

A county may not require prisoners sentenced to the county jail to work outside the jail premises except as provided in 56.08, and if so employed, they are entitled to workmen's compensation under ch. 102. 51 Atty. Gen. 116.

56.16 History: P. & L. 1855 c. 318 s. 1, 6; 1865 c. 189; P. & L. 1868 c. 442; 1878 c. 298; R. S. 1878 s. 604c; 1880 c. 249; Ann. Stats. 1889 s. 604c; 1893 c. 252; Stats. 1898 s. 603, 604; 1899 c. 212; 1903 c. 40; 1903 c. 356 s. 1; Supl. 1906 s. 697—1; 1907 c. 118, 236; 1919 c. 351 s. 1; Stats. 1919 s. 56.16; 1947 c. 366.

Revisor's Note, 1919: The note to this section is exhaustive. It reviews the many acts relating to the house of correction of Milwaukee county, discusses the legal question involved and cites many decided cases. The note is printed in section 1 of Bill No. 58 S.

56.17 History: P. & L. 1855 c. 318 s. 4, 15; 1865 c. 189; 1899 c. 212; 1919 c. 351 s. 2; Stats. 1919 s. 56.17; 1939 c. 48; 1947 c. 366; 1965 c. 249.

56.18 History: P. & L. 1855 c. 318 s. 10, 13; 1865 c. 189; P. & L. 1866 c. 439; P. & L. 1868 c. 442; P. & L. 1872 c. 5; 1899 c. 212; 1913 c. 355; Stats. 1913 s. 4733c; 1919 c. 351 s. 3; Stats. 1919 s. 56.18; 1923 c. 242; 1925 c. 300; 1929 c. 391; 1939 c. 48; 1943 c. 93; 1947 c. 366; 1961 c. 93; 1967 c. 276 s. 39; 1969 c. 255.

Comment of Interim Committee, 1947: The provisions for sentence to solitary confinement are omitted. Under (4) transfers of prisoners are to be approved by the department instead of the governor, and under (5) notice of temporary transfers will go to the department instead of to the governor. [Bill 359-A]

The inspector of the house of correction is made the custodian of all prisoners detained by him, but it is not necessary to name the inspector in a warrant of commitment, 56.18, Stats. 1921, being directory. *Langen v. Borkowski*, 188 W 277, 206 NW 181.

The terms "actual and reasonable costs of maintenance" in 56.18 (2), "expense" in 66.12 (1) (c), and "board" in 176.43 (1), Stats. 1963, all relating to liability for keeping prisoners, are to be considered together to ascertain their meaning, and when construed in light of their historical use and pre-existing enactments, are determined to embrace only out-of-pocket expenses directly affecting prisoners' keep, and do not include maintenance and operation charges of the jail and house of correction as a building. Such language includes the expenditures for the services of cooks, food-service workers, and administrative personnel, since the cost of meals for prisoners includes the cost of the raw food and the labor entailed in preparing and serving the same. *City of Milwaukee v. Milwaukee County*, 27 W (2d) 53, 133 NW (2d) 393.

An inmate in the Milwaukee county house of correction may be transferred to the state prison if he falls into the class described in 56.18 (4). 11 Atty. Gen. 863.

56.19 History: P. & L. 1855 c. 318 s. 11, 12; 1865 c. 189; 1875 c. 174; 1899 c. 212; 1909 c. 411; 1917 c. 261; Stats. 1917 s. 670 (21); Spl. S. 1918 c. 8; 1919 c. 351 s. 4; Stats. 1919 s. 56.19; 1939 c. 48; 501; 1943 c. 93; 1947 c. 366.

Comment of Interim Committee, 1947: The obsolete exception in old (1) is deleted. Under (3) good conduct certificates shall be subject to annulment by the department instead of the governor. [Bill 359-A]

56.20 History: 1865 c. 189 s. 7; 1919 c. 351 s. 6; Stats. 1919 s. 56.20; 1947 c. 366.

Federal prisoners may, under contract made pursuant to 56.20, Stats. 1925, be sent or committed by the United States to the Milwaukee house of correction, notwithstanding the term of imprisonment exceeds 18 months. 14 Atty. Gen. 558.

56.21 History: 1927 c. 241 s. 1; Stats. 1927 s. 56.21; 1945 c. 537; 1947 c. 366; 1951 c. 539; 1961 c. 187; 1969 c. 276 s. 584 (1) (b).

The Milwaukee house of correction is not a state institution. 20 Atty. Gen. 73.

56.22 History: 1919 c. 350 s. 20; Stats. 1919 s. 56.15; 1947 c. 366; Stats. 1947 s. 56.22.

CHAPTER 57.

Paroles and Pardons.

Comment of Interim Committee, 1947: The interim committee created by Joint Resolution No. 79 (72-S) to revise and codify the public welfare laws hereby submits a bill to revise chapter 57 of the statutes, entitled "Probation, Paroles and Pardons of Convicts." The bill proposes some changes in the law but those changes are not radical and do not change state policies. Changes are made when needed to supply omissions, to make administrative procedure more complete and simple, to make the statute expressly provide long-established procedure. From first to last we have endeavored to make the language more simple and clear.

Wherever any change in the law is intended the section involved is followed by a committee comment, which points out or explains the proposed change. Unless there is such a comment, the committee wishes to be understood as intending no change of meaning. [Bill 256-S]

57.06 History: 1907 c. 110; 1909 c. 182; 1911 c. 663 s. 520; Stats. 1911 s. 4960c—1 to 4960c—7; 1913 c. 355, 778; 1919 c. 615 s. 8; Stats. 1919 s. 57.06; 1925 c. 359 s. 3; 1933 c. 384; 1937 c. 165; 1943 c. 312; 1943 c. 313; 1943 c. 553 s. 7; 1947 c. 477; 1951 c. 242, 318; 1953 c. 72; 1955 c. 260, 372; 1955 c. 696 s. 14; 1957 c. 97 s. 26; 1959 c. 113, 315; 1961 c. 637; 1965 c. 520.

Comment of Interim Committee, 1947: In a questionnaire which was widely distributed, paragraph 14 states the procedure for paroles under sections 57.06 and 57.07; and then submits this question: "Shall the law be amended eliminating the requirement of approval by the governor?" In the answers received 77 said yes, 46 no, and 36 don't know. In view of the many and varied duties of the governor and the vast number of paroles issued, it is apparent that the governor cannot personally examine the details and facts on which the paroles are granted or denied. He must rely on some person or agency to advise him. The proper agency for that purpose is the depart-

ment. * * * The "prison for women" is omitted; see 57.07. [Bill 256-S]

A prisoner at the state prison cannot be paroled without giving the required notice to the district attorney who participated in the trial of the prisoner. Parole on subsequent application cannot be granted if the required notice is not given. *State ex rel. Zabel v. Hannan*, 219 W 257, 262 NW 625.

Under 57.06 (3), Stats. 1965, every paroled prisoner remains in the legal custody of the state department of public welfare unless otherwise provided by the department, and a paroled prisoner may be returned to prison at any time on the order of the department. *Gaertner v. State*, 35 W (2d) 159, 150 NW (2d) 370.

Under 57.06 (3) and 57.13, Stats. 1963, action of the state department of public welfare in granting defendant parole to meet a Colorado detainer was authorized and, therefore, Wisconsin did not lose its jurisdiction to reincarcerate defendant on his return. *Radant v. Burke*, 409 F (2d) 482.

A convict of the state prison out on parole may be arrested and tried for a felony committed before the earlier sentence. 2 Atty. Gen. 301.

Paroled prisoners and those on probation, as well as their earnings, are under the complete control and authority of the board of control. 4 Atty. Gen. 760.

A convict sentenced to the state prison while on parole cannot be deported under a federal warrant which states that the prisoner is to be deported at the expiration of his sentence. 15 Atty. Gen. 7.

The amendment to 57.06 (1) made by ch. 384, Laws 1933, refers to minimum of an indeterminate sentence. 23 Atty. Gen. 143.

A person sentenced to a term of from one to 3 years on one count and from 3 to 5 years on other counts, the sentences running concurrently, may be paroled after serving 2 years. 24 Atty. Gen. 263.

The board of control may furnish medical care to paroled prisoners under certain circumstances. 25 Atty. Gen. 488.

The time a prisoner is out under parole later declared invalid because of technical procedural defects is counted toward service of his sentence when such absence from prison was not due to fault or crime of the prisoner. 26 Atty. Gen. 292.

The governor has power to commute a life sentence to an indeterminate sentence of one to 20 years. A convict, whose sentence is so commuted, is eligible for parole under 57.06 (1), Stats. 1937, after serving one year. 27 Atty. Gen. 91.

The rule for determining parole eligibility with respect to both indeterminate and determinate sentences imposed to run consecutively is that a prisoner must serve the minimum period of incarceration required under each separate sentence before he becomes eligible for parole and, for purposes of computing service of said required minimum periods, the prisoner will be deemed to be serving his second minimum period at the expiration of the minimum period of incarceration upon first, and so on. Where a prisoner receives an additional consecutive sentence while incarcerated on a prior conviction, the same rule

applies and after serving the minimum required term on the original sentence he will be deemed to commence serving the minimum required term on the second sentence, for parole purposes. 29 Atty. Gen. 317.

When a convict has been at liberty on parole under 57.06 or 57.07, Stats. 1941, or by reason of escape and is returned to prison with an additional sentence imposed either for a new offense or for escape, the new sentence runs concurrently with the remainder of the original one only if the sentencing court does not provide otherwise, but the court has authority to provide that the new sentence shall run consecutively with the original one. A convict who violates parole has the same status for most purposes as an escaped prisoner. Running of his sentence is tolled from the time of such violation and the time spent in prison in another state or in hiding cannot be counted toward service of the Wisconsin sentence under which he was paroled. 30 Atty. Gen. 218.

The parole eligibility date of a person serving a life term in the state prison is computed, according to 57.06 (1), Stats. 1943, by deducting from a term of 20 years, an amount equal to good time which the prisoner would have earned under both 53.11 (1) and 53.12 (1) had he been serving a term of 20 years. Loss of good time due to misconduct operates to postpone the parole eligibility of life termers. 33 Atty. Gen. 262.

57.07 History: R. S. 1858 c. 189 s. 3; 1870 c. 66 s. 6; R. S. 1878 s. 4966; 1881 c. 298 s. 22; 1882 c. 175; 1887 c. 424; Ann. Stats. 1889 s. 4966, 4970a, 4970b; 1897 c. 346 s. 12; Stats. 1898 s. 4944j, 4964, 4969; 1899 c. 28 s. 1; 1899 c. 351 s. 19; Supl. 1906 s. 4944j, 4969; 1909 c. 160; 1913 c. 723; Stats. 1913 s. 4944j, 4944—o sub. 4, 5, 6, 4964, 4969; 1915 c. 387 s. 2; 1917 c. 486; Stats. 1917 s. 4944j, 4944—o sub. 4, 5, 6, 4964, 4969, 4970—4; 1919 c. 615 s. 9; Stats. 1919 s. 57.07; 1929 c. 439 s. 11; 1943 c. 313; 1945 c. 130, 343; 1947 c. 477; 1961 c. 110; 1965 c. 520.

A paroled inmate of the Wisconsin state reformatory may enter into a contract of co-partnership and sue for the value of his services, so long as he does not violate any orders or rules of the board of control. 14 Atty. Gen. 192.

57.071 History: 1943 c. 312, 313; 1943 c. 553 s. 7; Stats. 1943 s. 57.06 (4); 1947 c. 477; Stats. 1947 s. 57.071; 1953 c. 117; 1969 c. 366 s. 117 (1) (c), (3) (a).

Comment of Interim Committee, 1947: Old 57.06 (4) [renumbered 57.071] applies to prisoners in any penal institution and is therefore made a separate section. It is changed to apply during any war. The report provision is simplified. [Bill 256-S]

57.072 History: 1947 c. 477; Stats. 1947 s. 57.072; 1951 c. 244; 1969 c. 255 s. 65.

Comment of Interim Committee, 1947: 57.072 is a new provision intended to provide a uniform rule for "stopping the clock" as to the probation or parole period of absconders. [Bill 256-S]

A defendant, detained in the county jail as a parole violator, while not entitled to bail, was entitled to complain of the place of his

custody, for while so held, he was not serving his sentence and was not given credit for such time. *Gaertner v. State*, 35 W (2d) 159, 150 NW (2d) 370.

57.075 History: 1919 c. 454 s. 4; 1919 c. 671 s. 37; Stats. 1919 s. 57.075; 1943 c. 93; 1945 c. 183; 1947 c. 477.

Expenses incurred for necessities for probationers are properly charged to the probationers' revolving fund, regardless of whether or not the fund is subsequently reimbursed. 10 Atty. Gen. 31.

57.078 History: 1947 c. 477; Stats. 1947 s. 57.078; 1959 c. 464.

Comment of Interim Committee, 1947: The reason for 57.078 is quite obvious. Its constitutionality is asserted in a brief submitted to the committee by the revisor of statutes. The brief is printed in the May 1946 issue of the *Wisconsin Law Review*, Vol. 1946, page 281. [Bill 256-S]

Revisor's Note, 1949: Before 57.078 was created, by ch. 477, Laws 1947, civil rights were restored only by pardon. Now they may also be restored by the convicted person's having served his sentence or otherwise satisfied the judgment against him. [Bill 483-S]

57.08 History: R. S. 1849 c. 151 s. 1; R. S. 1858 c. 182 s. 1; 1868 c. 113 s. 8; R. S. 1878 s. 4855, 4861, 4864; Stats. 1898 s. 4855, 4861, 4864; 1919 c. 615 s. 10; Stats. 1919 s. 57.08; 1947 c. 477.

On the pardoning power see notes to sec. 6, art. V.

A convict who has served his sentence may be granted a pardon without compliance with secs. 4855-4863, Stats. 1898. 1904 Atty. Gen. 454.

Where a conditional pardon has been granted and the applicant discharged from imprisonment no notice need be given of a subsequent application for an absolute pardon. 8 Atty. Gen. 163.

A pardon granted contrary to the provisions of 57.08-57.10, Stats. 1921, is void. 10 Atty. Gen. 89.

Where an application for a pardon, in which all statutory requirements were followed, has been denied, if the governor reopens such case, he may grant a pardon only after the statutory requirements as to notice, publication, etc., have again been complied with. 14 Atty. Gen. 577.

The governor has no authority to honor a request from the immigration service of the U. S. department of labor to grant reprieve or pardon for the purpose of deportation unless statutory regulations provided in 57.08 to 57.10, Stats. 1929, have been complied with. 18 Atty. Gen. 339.

57.09 History: 1868 c. 113 s. 2; 1871 c. 56; R. S. 1878 s. 4856; Stats. 1898 s. 4856; 1919 c. 615 s. 11; Stats. 1919 s. 57.09; 1921 c. 389; 1947 c. 477; 1965 c. 252, 431.

The governor has no power to pardon a person except within 10 days next before the time when he would otherwise be entitled to a discharge pursuant to law, without compliance with 57.09 and 57.10, Stats. 1929. 18 Atty. Gen. 556.

57.10 History: 1868 c. 113 s. 3; R. S. 1878 s. 4857; Stats. 1898 s. 4857; 1919 c. 615 s. 13; Stats. 1919 s. 57.10; 1947 c. 477; 1965 c. 431.

Comment of Interim Committee, 1947: 57.10 is restated without change of meaning except that old (5), requiring the judge's recommendation in murder cases, is omitted. [Bill 256-S]

57.11 History: 1868 c. 113 s. 5; R. S. 1878 s. 4859, 4862, 4863; Stats. 1898 s. 4859, 4862, 4863; 1917 c. 14 s. 3; 1919 c. 615 s. 14; Stats. 1919 s. 57.11; 1947 c. 477.

Comment of Interim Committee, 1947: 57.11 is restated without change of meaning, except that new (3) forfeits a pardon violator's good time but permits parole. [Bill 256-S]

A pardon does not become effective until accepted by the one to whom granted; and may be recalled and revoked at any time before acceptance; the status of the grantee is then the same as though no pardon had been issued. If a conditional pardon is granted and accepted and later the conditions are violated, it can be revoked only in the manner prescribed by secs. 4862 and 4863, Stats. 1917. 7 Atty. Gen. 424.

Commutation of the sentence of a prisoner by the governor secured by fraudulent misstatements is void from its inception and may be withdrawn or revoked by the governor; the prisoner may, on order of the governor, be arrested by a sheriff or warden of the prison and required to serve out the balance of his term. 13 Atty. Gen. 625.

After a prison sentence has expired the governor has no further jurisdiction over the convict who was out on a conditional pardon and did not live up to all the conditions of that pardon. 25 Atty. Gen. 633.

57.115 History: 1921 c. 389; Stats. 1921 s. 57.115; 1947 c. 477; 1951 c. 440; 1961 c. 637; 1965 c. 520; 1969 c. 366.

Time during which a convict is out of prison on temporary release in a case where an emergency exists must be included in computing time of service required for parole consideration. 18 Atty. Gen. 572.

A prisoner in Waupun may be tried and sentenced while already serving a term, and a temporary permit may issue to take the prisoner out of prison for that purpose. 25 Atty. Gen. 162.

57.12 History: 1868 c. 113 s. 6; R. S. 1878 s. 4860; Stats. 1898 s. 4860; 1919 c. 615 s. 15; Stats. 1919 s. 57.12; 1947 c. 477.

57.13 History: 1939 c. 345; Stats. 1939 s. 57.13; 1947 c. 477; 1951 c. 261 s. 10.

57.135 History: 1947 c. 477; Stats. 1947 s. 57.135.

Comment of Interim Committee, 1947: 39 states have entered into the compact under the uniform act on out-of-state parolee supervision. New 57.135 is to authorize the placing of probationers and parolees in the states which have not entered into the compact, and to receive such persons from those states, on conditions equivalent to those prescribed by said act, with waiver of extradition in case of revocation of his probation or parole. [Bill 256-S]

57.14 History: 1955 c. 30; Stats. 1955 s. 57.14; 1969 c. 366.

CHAPTER 58.

Private Asylums, Hospitals and Societies.

58.01 History: R. S. 1858 c. 187; 1872 c. 146 s. 8; 1875 c. 325; 1877 c. 149; R. S. 1878 s. 1785, 1786; Stats. 1898 s. 1785, 1786; 1899 c. 351 s. 28; 1919 c. 616 s. 2; Stats. 1919 s. 58.01; 1923 c. 444 s. 1; 1929 c. 439 s. 11; 1955 c. 575 s. 20.

Editor's Note: The discharge of an inmate of a veterans' home was upheld, under sec. 1785, Stats. 1898, in *Smith v. Board of Trustees*, 138 W 628, 120 NW 403.

58.05 History: 1883 c. 171; 1887 c. 316; Ann. Stats. 1889 s. 1786a; Stats. 1898 s. 1786a; 1919 c. 616 s. 7; Stats. 1919 s. 58.05; 1943 c. 93; 1955 c. 506 s. 28; 1969 c. 366 s. 117 (1)(c).

58.06 History: 1917 c. 432; Stats. 1917 s. 1957 sub. 10; 1919 c. 616 s. 8; Stats. 1919 s. 58.06; 1929 c. 316 s. 1, 2; 1939 c. 233, 473; 1945 c. 104; 1949 c. 235; 1953 c. 430; 1957 c. 526 s. 26; 1957 c. 698; 1959 c. 555; 1961 c. 342; 1969 c. 366 s. 117 (1)(b), (c).

Under 58.06 (2), Stats. 1953, a philanthropic tuberculosis sanatorium approved by the state board of health may receive public patients at state and county expense notwithstanding that it leases the buildings and equipment from another non-profit corporation. The rent paid is a proper item of expense to be considered in calculating the per capita cost of maintenance, and the provisions of 50.07, relating to depreciation, have no application. The reasonableness of the rental charge is to be considered by the state board of health in determining whether to approve the sanatorium, but the use of the rent money by the owning corporation is immaterial. 44 Atty. Gen. 47.

See note to 50.09, citing 49 Atty. Gen. 191.

58.07 History: 1880 c. 179; Ann. Stats. 1889 s. 4445e; 1891 c. 292; Stats. 1898 s. 1636k; 1909 c. 65; 1911 c. 258; Stats. 1911 s. 1636k, 1636o; 1913 c. 106; 1919 c. 616 s. 9; Stats. 1919 s. 58.07; 1945 c. 158; 1947 c. 311, 540; 1949 c. 232; 1953 c. 193; 1969 c. 366 s. 117 (1)(c); 1969 c. 459.

A municipal humane officer has the powers of a constable; these do not extend beyond the limits of the county. 13 Atty. Gen. 134.

58.566 History: 1947 c. 93; 1947 c. 560.

CHAPTER 59.

Counties.

59.001 History: 1955 c. 651; Stats. 1955 s. 59.001.

59.01 History: R. S. 1849 c. 10 s. 1, 2; R. S. 1858 c. 13 s. 1, 2; R. S. 1878 s. 650; Stats. 1889 s. 650; 1919 c. 695 s. 3; Stats. 1919 s. 59.01; 1935 c. 212; 1955 c. 651 s. 2; 1969 c. 276 s. 610.

On legislative power generally see notes to sec. 1, art. IV; on uniform town and county government see notes to sec. 23, art. IV; on

prohibition of special and private laws see notes to sec. 31, art. IV; on election, terms, and removal of county officers see notes to sec. 4, art. VI; on division of counties see notes to sec. 7, art. XIII; on removal of county seats see notes to sec. 8, art. XIII; and on the division of the state into counties, and their boundaries, see notes to various sections of ch. 2.

The right of a county to challenge acts of the legislature is sharply restricted, since the county is a creature of the state and exists in a large measure to help handle the state's burdens of political organization and civil administration. *State v. Mutter*, 23 W (2d) 407, 127 NW (2d) 15.

59.02 History: R. S. 1849 c. 10 s. 7; R. S. 1858 c. 13 s. 6; R. S. 1878 s. 652; Stats. 1898 s. 652; 1915 c. 385 s. 14; Stats. 1915 s. 652, 670m; 1919 c. 695 s. 4, 5; Stats. 1919 s. 59.02; 1943 c. 177; 1955 c. 651 s. 3, 5.

A county board may delegate to a committee of its members the power to purchase a poor farm for the county, but it cannot delegate powers legislative in their character. *French v. Dunn County*, 58 W 402, 17 NW 1.

This section states the common-law rule that a legal assembly of the members of a definite municipal governing body is made up of a majority of all its members. This is the universal rule applicable to all corporations, public or private. Wherever the common-law rule has been changed by statute, language uniformly occurs which is so plain as to leave very little, if any, room for judicial construction. Under this section it was held that a majority vote of a quorum but by less than a majority of all the members of the board constitutes the legal action of the whole board. *St. Aemilianus Orphan Asylum v. Milwaukee County*, 107 W 80, 82 NW 704.

Commissioners appointed by the county board to act with the town board in the building of a bridge cannot alone or acting with the board bind the county by contract for the construction of such bridge. *Johnson v. Buffalo County*, 111 W 265, 87 NW 240.

An oral motion when adopted by a county board or city council becomes a resolution. *Meade v. Dane County*, 155 W 632, 145 NW 239.

Sec. 652, Stats. 1911, contemplates that some powers of a county board may be exercised by a committee, but it does not attempt to define the extent of such power of delegation. *First S. & T. Co. v. Milwaukee County*, 158 W 207, 148 NW 22, 1093.

Where a motion to accept a bid for furnishing furniture for the courthouse is voted on, 7 voting in the affirmative, 5 in the negative, 2 not voting, it is not carried, the statute requiring a determination by a majority of those present. 2 Atty. Gen. 251.

The county board may delegate power to a committee to attend to the erection of an addition to the courthouse. 5 Atty. Gen. 652.

The county board is empowered to employ a graduate trained nurse. This may be done by the board direct or in pursuance of a resolution or an ordinance. 7 Atty. Gen. 613.

A county board may not adopt a rule requiring a larger vote than is required by statute to authorize expenditures by that body. 12 Atty. Gen. 24.

Even though rules of parliamentary proce-