They are patterned after a provision in the Michigan law. See Mich. Comp. Laws s. 712A. 13 (1948).

Sub. (2) deals with the service of summons or notice in delinquency, neglect or dependency proceedings or in termination of parental rights proceedings.

Sub. (3) deals with the payment for the service or publication of summons or notice and traveling expenses and fees for witnesses in all cases coming within the jurisdiction of the juvenile court. [Bill 444-S]

Regular witness fees may be paid to witnesses in juvenile court and also to the person summoned to bring a child into court, if also used as a witness; but no per diem for bringing a child into court is allowed. 22 Atty. Gen. 190.

48.23 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.23.

48.24 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.24; 1965 c. 391.

Insanity at the time of the offense constitutes a defense to an allegation of juvenile delinquency and if proved the petition should be dismissed. Winburn v. State, 32 W (2d) 152, 145 NW (2d) 178.

48.25 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.25; 1969 c. 87.

Legislative Council Note, 1955: The first sentence of sub. (1) is new, but it clearly states present practice. The second sentence covers some of the material in s. 48.01 (3) at present. It makes a change in the law in that it requires that all hearings be private ones, while now the hearing may be public if the judge so orders or the parties demand. The last sentence covers the provision in s. 48.06 (2) providing that in cases of dependency, neglect or termination of parental rights, the child does not have to be present at the hearing. It seems wiser to give the court this power in a broader provision, relying on its discretion.

Sub. (2) is taken from a provision in s. 48.01 (3).

The first 2 sentences of sub. (3) are statements of case law. See Harry v. State, 246 W 69, 16 NW (2d) 390 (1944); also People v. Lewis, 260 N. Y. 171, 183 N. E. 353 (1932); 86 ALR 1008 (1933). The third sentence is the same as s. 48.07 (2).

Sub. (4) is a provision now contained in s. 48.01 (3).

Subs. (5) and (6) are new. A number of states have provision for the appointment of guardians ad litem in certain circumstances. See Ala. Code s. 13-352 (1940); N. D. Code s. 27-1625 (1943); Va. Code s. 16-172.39 (1954 cum. supp.). [Bill 444-S]

Legislative Council Note, 1969: Since this bill removes all references to juries in municipal courts, reference is made instead to civil practice in courts of record. This also changes the jury in juvenile cases from a 6-man jury to a 12-man jury. [Bill 9-A]

Proceedings against dependent and neglected children under ch. 48, Stats. 1919, are not criminal proceedings but are proceedings in the legitimate exercise of the police power of the state. The granting of separate trials rests in the discretion of the trial court. Denial of jury trial, when demanded, constitutes reversible error. In re Johnson, 173 W 571, 181 NW 741.

See note to 48.47, citing In re Aronson, 269 W 460, 67 NW (2d) 470.

Although a juvenile hearing need not comply with all the requirements of a criminal trial or even of the usual administrative hearing, in order to conform to the minimum standards prescribed by the U. S. supreme court it must measure up to the essentials of due process and fair treatment. Winburn v. State, 32 W (2d) 152, 145 NW (2d) 178.

See note to 59.47, citing 34 Atty. Gen. 337.

48.26 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.26; 1957 c. 411, 672; 1959 c. 19.

Legislative Council Note, 1955: Sub. (1) is new. Under present law, although juvenile court records are closed, much information can be obtained from police records which in many places are not closed. The Standard Juvenile Court Act recommends this type of

provision. See s. 15 of that act. A number of state statutes contain similar provisions. See, for example: Va. Code s. 16-172.29 (1954 cum. supp.); Wyo. Stat. s. 1-709 (1953 cum. supp.).

Sub. (2) is a restatement of a provision in s. 48.01 (3). [Bill 444-S]

Under 48.26 (1), Stats. 1967, law enforcement agencies cannot make juvenile records available to representatives of the U. S. armed forces without court order. 56 Atty. Gen. 211.

48.27 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.27; 1965 c. 201; 1969 c. 351.

Legislative Council Note, 1955: This section covers s. 48.07 (6) (a), (b), and (c) and a provision in s. 48.10 (3). No change in the present law regarding county liability is intended. The committee recognizes that the present law is unsatisfactory but recommends that it be retained until an exhaustive study has been made of the complex problems involved in the payment for foster care.

In cases where there is a dispute regarding the county of legal settlement, the counties are allowed to appeal to the department for settlement of the dispute. S. 48.07 (6) (c) provides that such disputes may be settled in any circuit court, but the procedure through the department was substituted as quicker and less costly.

"Legal custody" is defined in s. 48.02 of this bill. [Bill 444-S]

If no other valid provision is made for payment of the cost of a child's care, the county of its legal settlement is liable by force of statute (48.07 (6), Stats. 1941). 31 Atty. Gen. 294.

The judge of the juvenile court may require the probation department of his court to receive money and keep a record thereof under 48.07 (6), Stats. 1945. 34 Atty. Gen. 218.

The county of legal settlement is liable for support of a child committed to custody other than that of his parent, pursuant to 48.07 (6), as amended in 1951. Notice to the county of legal settlement is desirable but not a prerequisite to commitment of the child. The county of legal settlement is liable for the support irrespective of notice, but a county cannot be bound by an erroneous finding of legal settlement in the absence of notice. 40 Atty. Gen. 298.

48.28 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.28; 1957 c. 140.

Legislative Council Note, 1955: This section covers s. 48.06 (7). It is very similar to Va. Code s. 16-172.601 (1954 cum. supp.).

The term "custody" is used in this section to distinguish it from "legal custody" which is used in this chapter to indicate the transfer by a court of certain control over a child. [Bill 444-S]

See note to 48.29, citing 46 Atty. Gen. 284.

48.29 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.29.

Legislative Council Note, 1955: This section covers subs. (5) and (6) of s. 48.06 except that the provision for bail has been dropped on the ground that bail has no place in a juvenile court law. The comment to s. 15 of the Standard Juvenile Court Act points out: "The decision whether to hold a child in detention or to release him should depend upon his welfare and protection, not upon the availability of a bail bond." See also 160 ALR 287 (1946); Standards for Specialized Courts Dealing with Children, 47, Children's Bureau Publication No. 346 (1954).

Sub. (1) deals with the release of children taken into custody. It requires a verbal promise by the child's parent, guardian, or legal custodian to bring him to court, not a written one, as the present statutes do. The written promise may be required if the officer feels it is necessary but, since the written promise frequently is not required at present, the statute was amended to conform to practice.

The appointment with the court which is made under sub. (1) may be for informal disposition under s. 48.19 of this bill and may be an appointment with a member of the staff of the juvenile court, not the judge, since members of the staff can perform any of the functions of the judge prior to the filing of a petition, if authorized by the judge to do so. See s. 48.08 of this bill. If the person to whom the child is released does not keep the appointment, a petition may be filed and a summons served in accordance with ss. 48.20 and 48.21 of this bill.

Sub. (2) deals with the detention of children. It requires that all detention must be on order of the court, but then allows a 24-hour leeway in certain cases. Present statutes require an order of the court only in the case of detention in jail [see s. 48.12 (1)] but require immediate notification of the court of all detention. [See ss. 48.06 (5) and 48.11.] There has been much complaint about the lack of flexibility in both provisions. The provision in sub. (2) is intended to provide this flexibility by allowing some time interval and by allowing the judge to authorize any person designated to provide services to the court to order detention. [Bill 444-S]

Under 48.29, Stats. 1957, a written order of the juvenile judge or other authorized person is necessary to detain a child taken into custody under 48.28, unless detention is during unreasonable hours or on Sunday or holiday. A child cannot be taken into custody under 48.28 for purposes of interrogation or investigation unless there is reasonable suspicion of circumstances bringing the case under 48.28. 46 Atty. Gen. 284.

48.30 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.30.

Legislative Council Note, 1955: Sub. (1) is a restatement of parts of s. 48.12 (1) and (2) of the present law, except for one major change: the age limit of 14 for detention of a child in jail is dropped. Under this section, if a child needs secure detention and there is no other place in which he can be detained, he may be detained in a jail if he is kept entirely separated from adults and the jail is approved by the state department of public welfare for the detention of children.

Sub. (2) is a restatement of the first part of s. 48.12 (1).

Sub. (3) is taken from the last sentence of sub. (3) (b) of s. 48.12. [Bill 444-S]

48.31 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.31; 1961 c. 614; 1965 c. 462; 1969 c. 333.

Legislative Council Note, 1955: Sub. (1) differs from present law in that it allows 2 or more counties to join together to establish a detention home.

Sub. (2) covers a provision in s. 48.12 (3) (a).

Sub. (3) covers provisions in s. 48.12 (3) and s. 48.02 (1) (last sentence). [Bill 444-S]

48.32 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.32.

Legislative Council Note, 1955: Since all counties in the state, except Milwaukee, probably do not have sufficient juvenile cases needing detention to warrant the building of a detention home for one county, one of the primary problems in this area is that of planning the location of detention homes to serve entire areas of the state. This planning can be done more efficiently on a state level. This section replaces s. 48.12 (4). [Bill 444-S]

48.33 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.33.

48.34 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.34; 1961 c. 173; 1963 c. 554; 1969 c. 469.

Legislative Council Note, 1955: This section and the next section are largely restatements of the present law to be found in ss. 48.01 (3), (5) (b), 48.07 (1), (9), and 48.10 (3), but they rearrange the provisions and clarify them. The 2 sections are parallel provisions: this section deals with children adjudged delinquent and the next one deals with those found neglected or dependent. This organization differs from the present law which deals with the various types of children together. Actually, many of the provisions on disposition are identical for all types of children. But, sufficient difficulty has been experienced under the present statutes to warrant separating the provisions governing delinquent children from others.

Sub. (1) (a) is a new provision although undoubtedly the court can do it under the present law. Sub. (1) (b) covers the case where the child who is found to be delinquent is allowed to remain in his own home under supervision. That provision is now contained in s. 48.07 (1) (a) although the present provision does not specifically provide that the court can prescribe rules for the conduct of the child's parents, guardian or legal custodian as part of the conditions of the supervision. Sub. (1) (c) deals with the placement of children in foster homes directly by the juvenile court. The exemption of the foster home from a license if the child is there for less than 30 days is now contained in s. 48.07 (9). Sub. (1) (d) deals with the transfer of legal custody of children, which at present is usually called a "temporary commitment." Legal custody is defined in s. 48.02 of this bill. The person or agency having legal custody of a child is responsible for providing for that child although the actual care of the child may be delegated to another. The present provisions are in s. 48.07 (1) (a) and (b). Sub. (1) (e) is a new provision allowing the juvenile court to require a child to make reasonable restitution for damage he does to another's property. This provision is considered by the courts to be desirable in helping them cope with the problem of vandalism by children. Sub. (1) (f) is taken from s. 48.10 (3).

Sub. (2) is intended to eliminate the cases of "forgotten probationers," which sometimes occur. Under present law the court may place a child under supervision until he is 21 or until discharged by the court. See s. 48.01 (5) (b). Sometimes, a child is placed under supervision or "probation" for an indefinite period and then contact with him may be lost. His probationary status is not doing him any good because he is not receiving any service, but he still has the disabilities of being under supervision by order of the court. In this type of case there should be some provision for automatic termination of the supervision.

Sub. (3) (a) is a restatement of provisions in s. 48.07 (1) (b) and (5), except for the requirement of yearly reporting to the court. "Person" includes both individuals and agencies. See s. 370.01 (26).

Sub. (3) (b) is taken from a provision in s. 48.01 (3), except that it allows the court the alternative of sending a summary of its information or a transcript of the hearing, while the present statute requires a transcript.

Sub. (4) (a) is a new provision in the statutes intended to clarify the status of the continuing jurisdiction of the juvenile court over children adjudged delinquent. See 24 Ops. Atty. Gen. 754 (1935); 31 Ops. Atty. Gen. 133 (1942).

Sub. (4) (b) allows for the transfer of a case from one county to another if a child is in that county. This undoubtedly happens at present but it was decided that such a provision would be desirable in the statutes. A transfer is desirable particularly where a child is under supervision by a person working under the juvenile court. [Bill 444-S]

The provision of ch. 48, Stats. 1935, that all commitments of delinquent children to industrial schools shall be to the age of 21 is not changed by other provisions of the children's code so as to give the juvenile court jurisdiction to release from an industrial school a child committed to it by the court. In re Willard, 225 W 553, 275 NW 537 and 225 W 562, 275 NW 541.

A federal court cannot commit a boy to the Wisconsin industrial school for boys. 4 Atty. Gen. 1121.

Indian boys found guilty of misdemeanors in local Indian court cannot be committed to and accepted by the Wisconsin industrial school for boys. 26 Atty. Gen. 25.

Where a child was adjudged delinquent by the juvenile court of County A and placed in a foster home in County B at the expense of County A and while so in County B committed further acts of delinquency, the juvenile court of County B had concurrent jurisdiction notwithstanding retention of jurisdiction by the juvenile court of County A. If it was error for the juvenile court of County B to assume jurisdiction under such circumstances, such error did not affect the jurisdiction of the court but constituted error committed within the jurisdiction. However, it was probably not error for the juvenile court of County B to assume jurisdiction under the circumstances, thus saving the expense of returning the child, together with witnesses, to the juvenile court of County A. 31 Atty. Gen. 133.

See note to 54.23, citing 36 Atty. Gen. 609.

Documents required to be furnished by a juvenile court upon transfer of custody of delinquent, neglected, and dependent children to the state department of public welfare pursuant to 48.34 (3) (b) and 48.35 (2) (b), Stats. 1957, and in cases of termination of parental rights pursuant to 48.43 (3), are to be furnished at the expense of the county and are not required to be paid for by the department. 47 Atty. Gen. 35.

48.35 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.35; 1957 c. 138.

Legislative Council Note, 1955: As pointed out in the note to the preceding section, this section deals with the disposition of cases of children adjudged to be neglected or dependent.

Sub. (1) is identical to provisions in sub. (1) (b), (c), (d) and (f) of s. 48.34 of this bill and the discussion of those provisions in the note to s. 48.34 applies here.

Sub. (2) (a) covers provisions in s. 48.07 (1) (b) and (5) except for 2 changes: Under the present statute it appears that the court cannot set the term for which legal custody of a child found neglected or dependent is given to the department. In practice, the courts do specify such a time. The provision in sub. (2) allows the courts to do this. The other change from the present provision is in the requirement that there be a yearly report to the court. "Person" includes both individuals and agencies. See s. 370.01 (26).

Sub. (2) (b) is the same as s. 48.34 (3) (b) of this bill and sub. (3) the same as s. 48.34 (4) (b). The discussion of those provisions in the note to that section applies here. [Bill 444-S]

See note to 51.05, citing 38 Atty. Gen. 615.

The requirement of annual reports, contained in 48.35 (2), Stats. 1955, is not applicable to children, legal custody over whom was transferred prior to July 1, 1956. 45 Atty. Gen. 311.

See note to 48.34, citing 47 Atty. Gen. 35.

When neglected children are present in a county other than that of the court having continuing jurisdiction, said court may transfer jurisdiction to the county where the children are present and the juvenile judge of the latter county is obliged to assume jurisdiction. 52 Atty. Gen. 28.

48.37 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.37.

48.38 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.38.

Legislative Council Note, 1955: Sub. (1) is standard in juvenile court acts. It is taken from sub. (3) of s. 48.07.

Sub. (2) clarifies the power of the juvenile court judge to disclose information of juvenile court proceedings. Although sub. (1) clearly does not prohibit the judge from disclosing information except in limited circumstances, certain rulings of the attorney general have broadened the scope of the section considerably. See, for example, 41 Ops. Atty. Gen. 70 (1952). [Bill 444-S]

A ruling in a criminal proceeding excluding the defendant's introduction of a record made in juvenile court concerning the complaining witness was proper, as in compliance with 48.07 (3), Stats. 1941. Sprague v. State, 243 W 456, 10 NW (2d) 109.

The children's code was enacted by the legislature for the promotion of the best interests of the children of the state. Prohibiting the admission into evidence of juvenile proceedings into other courts of the state is an implementation of this express purpose. Smith v. Rural Mut. Ins. Co. 20 W (2d) 592, 123 NW (2d) 496.

See note to sec. 1, art. IV, on legislative power generally, and note to 885.19, citing Banas v. State, 34 W (2d) 468, 149 NW (2d) 571.

48.39 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.39.

Legislative Council Note, 1955: This section is a restatement of present case law. See State ex rel. White v. District Court of Milwaukee County, 262 W 139, 54 NW (2d) 189 (1952). [Bill 444-S]

48.40 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.40; 1959 c. 580; 1969 c. 293.

Legislative Council Note, 1955: This section and the next 3 sections cover the termination of parental rights which is now in s. 48.07 (7). They differ from that provision in that they apply to the termination of parental rights to minors, i.e., persons under 21, while the present provision is limited to the termination of parental rights to children, i.e., persons under 18. The proposed sections will cover the provision now in s. 322.04 (8).

This section specifies the grounds for the termination of parental rights. Sub. (1) deals with the voluntary termination of the parent's rights. This is the usual type of case. Present statutes allow for the voluntary termination of parental rights on the "application" of the parent. [s. 48.07 (7) (c).] The courts differ in their interpretation of an "application" some requiring the parent to file a petition and others merely requiring his written consent to the termination. Sub. (1) clearly requires that the parent consent to the termination of his rights.

Sub. (2) covers the grounds for terminating parental rights because of the unfitness of the parent. The first 4 paragraphs are substantial restatements of the present law. [s. 48.07 (7) (a) 2 and 3.] Par. (e) covers the provision in s. 48.07 (7) (a) 4., which has been interpreted by the attorney general to mean that the rights of a mentally deficient parent who abandons or neglects his child cannot be terminated on that ground but only by waiting 2 years and having a re-examination of the parent to determine if he is still mentally deficient. [41 Ops. Atty. Gen. 362 (1952).] Sometimes the mentally deficient parent disappears before the 2 years have passed and under the attorney general's ruling that parent's rights cannot be terminated. The committee studied the problem and concluded that the important question is not the parent's mental deficiency since some mentally deficient persons make adequate parents but whether that mental deficiency makes the parent incapable of giving the child proper parental care and protection.

Sub. (3) is a new provision in the law. Where parental abandonment, neglect or un-

fitness, constituting grounds for termination of parental rights, existed prior to the finding of mental illness, the child should be protected. [Bill 444-S]

Where a parent is imprisoned for life he is not to be considered as having abandoned his child within the meaning of 48.07 (7), Stats. 1935. 25 Atty. Gen. 577.

A juvenile court could terminate parental rights of a parent abandoning a child, pursuant to 48.07 (7), Stats. 1953, notwithstanding that the court in which the parents were divorced has jurisdiction of the question of care and custody of said child pursuant to 247.25. 42 Atty. Gen. 341.

Where neglected children have been committed to the department and placed by such department temporarily in licensed foster homes in other counties, and the parents are living in another state but have refused to consent to adoption, parental rights may be terminated by said court under 48.07 (7), Stats. 1953, upon proper notice where statutory grounds for such termination are proved. 44 Atty. Gen. 136.

For discussion of grounds for termination of parental rights see 46 Atty. Gen. 53.

Laws and procedures governing the termination of parental rights are discussed in 52 Atty. Gen. 338.

48.41 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.41.

Legislative Council Note, 1955: This section deals with jurisdiction and venue in termination of parental rights proceedings. The first sentence deals with jurisdiction. It restates what appears to be the present practice, that the courts will terminate the rights of parents who have moved to other states but whose children are left in Wisconsin. This apparently is based on the assumption that the termination of parental rights proceeding is a quasi-in-rem proceeding regarding a status, i.e., the parent-child relationship, and can be treated in the same manner as divorce, for example. [But see the opinion in May v. Anderson, 345 U. S. 528, 73 S. Ct. 840 (1953).]

If the court has jurisdiction, i.e., if either the minor or both the minor and his parents are in the state, the proceeding should be heard by the court which made temporary disposition of the case, if any. Otherwise, the county where either the minor or his parents are should be able to hear the proceeding. [Bill 444-S]

48.42 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.42; 1965 c. 252; 1969 c. 293.

Legislative Council Note, 1955: This section deals with procedures such as the giving of notice and the appointment of a guardian ad litem for a minor or incompetent parent. The first sentence of sub. (1) is taken from s. 48.07 (7) (am). The second sentence is also taken from that section except that provision is made for service by registered mail in addition to publication in cases where personal service cannot be effected. The present statute provides for personal notice or, if personal service cannot be obtained, notice by publication. Whether this means that personal service must be made outside the state if the parent is outside the state or that service can be made by publication alone in cases of a nonresident parent even though his address is known is not clear. The third sentence of sub. (1) is a new provision allowing the parent to waive the 10-day waiting period in those cases where he consents to the termination of his rights. Such a statutory provision is actually not necessary for adult parents but it is necessary to allow the minor parent and his guardian ad litem to waive notice.

The first sentence of sub. (2) is now in s. 48.07 (7) (am) except that the proposal includes provision for the appointment of a guardian ad litem for an incompetent parent as well as for a minor one. The second sentence of sub. (2) is a new provision which is copied from the requirement in the adoption sections that the minor parent's consent to the adoption of his child is invalid unless the guardian ad litem joins in the consent. Since the consent of a parent to adoption of his child is, in fact, one way of terminating his rights, there should be some correlation between the 2 provisions. [Bill 444-S]

Before the rights of parents to custody, companionship and affection of their children may be extinguished there must be an abandonment by the parents by conduct or written consent or notice given to them of the proceedings wherein such rights are sought to be extinguished. Lacher v. Venus, 177 W 588, 188 NW 613.

See note to 48.47, citing In re Aronson, 269 W 460, 67 NW (2d) 470.

Termination of parental rights without proper notice under 48.07 (7), Stats. 1931, is without jurisdiction and action may be brought to set the same aside. 24 Atty. Gen. 133.

The putative father of an illegitimate child is not entitled to notice of proceedings for termination of parental rights and transfer of permanent custody of the child to a welfare agency. 30 Atty. Gen. 282.

Termination of parental rights with respect to an illegitimate child born to a married woman is discussed in 33 Atty. Gen. 177.

Appearance of a minor mother and her guardian ad litem at separate hearings would not invalidate a judgment terminating her parental rights in her illegitimate child when other requirements of 48.07 (7), Stats. 1949, are met. 38 Atty. Gen. 179.

See note to 48.40, citing 52 Atty. Gen. 338.

48.43 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.43; 1957 c. 672; 1959 c. 306.

Legislative Council Note, 1955: This section deals with the disposition of the case if the court finds that there are grounds for terminating parental rights. This section, unlike the present section [s. 48.07 (7) (a)] requires that where the termination of parental rights leaves the child without a parent (sometimes only one parent's rights are terminated) [see sub. (2)] to look out for his interests, a guardian shall be appointed. Under present law, the court may appoint a guardian, which means that some youngsters are left in a never-never land without parents or a guardian. Every minor has the right to have someone responsible for him. The agencies specified in pars. (a), (b), and (c) are those in the present law; but the law is changed in regard

to individuals being appointed guardians [see par. (d)] in that they are limited to those in whose home the minor has resided at least one year prior to the termination of parental rights. This provision is included to prevent the circumvention of the law restricting independent placements by the use of a judicial proceeding.

Sub. (2) restates s. 48.07 (7) (b).

Sub. (3) covers provisions in ss. 48.01 (3) and 48.07 (7) (d). [Bill 444-S]

In proceedings had pursuant to 48.06 and 48.07, Stats. 1953, the best interests of the child are paramount in a situation where the same conflict with the rights of a putative father. In re Aronson, 269 W 460, 67 NW (2d) 470.

See note to 48.34, citing 47 Atty. Gen. 35.

48.44 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.44.

Legislative Council Note, 1955: Although the juvenile court jurisdiction is, of course, primarily limited to children, there are limited circumstances in which it exercises jurisdiction over older persons. These circumstances are spelled out in this section.

Sub. (1) is a restatement of present law. See s. 48.01 (5) (c). Sub. (2) is new. It is intended to clarify a provision in the present law, relating to continuing legal custody of delinquents beyond the age of 21. Present law (s. 54.32) provides that the department should apply to the committing court when it desires to retain control over a person. In the case of a person whose legal custody had been transferred on an adjudication of delinquency the committing court is the juvenile court but that court has no jurisdiction over persons beyond 21 unless the statutes give it that jurisdiction. Sub. (2) gives the juvenile court that jurisdiction. [Bill 444-S]

48.45 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.45; 1957 c. 38.

Legislative Council Note, 1955: This section is largely a restatement of present law except that some of the present provisions use the terms adult and minor while this section distinguishes between a child and a person 18 or older.

Sub. (1) is s. 48.01 (5) (c) at present. Sub. (2) is presently s. 48.08 (1) and sub. (3), s. 48.08 (2). Sub. (4) is now s. 351.20 (1) and (3) (first sentence). The definition of "contributing to the delinquency or neglect" in sub. (5) is new. [Bill 444-S]

A woman giving intoxicating liquor in the form of wine to minor children may be prosecuted under the children's code in connection with a proceeding against minor children to whose delinquency she contributed. 18 Atty. Gen. 554.

48.46 History: 1955 c. 575 c. 7; Stats. 1955 s. 48.46.

Legislative Council Note, 1955: This section covers s. 48.07 (2a) and the last sentence of 48.07 (7) (d). It is clearly limited to the finding of new evidence since the supreme court has held that the present provision is so limited. In re Willard, 225 W 553, 562, 275 NW 538, 541 (1937).

One major change is made from the present statutes. While there is no time limit in s. 48.07 (2a) and a 2-year limit in 48.07 (7) (d), this section is limited, like the general provision in s. 270.50 on new trials on the ground of newly-found evidence, to a one-year period. [Bill 444-S]

48.47 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.47; 1957 c. 374; 1961 c. 495; 1969 c. 216, 424.

Legislative Council Note, 1955: This section is a substantial change from the provision in s. 48.07 (8) setting up appeals from the juvenile court. It sets out who may appeal from an order of the juvenile court, something which the present statute does not do. The designation of the persons who can appeal is intentionally broad to take care of situations such as that which arose in In re Aronson, 263 W 604, 58 NW (2d) 553 (1953).

Another important change is that it allows an appeal by a welfare agency which files a petition in a case since the agency would come within the class of those aggrieved by the adjudication and directly affected thereby. This overrules In re Fish, 246 W 474, 17 NW (2d) 558 (1944). [Bill 444-S]

Editor's Note: In Reed v. Duter, 416 F (2d) 744, the circuit court of appeals (7th circuit) held that where a juvenile did not take a direct appeal and subsequently sought state post-commitment review but was unable to obtain consideration on the merits of the petition or of her right to counsel thereon because of apparent concern of the state courts as to availability of public funds for payment of counsel, the district court would have jurisdiction to hear the juvenile's petition for a federal writ of habeas corpus unless within a reasonable time the state would furnish the assistance of counsel in effective procedure to test the validity of her commitment.

The putative father of illegitimate child, appearing and acknowledging that he is the father, is a proper party to the proceedings possessing a right of appeal under 48.07 (8), Stats. 1953, even though the proceedings are not jurisdictionally defective if he has not been notified thereof. The person having custody of the child at the time of institution of proceedings, as well as a parent, has the right to appeal. In re Aronson, 263 W 604, 58 NW (2d) 553.

Proceedings of a juvenile court are in the nature of a judicial inquiry, which differs materially from the ordinary action between adversary parties, and error occurring in the trial, which would be of such character as to be prejudicial and necessitate a new trial in the ordinary action, may not necessarily require such a result in such proceedings. In re Aronson, 269 W 460, 67 NW (2d) 470.

A county department of public welfare could appeal to the circuit court from an order of the juvenile court dismissing its petition for the termination of parental rights to a child in the legal custody of the department; and under 274.09, 274.33 (2), Stats. 1957, the county and state departments of public welfare could appeal to the supreme court from the final order of the circuit court in the matter. In re Johnson, 9 W (2d) 65, 100 NW (2d) 383.

On appeal to the circuit court from an order of the juvenile court terminating parental rights, and also on appeal to the supreme

court from the circuit court, the question presented is whether the findings of the juvenile court were against the great weight and clear preponderance of the evidence, and whether the juvenile court abused its discretion, and neither appellate court may make independent findings of its own. In re Johnson, 9 W (2d) 65, 100 NW (2d) 383.

48.48 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.48; 1957 c. 138, 672; 1959 c. 19, 306; 1969 c. 216.

Legislative Council Note, 1955: This section states the child welfare services of the state department of public welfare. It covers provisions which at present are in several sections. Sub. (1) comes from s. 46.03 (7) (a). Sub. (2) covers ss. 48.31, 48.32 and 54.06 (5). Sub. (3) is not specifically stated in the statutes at present although clearly the department has authority to accept such legal custody. Sub. (4) covers ss. 48.17 (1), 48.19 and 48.22 (1). Sub. (5) is a new provision; under present statutes there is a similar provision for licensed child welfare agencies [s. 48.35 (5)] and the committee considered it desirable to have the state department covered by the provision also.

Sub. (6) is taken from s. 48.22 (5), but the provision has been considerably narrowed after consultation with the attorney for the State Medical Society. Under the present statute there is no requirement that an attempt be made to obtain the consent of the child's parent or guardian.

Sub. (7) is taken from the first sentence of s. 48.22 (2). Sub. (8) covers s. 48.22 (3) of the present law and sub. (9) s. 48.32 (2). Sub. (10) comes from ss. 48.37 (2) and 48.50 (1); sub. (11) from s. 46.03 (7) (b). [Bill 444-S]

48.49 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.49.

Legislative Council Note, 1955: One of the objectives of this revision of the children's laws is to integrate provisions in ch. 54, dealing with the treatment of children adjudged delinquent, with ch. 48. This section is one of the sections designed to effect that integration. The principal difference between its application in ch. 54 and in ch. 48 is that it now applies to children found neglected and dependent as well as those found delinquent. The method of notifying the state department and delivering the child to the custody of the state is the same regardless of the child's adjudicated status.

The first sentence of sub. (1) is taken from s. 54.19, except that the department does not have to be notified in writing. Frequently, the department is notified by telephone which, because it is faster, usually is much better than a written notice.

The second sentence of sub. (1), dealing with transportation, is taken from s. 54.09 of the present law. It differs from that provision because it allows the state the alternative of requiring the court to provide transportation for the child to a receiving place or to deliver the child to personnel of the department. If the child is to be placed immediately in a foster home, it may be more desirable to have him delivered to department personnel rather than taken to a receiving center. These receiving centers may be part of an institution or they may be special group homes maintained by the department for the temporary care of children.

Transportation of the child to the place designated by the department is the responsibility of the court not the state department.

Sub. (2) is similar to s. 54.20. [Bill 444-S]

48.50 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.50.

Legislative Council Note, 1955: This section is similar to s. 54.27 (1). It is similar to a Virginia statute. See Va. Code s. 63-292 (1950). [Bill 444-S]

48.51 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.51.

Legislative Council Note, 1955: This section draws together a number of scattered provisions in the present law [ss. 48.09, 48.16 (2) and 48.20 (2)], all intended to provide flexibility in the type of care given children in the legal custody of the department.

This section is similar to ss. 54.29 and 54.30, but it must be remembered that this section applies to the type of care which may be given to children adjudged delinquent, neglected or dependent, while ch. 54, with the amendments proposed by the committee, will apply only to convicted offenders. [Bill 444-S]

48.52 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.52; 1959 c. 71; 1961 c. 67; 1969 c. 366 s. 117 (1) (c); 1969 c. 492.

Legislative Council Note, 1955: This section contains the facilities which the department may use in providing care and treatment for children in its legal custody.

Sub. (1) lists the various types of facilities operated by the department for the care of children committed to it as neglected, dependent, or delinquent. The institutions, facilities, and services specified in par. (d) are limited to children who have been adjudged delinquent. These facilities may include forestry or conservation camps or other types of vocational training, which may be recognized as helpful in rehabilitating delinquent youngsters. All the other facilities may be used for either neglected, dependent or delinquent children. For example, under the present program the state department has some foster homes for delinquent children as well as many foster homes for neglected and dependent children.

This section is intended to provide the same type of flexibility in the treatment of children in this field as s. 54.30 was intended to provide for delinquents and youthful offenders. It replaces provisions in ss. 48.09, 48.14, 48.16 (3), 48.20, and 48.22.

Sub. (2) is taken from s. 54.24. The difference is that s. 54.24 applies to delinquent children only (and youthful offenders), while this section applies to all children committed to the state department as neglected, dependent, or delinquent. It should be pointed out, however, that this is the approach used for neglected and dependent children at present.

Only children adjudged delinquent may be transferred to penal institutions; and the power to transfer them expires on July 1,

1959, or such earlier date as medium security facilities for delinquents are in operation. This will allow time for 2 legislatures to review the problem of transfers to penal institutions and to extend the power if no medium security facilities are built. For example, the only medium security facility planned is for boys which does not solve the problem of delinquent girls who cannot be handled at an open institution. At present a significant number of delinquent girls are transferred to the Home for Women.

If the power to transfer is extended beyond July 1, 1959, the legislature may want to consider the problem of a minimum age at which children may be transferred to a penal institution. Section 53.18 limits the transfer to children 16 or older, but this section apparently was superseded by the passage of s. 54.24 in 1947 because the state department of public welfare occasionally transfers 15-year-old boys to the state reformatory. [But see 39 Ops. Atty. Gen. 334 (1950)]

The legislative council child welfare committee wishes to go on record in opposition to the transfer of delinquent children to penal institutions. It recommends that the transfer to penal institutions be considered as a temporary measure only until security facilities for delinquents are available. [Bill 444-S]

On delegation of power see notes to sec. 1, art. IV.

Transfer of juveniles to adult correctional institutions. Dix, 1966 WLR 866.

48.53 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.53.

Legislative Council Note, 1955: This section is a restatement of present law. Sub. (1) is a restatement of provisions in ss. 48.16 and 54.28. Sub. (2) covers s. 54.31 (2) and makes it clear that the provisions in ch. 54, regarding the retention of legal custody of persons believed to be dangerous, apply to delinquents. [Bill 444-S]

48.54 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.54.

Legislative Council Note, 1955: This section is taken from s. 48.23 except that section applies only to children at the child center; this section applies to all children in the legal custody of the department. [Bill 444-S]

48.55 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.55; 1957 c. 616; 1965 c. 604.

Under ch. 48, Stats. 1933, in the case of a child having no legal settlement in any county, the cost of the child's support must be borne by the state. 23 Atty. Gen. 118.

Under 48.55, Stats. 1955, the county of legal settlement is chargeable for the care of a child in legal custody of the state department of public welfare, notwithstanding transfer or commitment to a penal institution. 46 Atty. Gen. 101.

48.55 and other appropriate provisions of ch. 48, Stats. 1957, rather than ch. 526, Laws 1957, govern the chargeability of governmental divisions for care in a tuberculosis sanitorium of a child in the legal custody of the state department of public welfare. 46 Atty. Gen. 240.

Children in legal custody of the state department of public welfare who have become patients in mental hospitals under ch. 51, Stats. 1957, or inmates of the diagnostic center under 46.04, are chargeable to the counties of legal settlement as provided in 51.08 and not 48.55. 47 Atty. Gen. 207.

48.56 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.56.

Legislative Council Note, 1955: This section specifies the various county agencies which at present may provide child welfare services. Now, it is necessary to look in 4 different chapters in order to determine what types of agencies may provide these services. See ss. 46.22 (5) (g), 48.29, 48.315, 49.51, and 59.08 (9a).

This section differs from the present law in that it requires that each county must provide child welfare services. Under the present law the provision of these services is in the discretion of the county. About 6 counties make no provision for child welfare services. This provision will require no additional county organization since all counties have a county welfare department. (See s. 46.22.)

Sub. (1) (b) relating to county children's boards does not contain any of the provisions regarding the organization of those boards. The reference to the statutory provisions on organization in the 1953 statutes is all that is necessary.

Sub. (2) sets desirable standards for the personnel providing child welfare services. This provision is parallel to that in s. 48.06 of this bill regarding the desirable qualifications for juvenile court workers. It changes the law in regard to personnel employed by children's boards since at present these qualifications are mandatory for them. [See s. 48.29 (5).]

Sub. (3) recognizes the fact that in a couple counties the staff of the juvenile court, in addition to their juvenile court duties (see s. 48.08 of this bill) perform other child welfare services. [Bill 444-S]

Under 48.01 and 48.30, Stats. 1931, a county children's board is not authorized to expend moneys appropriated to it by a county to assist a girl 19 years of age to attend high school. 20 Atty. Gen. 293.

A county children's board may be given control of administration of poor relief and its work may be co-ordinated with administration of aid to dependent children, soldiers' and sailors' relief, blind and deaf pensions and old-age assistance. Statutory administrative machinery may not be wholly dispensed with. 21 Atty. Gen. 498.

A county department of public welfare authorized by the county board pursuant to 48.315, Stats. 1947, to perform functions of a child welfare agency may not issue a permit to a foster home in another county. 37 Atty. Gen. 377.

A county board may not divide the governmental functions of administering state laws relating to child welfare between a children's board and a county department of public welfare. It must either delegate the authority to a children's board under 48.29 to 48.31 or to the county department of public welfare under 46.22 (5) (g) and 48.315, Stats. 1953. 43 Atty. Gen. 295.

The creation of new county children's

boards is not permitted under 48.56 (1) (b). 47 Atty. Gen. 231.

48.57 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.57; 1957 c. 672; 1959 c. 306; 1969 c. 216; 1969 c. 366 s. 117 (1) (c).

Legislative Council Note, 1955: This section combines in one section provisions now in ss. 46.22 (5) (g), 48.30, 48.315 and 49.51. It combines into one section the provisions, now separate, relating to county welfare departments and county children's boards.

Sub. (1) (introductory statement) comes from ss. 48.30 (2) and 46.22 (5) (g) 2; sub. (1) (a) from 48.30 (1) and 46.22 (5) (g); subs. (1) (b), (c) and (d) are not specifically stated, at present, but are implied because the county agency acts as a child welfare agency (see ss. 48.30 and 48.315); sub. (1) (e) is from s. 49.51 (2) (a) 11. Sub. (1) (f) covers ss. 46.22 (5) (g) 3. and 48.30 (4); sub. (1) (g), ss. 46.22 (5) (g) 4, and 48.30 (5); sub. (1) (h) is a power of child welfare agencies and therefore, by reference, of county agencies; sub. (1) (i) comes from ss. 48.30, 48.315 and 48.385. [Bill 444-S]

A county department of public welfare administering child welfare services pursuant to 48.315, Stats. 1953, is without authority to make a study of a proposed adoptive home and sending a favorable report thereon to a social agency of a foreign country in support of an adoption of a child in the foreign country by Wisconsin residents. 44 Atty. Gen. 197.

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

See note to 59.07 (intro. par.), citing 51 Atty. Gen. 184.

48.58 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.58; 1957 c. 616; 1959 c. 578; 1965 c. 433 s. 121; 1967 c. 291 s. 14.

Legislative Council Note, 1955: This section replaces the provisions now in s. 48.28 relating to the Milwaukee county children's home. Most of the present provisions are no longer applicable since child welfare services are now usually performed by the Milwaukee county department of public welfare. The children's home is one of the resources used by the county department of public welfare for children under its care. This section states the services which the children's home performs.

The provisions in the present section relating to the transfer of guardianship to the county children's home and the placement of children for adoption are obsolete since children are now placed for adoption by the county welfare department. The provision in s. 48.28 (6) relating to the guardianship of the property of children who are permanently committed (i.e., whose guardianship is transferred) to the children's home is also obsolete since children are no longer permanently committed to the children's home. [Bill 444-S]

48.58 (2), Stats. 1957, does not authorize payment of state aid for periods when children have been removed from a county children's home to a hospital for medical and surgical treatment. 47 Atty. Gen. 307.

The amendment of 48.55 by ch. 604, Laws 1965, did not operate to change the reimbursement formula applied to the Milwaukee county children's home by 48.58 (2). 57 Atty. Gen. 1.

48.59 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.59.

Legislative Council Note, 1955: Sub. (1) is a statement in more general terms of the provisions of s. 48.28 (5) and an application of them to all county agencies rather than to the Milwaukee county children's home. It also replaces the provisions in s. 48.31 on the records of county children's boards.

Sub. (2) covers in a general way present sections regarding the reporting of information to the state department by county children's boards. [See s. 48.30 (6) and (8).] There seems to be no equivalent provision for county welfare departments and, in that respect, this section is a change. [Bill 444-S]

48.60 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.60; 1961 c. 119, 171; 1969 c. 366 s. 117 (1) (a).

Legislative Council Note, 1955: This section covers s. 48.35 (1) with only minor changes. The definition of "relative" used in the proposed chapter (see s. 48.02 in this bill) is considerably narrower in scope than the one in the present section. However, to the knowledge of the committee, this will not make any change in practice, since existing child welfare agencies would not be exempt from licensing no matter what definition of relative is used. Sub. (2) (d) is new. It is included because the attention of the committee was called to the fact that homes for the care of unmarried mothers during pregnancy often have a number of girls under 18 staying for several months. Since these places are licensed by the state board of health already, it seems desirable to exclude them from this provision. It should not be necessary for them to obtain 2 licenses.

Sub. (2) (e) was included for the same reason: some foster homes have 4 children and it should not be necessary for that home to obtain 2 licenses. [Bill 444-S]

48.61 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.61; 1959 c. 306; 1969 c. 216.

Legislative Council Note, 1955: This section is another provision drawing together into one section a number of scattered provisions. These provisions relate to the services which a licensed child welfare agency can perform.

Sub. (1) comes from s. 48.35 (2). Sub. (2) covers s. 48.35. Sub. (3) restates s. 48.35 (2) and (4) and provisions in 48.36 (3). Sub. (4) is taken from s. 48.35 (5). Sub. (5) covers 48.36 (1) and part of (2). Sub. (6) is a new provision although child welfare agencies now perform these services for some courts. Sub. (7) is from s. 48.38 (3). [Bill 444-S]

48.62 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.62; 1959 c. 202.

Legislative Council Note, 1955: This section restates s. 48.38 (1) and (2) except for the prohibition against more than 4 children in one home which is contained in s. 48.64 of the bill. It also covers a provision in s. 48.36 (2).

Relative is defined in s. 48.02 in this bill.

"Care and maintenance" requires that the

person have some type of control over and responsibility for the child. For example, a 17-year-old youngster who has a job and lives at the YMCA is not in a "foster home." [Bill 444-S]

A man and wife who have a child not their own in their home, thus conducting a foster home, may be prosecuted under 48.41 (2), Stats. 1929, for maintaining a foster home without a permit. An action may be maintained to secure possession or custody of the child. 19 Atty. Gen. 192.

The state department of public welfare may not license foster homes located outside the state. 36 Atty. Gen. 603.

Where persons take a child into their home for the purpose of eventual adoption to meet the requirement contained in 322.02 (3), Stats. 1947, that the child live 6 months in the home of persons proposing to adopt it before a petition for adoption can be granted, such persons operate a foster home until the child is adopted, and they must obtain a foster home permit, provided none of the exceptions in this section is applicable. 37 Atty. Gen. 344.

Under 48.38, Stats. 1949, the state department of public welfare cannot require that a permit be issued to a home in which fewer than 4 children are received for control and care for a period of less than 24 hours a day. 39 Atty. Gen. 445.

See note to 101.09, citing 38 Atty. Gen. 31 and 57 Atty. Gen. 86.

48.63 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.63; 1957 c. 374; 1961 c. 208.

Legislative Council Note, 1955: Sub. (1) covers the material now in ss. 48.37 (1), 48.41 (1), and 48.45 (1). It is somewhat broader than the present law in that the language "act as intermediary" covers the person who conveys information regarding a foster home placement. See 37 Ops. Atty. Gen. 403 (1948). If the person who places, negotiates, or acts as intermediary for the placement of a child in a foster home or who offers or holds himself out as able to place a child in a foster home is conducting or connected with the conduct of a maternity hospital, that hospital may have its license revoked under s. 140.38.

Sub. (2) is a new provision in the law intended to provide protection for the child whose parent places him for adoption with a nonrelative, i.e., who makes what is usually called an independent placement. The child who is not wanted by his parent has 2 strikes against him already. The committee was of the opinion that he should have some protection from the possibly selfish wishes of that parent who usually is interested primarily in ridding himself of an unwanted burden. The proposed section should serve that purpose as well as protect the parent who has made a constructive plan for his child since, in that case, the juvenile court would approve the placement.

It must be remembered that this section applies only to nonrelative homes. A foster home is not the home of a relative. See s. 48.62 in this bill.

For a similar section see Rh. Is. Pub. Laws, ch. 373 s. 2 (1938, as am. to 1952): "No parent shall assign or otherwise transfer to another not related to him by blood or marriage his rights or duties with respect to the permanent care and custody of his child under 16 years of age unless duly authorized so to do by an order or decree of court, or unless such assignment or transfer is made to any orphanage or society now or hereafter organized and incorporated under the laws of this state for the care of orphans and needy children as provided under ch. 422, and duly licensed under the provisions of s. 9 of this chapter." [Bill 444-S]

A charitable or fraternal organization not licensed as a child welfare agency is prohibited by 48.37 (1), Stats. 1953, from making a study of a proposed adoptive home and sending a favorable report thereon to a foreign country in order that a passport may be issued by that country for a child to be placed in such home for adoption in Wisconsin. 44 Atty. Gen. 197.

48.64 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.64; 1959 c. 306; 1969 c. 216, 388.

48.65 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.65; 1963 c. 416.

Legislative Council Note, 1955: This section covers part of subs. (1) and (6) of s. 48.50 with the following changes: The first change involves the length of time the center must operate. At present this must be more than 2 hours a day. The committee was informed that there are a number of centers which operate only 2 hours a day to avoid the licensing law. Therefore, the minimum time limit was dropped and the statute now requires only that the person must provide care for 4 or more children for compensation for part of a day.

The second change from the present law is the clear exception of "babysitters" from the day care law. See sub. (2) (c). The committee was convinced that the law was not intended to cover the parent with 4 or more children who has a person come to his home to care for those children for a few hours.

In addition, the exception of recreational camps in the present law was dropped. Most recreational camps are not covered by the law because they do not provide day care; i.e., children come to the camp to stay for one, two, or more weeks and not for part of a day. Although there are a number of day camps, providing care for children for part of a day, they usually do not take children under the age of 7. The committee was of the opinion that in cases of day camps taking children under the age of 7 they were properly classified as day care centers since the problems of care for pre-school children are quite different from the usual problems of a recreational camp.

"Person" includes corporations and associations as well as individuals. See s. 370.01 (26). [Bill 444-S]

Under 48.50 (1), Stats. 1953, one who operates a boarding home for mothers and children must have a permit if she provides care and supervision for 4 or more children for less than 24 hours a day, while the mothers are at work, irrespective of whether a separate charge is made for the children's care or it is included in the charge for board and room. 43 Atty. Gen. 124.

48.65, Stats. 1957, applies to a recreational camp maintaining a nursery unit for children of staff members, where care and supervision are furnished for 4 or more children under the age of 7, for compensation. 46 Atty. Gen. 223.

48.66 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.66; 1959 c. 306.

48.67 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.67; 1959 c. 306; 1969 c. 276 s. 584 (1)(b); 1969 c. 366.

Legislative Council Note, 1955: Sub. (1) and (2) cover the second sentence of s. 48.37 (2), the last sentence of s. 48.38 (4) and s. 48.50 (2) and (3). Sub. (1) contains one provision not in the present statutes—a standard for the department to follow in establishing rules. Such a standard is a constitutional requirement and, although it apparently is implied in the present statutes, it seems desirable to state it explicitly.

Sub. (3) covers a provision in s. 48.37 (4) except that it applies to foster homes and day care centers as well as child welfare agencies. [Bill 444-S]

Under 48.50 (3), Stats. 1953, the state department of public welfare may adopt a rule requiring physical examinations of children attending child-care centers, day nurseries, and nursery schools, but by virtue of 147.19 (2), such rule may not require the vaccination or immunization of Christian Scientists. 44 Atty. Gen. 19.

48.68 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.68.

Legislative Council Note, 1955: This section covers a provision in s. 48.37 (2) applying to child welfare agencies and one in s. 48.40 (2) applying to foster homes. The proposed section includes day care centers also. A number of other states have similar provisions. See Va. Code ss. 62-235 and 63-236 (1950). [Bill 444-S]

48.69 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.69; 1959 c. 306.

Legislative Council Note, 1955: This section is new. A number of other states have such a provision. In practice, a procedure similar to this is followed at present since the department will allow an agency which does not completely meet standards to operate if it is working to improve its facilities and services.

For similar sections see: Va. Code s. 63-238 (1950); W. Va. Code s. 4904 (10) (1949). [Bill 444-S]

48.70 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.70; 1959 c. 306.

Legislative Council Note, 1955: This section covers the provisions in s. 48.37 (3), first sentence, and in s. 48.50 (1), second sentence. Sub. (1) applies to foster homes, child welfare agencies, and day care centers. [Bill 444-S]

48.71 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.71; 1961 c. 170.

48.72 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.72.

Legislative Council Note, 1955: This section is intended to cover the provisions in s. 48.39 (3) and (4), applying to child welfare agencies and, in the case of (4), maybe to foster homes, and s. 48.50 (4) (c), applying to day care centers. It should be noted that the proposed section differs quite a bit from the present ones. In the first place it applies the same procedure to all types of licenses—something which the present statutes do not do probably only because they were enacted at different times. Secondly, it applies to refusal or failure to issue a license as well as to revocation. Thirdly, it applies the procedures of ch. 227 rather than setting up special procedures; the committee was of the opinion that the general procedures in ch. 227 are fair and equitable and should be followed wherever possible for the sake of uniformity.

The language "refusal or failure" is intended to cover the case where the department takes action to refuse the license and also where it fails to take any action on an application. Some states allow the applicant to go ahead as if the license had been granted if the department does not act within a specified time. The committee feels the approach of this section is more desirable. [Bill 444-S]

48.73 History: 1955 c. 575 s.7; Stats. 1955 s. 48.73.

48.74 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.74.

Legislative Council Note, 1955: This section covers s. 48.40 (1) (a) and (2). It differs from that provision in that it applies to day care centers as well as child welfare agencies and foster homes.

The section gives the department the power to investigate complaints of violations of the foster home, child welfare agency, and day care center licensing laws. Frequently, particularly in the case of foster homes, this investigation may reveal that the person is qualified for a license and the reason he does not have a license is because he was not aware that he was required by law to have one. In that type of case the department should have the authority to issue a license instead of prosecuting the violation. This authority is contained in the last sentence of the section. [Bill 444-S]

48.75 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.75; 1969 c. 366 s. 117 (1)(e).

Legislative Council Note, 1955: Sub. (1) is now in ss. 48.315, 48.38 (3) and 48.385. It authorizes county agencies and child welfare agencies to issue foster home licenses in accordance with the rules of the department. This is a restatement of present law. Section 48.38 (3) provides that these licenses be issued "upon terms prescribed by the department." County agencies when performing child welfare services are governed by s. 48.38 [except that they do not have to be licensed by the department as child welfare agencies do] and, therefore, s. 48.38 (3) covers them also. See s. 48.315.

Sub. (2) extends the appeal provisions relating to the department to licensees of a county agency or a child welfare agency. Present statutes do not make provision for appeals by licensees of private and county

agencies. It seems desirable to allow an appeal to the department in these cases because of the cost and delay of a court action, which would be the alternative. [Bill 444-S]

The state department of public welfare has authority under 46.35 (10), 48.315 and 48.30 (6), Stats. 1949, to require county departments administering child welfare services to make reports respecting foster homes to which they have issued permits. 38 Atty. Gen. 35.

48.76 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.76.

Legislative Council Note, 1955: This section covers ss. 48.41 and 48.50 (7). It differs considerably from these provisions. In the first place, it provides the same penalty for the child welfare agency, the foster home, or the day care center violation; the present statute provides very different penalties. The committee concluded that there should be no difference in the penalty provided.

The second way in which this proposed section differs from the present law is in the fact that it provides a criminal penalty only for those who do not obtain a license as required by law or who violate the restrictions on independent placements. Violations of the department rules can be controlled by revocation of license. [Bill 444-S]

48.77 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.77.

48.78 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.78.

Legislative Council Note, 1955: This section is a new provision. It provides for the confidentiality of records of all types of child welfare agencies and facilities. It is intended to protect individual case records from disclosure to unauthorized persons. It does not prevent the reporting of general statistics and information or the use of anonymous case examples to illustrate certain problems. [Bill 444-S]

In a proceeding under 48.85, an order of the county court, requiring disclosure and inspection of the records and information on which an agency has based its refusal to consent to the proposed adoption, is sufficient protection so that the agency cannot be considered to have violated 48.78 in making disclosure for that purpose. Adoption of Brown, 5 W (2d) 428, 92 NW (2d) 749.

Defendant was not entitled to compel the complaining witness' general guardian (a licensed child welfare agency) to turn over the records it had concerning her mental condition where no order of the court to inspect the records had been obtained, and it appeared that the records might have contained privileged patient-doctor communications as well as hearsay. State v. Miller, 35 W (2d) 454, 151 NW (2d) 157.

48.79 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.79.

Legislative Council Note, 1955: This section is a restatement of subs. (1) to (11) of s. 54.06. It and the section which follows constitute some of the most important sections in the children's code. They are aimed at the prevention of delinquency. While the juvenile court provisions and the sections on child welfare services deal with court procedures and treatment of children who have been brought to the attention of the authorities, these sections deal with the development of services and programs to prevent children from becoming delinquent.

This section recognizes that these services and programs must be developed at the local level but it also recognizes the responsibility of the state to help foster these programs. In addition the section provides for the gathering of information on the problems and causes of delinquency. We can prevent something only if we know what it is and how it is caused; knowledge of the extent and cause of delinquency is essential to its prevention. Through the facilities of the department under this section this type of information is being gathered. [Bill 444-S]

48.80 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.80.

Legislative Council Note, 1955: This section is the same as s. 54.07 except that sub. (3) is taken from s. 54.03 (4). It authorizes the establishment of local co-ordinating councils or committees for the development of local services for children and youth.

"Person" in sub. (1) includes corporations and associations as well as individuals. See s. 370.01 (26). [Bill 444-S]

48.81 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.81.

Legislative Council Note, 1955: Since these sections apply only to the adoption of minors, this section is so restricted. In the present law, the provision regarding persons who may be adopted is contained in s. 322.01 and, since the present law applies to both the adoption of minors and adults, is not restricted to minors. But like this provision it makes no requirements regarding residence or place of birth. For a provision quite similar to this, see the uniform adoption act. [Bill 444-S]

48.82 History: 1955 c. 575 s. 7; 1955 c. 653 s. 9; Stats. 1955 s. 48.82; 1959 c. 306; 1969 c. 139, 216.

Legislative Council Note, 1955: This section is somewhat similar to s. 322.01 which specifies who may adopt, but differs from that provision in 2 ways: (1) In the case of a married couple, it is not necessary that they be adults; and (2) the provision for the adoption of relatives by nonresidents is dropped. If a nonresident relative wishes to adopt a resident minor, the more desirable procedure is for him to take the minor to his own state and to adopt him there. [Bill 444-S]

Under 4021, Stats. 1923, a petition for adoption which disclosed that the petitioner was a married man and that his wife did not join therein did not give the court jurisdiction, notwithstanding a statement that petitioner's wife was incompetent. Adoption of Bearby, 185 W 33, 200 NW 686.

Adoption proceedings are wholly statutory and, when the statute is not complied with, a defect in the proceedings cannot be cured by the application of equitable principles. St. Vincent's I. Asylum v. Central W. T. Co. 189 W 483, 206 NW 921.

Under 4021, Stats. 1917, a county court was without jurisdiction to consider a petition or to issue an order of adoption where the wife of the petitioner failed to join in the petition. Will of Bresnehan, 221 W 51, 266 NW 93.

48.83 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.83; 1959 c. 306; 1969 c. 352.

Legislative Council Note, 1955: This section covers a provision now in s. 322.01 except that it treats the county where the adoption must be heard as a matter of venue rather than jurisdiction. This has been the approach throughout this revised chapter. See, for example, ss. 48.16 and 48.41. The uniform adoption act also treats this as a venue matter. For problems arising under the present provision see: 33 Ops. Atty. Gen. 57 (1944). [Bill 444-S]

"Adoption proceedings are statutory, and it is fundamental that the statutory prerequisites of jurisdiction must exist in order to authorize the court to act. The first step necessary to arouse the jurisdiction of the county court is a petition conforming to the statutory requirements. * * * While there is an increasing disposition on the part of courts to place fair and reasonable construction upon statutes and proceedings relating to the adoption of children so that mere irregularities of procedure may not defeat the beneficient purposes of the institution of adoption, plain jurisdictional requirements must be observed." Adoption of Bearby, 185 W 33, 34-35, 200 NW 686, 687.

48.84 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.84; 1957 c. 672; 1959 c. 306.

Legislative Council Note, 1955: Sub. (1) (a), (b), (c), and (d) are restatements of the consents necessary under the present law in s. 322.04, although the statutory statement of the consents has been revised and considerably shortened. See also 48.22 (3) and 48.36 (2). Guardian as defined in this chapter is a guardian of the person. It may be an individual or an agency, such as the state department of public welfare, a licensed child welfare agency or a county department of public welfare, authorized by s. 48.57 to place children for adoption. See s. 48.43. The phrase "legally terminated" in relation to parental rights is used to cover not only the case of judicial termination of parental rights provided for by Wisconsin law but also the case where parental rights have been relinquished by contract under the laws of other states, which use that procedure in lieu of the termination of parental rights in court.

Sub. (2) (a) is intended to cover the provisions in s. 322.04 (4) and (9) (a) with the following change: The judge must be satisfied that the parent knows the person who is going to adopt his child. This particular point has never been decided under present law [but see dictum in In re Adoption of Morrison, 267 W 625, 66 NW (2d) 732 (1954)] although s. 48.37 (1) [proposed s. 48.63] would seem clearly to require that the parent know the person with whom he places his child for adoption. If a parent wishes to get rid of his child to a person he does not even know, there is ample legal provision in the termination of parental rights statutes to allow him to do so. Sub. (2) (b) dealing with the consent of the minor is the same as the corresponding provision in the second and third sentences of s. 322.04 (1).

Sub. (3) covers the fifth sentence in s. 322.04 (1) providing that the consent of the father of an illegitimate child is not necessary even where he has married the mother if he did so after her rights were judicially terminated. The provision regarding the mother's consent to the adoption prior to the marriage is not in the present law but has been the subject of a court decision. See In re Adoption of Morrison, 260 W 50, 49 NW (2d) 759 (1951). That case held that the mother's consent became irrevocable when the court assumed jurisdiction in the adoption case and that marriage to the father later did not give the father right to consent to the adoption. Under this proposed provision the mother's consent becomes irrevocable when she gives it before a judge of a court of record and intermarriage to the father of the child thereafter does not legitimate the child so that the father's consent is necessary.

Sub. (4) is a restatement of a part of s. 322.04 (11). [Bill 444-S]

Concurrence by the guardian ad litem in the consent of a minor parent is a jurisdictional requirement which cannot be waived by the court, so that where it has not been obtained the judgment decreeing adoption is void. The function of the guardian ad litem in such case is to make independent investigation as to whether the parent voluntarily and freely executed such consent and whether the best interests of the child would be promoted thereby. The court and the attorney for petitioners should see to it that the guardian ad litem performs his duties and either files written consent or reports adversely before the court assumes jurisdiction by setting a hearing and ordering an investigation. The status of a child on the date the court assumes jurisdiction is determinative of consents required, so that consent of the father of an illegitimate child is not required where he marries the mother after such date. Adoption of Morrison, 260 W 50, 49 NW (2d) 759.

A child born to a married woman is "born in lawful wedlock" even though the husband of the mother is not the father of such child. 25 Atty. Gen. 597.

A bigamous marriage does not constitute "lawful wedlock" and a child born to such marriage, though legitimate under 245.36, is a "child not born in lawful wedlock." 27 Atty. Gen. 369.

A judgment of divorce awarding permanent custody of a minor child to one parent does not judicially terminate the parental rights of the other parent so as to obviate consent of such other parent to an adoption under 322.04 (2), Stats. 1949. 39 Atty. Gen. 67.

Consent of a minor 14 years of age or older is a jurisdictional requirement for adoption and cannot be waived by the court. 42 Atty. Gen. 318.

48.841 History: 1959 c. 306; Stats. 1959 s. 48.841.

48.85 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.85; 1959 c. 306; 1969 c. 216.

Legislative Council Note, 1955: This pro-

vision is new. It is intended to take care of the problem, which arises very rarely, where the guardian of the minor refuses to consent to the adoption. In Adoption of Tschudy, 267 W 272, 65 NW (2d) 17 (1954), the supreme court held that the county court had no jurisdiction to order the adoption without that consent. This provision provides procedure to be followed in the case where the guardian refuses to consent.

Although this problem arises very rarely, a few states have statutory provisions on it. See, for example, Va. Code s. 63-351 (4) (1954 supp.):

"(4) If after hearing evidence the court finds that the consent of any person or agency whose consent is hereinabove required is withheld contrary to the best interests of the child, or is unobtainable, the court may grant the petition without such consent provided 10 days' notice in writing is first given to the person or agency so withholding consent."

Wash. Code s. 26.32.030 (5): "If the person to be adopted is a minor and has been permanently committed upon due notice to his parents by any court of general jurisdiction to an approved agency, then [consent may be given] by such approved agency, in which event neither notice to nor consent by its parents in the adoption proceeding shall be necessary: Provided, that if the approved agency refuses to consent to the adoption, the court, in its discretion, may order that such consent be dispensed with."

See also Ariz. Code s. 27-203 (c) (1952 cum. supp.), although the section apparently does not apply to agencies. [Bill 444-S]

In considering where the best interests of the child lie, both guardian and court are to be guided by the declaration of intent in the first section of the children's code, 48.01, Stats. 1957, and guardian, in determining whether to consent to a particular adoption, and the county court in determining whether to waive such consent if it is refused, must have in mind that the objective is not only a good home for the child, but the best home available, a home where the child will be protected from interference by its natural parents. Adoption of Shields, 4 W (2d) 219, 89 NW (2d) 827.

48.86 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.86.

Legislative Council Note, 1955: This section is taken from the uniform adoption act. It changes the present law in Wisconsin which is to the effect that a consent to adoption is irrevocable after the petition is filed. See Adoption of Morrison, 260 W 50, 49 NW (2d) 759 (1951). [Bill 444-S]

48.87 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.87; 1959 c. 306.

Legislative Council Note, 1955: This section states certain procedures which are implied in the present law, except that the third sentence replaces the provision in s. 322.02 (2) that "if the parental rights of the natural parents of a minor have been judicially terminated, the report of the investigating agency shall contain a summary of the proceedings." The committee decided that a certified copy of the order is all that is necessary. [Bill 444-S]

48.871 History: 1959 c. 306; Stats. 1959 s. 48.871.

48.88 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.88; 1959 c. 306; 1969 c. 216; 1969 c. 366 s. 117 (1)(c).

Legislative Council Note, 1955: Sub. (1) restates part of s. 322.03 except that it requires that notice of the hearing be given to all persons whose consent to the adoption is required while under 322.03 only the state department of public welfare or a child welfare agency must be notified.

Sub. (2) (a) deals with the investigation. It must be made by an agency which provides other child welfare services. At present any public agency or person may make the investigation. Certain requirements regarding the investigation now in the statutes, such as the fact that inquiry must be made of at least 2 responsible citizens residing in the same community as the petitioner, and of his pastor, are dropped on the ground that the adequacy of the investigation will always depend on the competency of the agency doing it. The time limit of 90 days is taken from s. 322.02 (2).

Sub. (2) (b) provides that no special investigation is necessary in cases where the child has been placed by the state department, a child welfare agency or the Milwaukee county welfare department and that agency must consent to the adoption and make a report to the court. Although a special investigation is not required by statute, the court may desire to order one under certain circumstances. This differs from present law which requires both consent and report and recommendation by the agency [s. 322.04 (5)] and a special investigation by order of the court [s. 322.02 (1)].

Sub. (3) is the same as s. 322.02 (3). [Bill 444-S]

48.89 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.89; 1957 c. 672; 1959 c. 306; 1969 c. 366 s. 117 (1) (c); 1969 c. 492.

Legislative Council Note, 1955: This section restates provisions in s. 322.04 (2), (3) and (6). The time in which this recommendation must be made is changed from 6 months [see s. 322.04 (10)] to 90 days and the provision that, if the recommendation is not filed within the time allowed, the court may proceed without it is dropped on the ground that such a provision is not necessary because the statute requires that the recommendation be filed within the time allowed. [Bill 444-S]

See notes to 48.84, citing 25 Atty. Gen. 597 and 27 Atty. Gen. 369.

48.90 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.90; 1959 c. 306; 1961 c. 231.

Legislative Council Note, 1955: This section covers s. 322.02 (4). The reasons for waiver of the 6-month period of residence are stated in broader terms. [Bill 444-S]

48.91 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.91; 1959 c. 306.

Legislative Council Note, 1955: Sub. (1) restates s. 322.03 (2) and (3).

Sub. (2) covers the first 2 sentences of s. 322.05 but does not spell out, as that provision does, the various qualifications of the adoptive parents, i.e., "that the petitioners are of good moral character and of reputable standing in the community and able to properly maintain and educate the person proposed for adoption . . ." These qualifications and many others should be taken into consideration by the court in determining whether the adoption is in the best interests of the child. [Bill 444-S]

An order of adoption may be revoked for a fraud practiced upon the court in procuring it, unless the statute of limitations has confirmed rights thereunder. But a failure to disclose an agreement between the parties, that in case the natural mother should subsequently marry and have a good home she might have the child restored, was neither an actual nor a constructive fraud warranting interference by a court of equity. A change, subsequent to the adoption, in the circumstances of the parties, does not warrant the vacation of an order of adoption entered by consent. Carlson v. MacCormick, 178 W 408, 190 NW 108.

The adoption statutes confer on the court only the power to decree, or not to decree, adoption, and they give the court no power to award custody to the proposed adoptive parents if adoption is denied, even though the court finds that the best interests of the child so require. Adoption of Morrison, 260 W 50, 49 NW (2d) 759.

Sec. 4022, Stats. 1919, did not require that the order of adoption recite a finding of illegitimacy in any particular language, and if it were not clear enough from the adoption papers of 1920 that the county court on sufficient evidence considered the child illegitimate, resort could be had to 253.21, providing in part that when the validity of any order of a county court is drawn in question in any other action or proceeding everything necessary to have been done or proved to render the order valid, and which might have been proved by parol at the time of making the order, shall, after 20 years from such time, be presumed to have been done or proved unless the contrary appears on the same record. Estate of Christl, 6 W (2d) 525, 95 NW (2d) 381.

There is no statutory requirement that a guardian ad litem be appointed in an adoption proceeding to represent the child, and jurisdiction of the court is not dependent upon such an appointment. Estate of Topel, 32 W (2d) 223, 145 NW (2d) 162.

48.911 History: 1959 c. 306; Stats. 1959 s. 48.911; 1969 c. 339 s. 27.

48.92 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.92; 1969 c. 339.

Legislative Council Note, 1955: This section differs considerably from the section on effect of adoption in s. 322.07, in that it severs completely the relationship between the adopted person and his natural parents. Under the present law some of those ties remain:

"322.07 . . . (2) If the adopted person is not survived by a spouse or by issue or by an adoptive parent and there is no heir or next of kin of the adoptive parents, the property of the adopted person shall descend and be distributed as though there had been no adoption. . . .

"(4) The adopted person does not lose the right to inherit from his natural relatives."

The change proposed by this section is also recommended by the State Board of County Judges. See Bill 254 S. (1955).

Sub. (1) of the proposed section is taken from the uniform adoption act. [Bill 444-S]

Sec. 4024, Stats. 1898, relating to the status of adopted children, does not necessarily determine the construction of the word "child" or "children" in a will but may be considered in connection with the will as throwing some light upon the intent. Lichter v. Thiers, 139 W 481, 121 NW 153.

Legal adoption destroys the existing parental relationship and creates a new relationship. Specific performance will not lie to compel the adoptive parents to comply with their contract to let the father visit the child, although the contract was made in consideration of consent to adoption. The contract was invalid as contrary to public policy. Stickles v. Reichardt, 203 W 579, 234 NW 728.

The effect of an order of adoption is to change completely the status of an adopted person from that of the child of natural parents to that of the child of adoptive parents and hence to the status of that parent's lineal descendant, so that the surviving adopted child of a predeceased sister of intestate, whose nearest surviving relative was another sister, acquired the inheritance rights which the adoptive mother would have had if such mother had survived the intestate. Estate of Nelson, 266 W 617, 64 NW (2d) 406.

A child adopted, after the death of the testator, by his daughter, did not become the "issue" of such daughter within the meaning of 238.13 so as to entitle such child to share in the corpus of the trust created by the testator's will which provided that on termination of the trust the corpus should be distributed equally among the then living children and the then living "issue, per stirpes," of any deceased child dying before or after the testator. Estate of Uihlein, 269 W 170, 68 NW (2d) 816.

Where the testator's will provided that in event the named legatee predeceased the testator the share of such legatee should go to her "natural heirs," the ordinary meaning of such term does not include the adopted child of such legatee. However, since such child was the only child of such legatee and had been adopted 20 years prior to execution of such will, 40 years prior to death of the testator, and the legatee was 58 years old when the will was executed, the testator must have intended that the term "natural heirs" should include such adopted child. Estate of Rhodes, 271 W 342, 73 NW (2d) 602.

Whether an adopted child inherits under a will as "issue" depends on the statutes and decisions at the time of execution of the will. Will of Adler, 30 W (2d) 250, 140 NW (2d) 219.

Although 48.92, Stats. 1967, changed the legal status of an adopted person from that of a child of his natural parents to that of a child of his adoptive parents, it does not purport to bar a natural parent or relative of an adopted child from including such child in his will.

Estate of Zastrow, 42 W (2d) 390, 166 NW (2d) 251.

48.93 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.93; 1969 c. 366 s. 117 (1) (c).

Under 322.06, Stats. 1953, the board of public welfare cannot discuss closed records of adoption proceedings at any conference which is open to the public. 42 Atty. Gen. 339.

48.94 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.94.

48.95 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.95; 1959 c. 306; 1969 c. 366 s. 117 (1)(c).

48.96 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.96.

Legislative Council Note, 1955: This section would probably not be necessary in view of the definition of "parent" in s. 48.02 except for the specific references in s. 48.92 to natural parents. [Bill 444-S]

48.97 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.97.

Legislative Council Note, 1955: This section is copied from the uniform adoption act. It states the rule of the A. L. I. Restatement of Conflict of Laws, s. 143: "The status of adoption, created by the law of a state having jurisdiction to create it, will be given the same effect in another state as is given by the latter state to the status of adoption when created by its own law." See also, 1 Am. Jur., Adoption of Children, ss. 66 and 67. [Bill 444-S]

48.98 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.98; 1969 c. 366 s. 117 (1) (c).

Legislative Council Note, 1955: This section is the same as s. 48.42 of the present statutes except that the provision exempting persons who bring children into the state for adoption into their own families is deleted. The committee concluded that, since adoption placements within the state must be approved by the juvenile court unless made by an authorized agency [see s. 48.63], it would be inconsistent not to have some supervision of interstate placements. [Bill 444-S]

48.981 History: 1965 c. 333; Stats. 1965 s. 48.981; 1967 c. 230.

48.985 History: 1963 c. 401; Stats. 1963 s. 48.985.

48.99 History: 1955 c. 575 s. 7; Stats. 1955 s. 48.99.

The right of a parent to the services and wages of his child may be forfeited by ill treatment or abuse, by leading an immoral and dissolute life or by failing to support when able to do so. The right is extinguished by the lawful marriage of the child while still a minor or by the emancipation, express or implied, of the child. Patek v. Plankinton P. Co. 179 W 442, 190 NW 920.

48.991 History: 1955 c. 300; Stats. 1955 s. 48.991; 1957 c. 76.

48.992 History: 1955 c. 300; Stats. 1955 s. 48.992; 1969 c. 366 s. 117 (1) (c).

48.993 History: 1955 c. 300; Stats. 1955 s. 48.993; 1969 c. 366 ss. 35, 117 (1) (c).

48.994 History: 1955 c. 300; Stats. 1955 s. 48.994; 1969 c. 366 s. 117 (1) (c).

48.995 History: 1955 c. 300; Stats. 1955 s. 48.995; 1969 c. 366 s. 117 (1) (c).

48.996 History: 1955 c. 300; Stats. 1955 s. 48.996.

48.997 History: 1955 c. 300; Stats. 1955 s. 48.997.

CHAPTER 49.

Public Assistance.

49.002 History: 1969 c. 154; Stats. 1969 s. 49.002.

49.01 History: 1945 c. 585; Stats. 1945 s. 49.01; 1947 c. 121; 1957 c. 190; Spl. S. 1958 c. 2; 1959 c. 597; 1961 c. 462; 1969 c. 366.

See note to 49.14, citing State ex rel. Nelson v. Rock County, 271 W 312, 73 NW (2d) 564.

See note to 52.01, citing In re Spigner, 26 W (2d) 190, 132 NW (2d) 242.

See note to sec. 1, art. I, on limitations imposed by the Fourteenth Amendment, citing Ramos v. Health and Social Services Board, 276 F Supp. 474, and Denny v. Health and Social Services Board, 285 F Supp. 26.

As long as a minor has property which can be used to provide for him maintenance and education he is not eligible for public relief; he is neither a "poor" or "indigent" person, nor in "need" of relief within the meaning of those words as used in 49.01, Stats. 1939. 28 Atty. Gen. 401.

One may be a "dependent person" under 49.01(4), even though he has a cause of action for damages against another, where such other denies liability. 43 Atty. Gen. 261.

For discussion of residence requirements for public assistance under amendments to ch. 49, made by ch. 190, Laws 1957, see 46 Atty. Gen. 177.

The legislative development of public assistance. Handler and Goodstein. 1968 WLR 414.

49.02 History: 1945 c. 585; Stats. 1945 s. 49.02; 1953 c. 513; 1957 c. 167, 190, 478.

The duty of a town to support its paupers is by sec. 1, ch. 34, R. S. 1858, made clear and indisputable, and may be enforced by an action. Meyer v. Prairie du Chien, 9 W 233.

Where the county system is not established the town remains liable, under sec. 1, ch. 34, R. S. 1858, for the support of its poor. Mappes v. Iowa County, 47 W 31, 1 NW 359.

Under 1513, R. S. 1878, the town in which a pauper happens to be, destitute and in absolute want, is primarily liable for his support when the supervisors have notice thereof; and this though they do not make a contract for his support and though the town in which he has a settlement is ultimately liable therefor. Davis v. Scott, 59 W 604, 18 NW 530.

A town is not liable to a respondent which provided hospital care of an indigent resident of a town beyond the term of a contract providing for care; if the person remained indigent the town had a duty to provide care and maintenance but it was not obliged to con-