

No. 31, S.]

[Published April 7, 1953.

CHAPTER 31.

AN ACT to repeal the title to chapter 166 and 351.30 (1a); to renumber 49.07 (2), (3) and (6), 49.13, 49.135, 166.11 (1), (1m), (2) and (3), 166.12 (2), 166.16, 166.18 (1) and (2), 166.185, 166.22 and 351.30 (3) to (6); to renumber and amend 49.07 (1), (4) and (5), 166.01 to 166.105, 166.12 (1) and (3), 166.13 to 166.15, 166.17, 166.18 (3), 166.19 to 166.21, 166.23, 247.095, 351.30 (1) and (2) and 351.31; to amend 46.03 (3), 46.21 (5) (b), 49.18 (2) (d), 49.19 (4) (d), 49.22 (3), 49.61 (2) (d), 50.10, 56.07 (2), (3) and (4), 57.01 (1), 57.04 (1), 69.33 (9), 237.06, 247.23 and 288.13; and to create a title to chapter 52 of the statutes, all for the purpose of revising the statutes relating to support of dependents and consolidating such provisions in a new chapter 52 of the statutes.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. The title to Chapter 52 of the statutes is created to read:

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SUPPORT OF DEPENDENTS.

SECTION 2. 49.07 (1) of the statutes is renumbered 52.01 (1) and amended to read:
52.01 LIABILITY OF RELATIVES; ENFORCEMENT. (1) The * * * parent, spouse and * * * child of any dependent person (as defined in s. 49.01) who is unable to maintain himself * * * shall maintain such dependent person, so far as able, in a manner approved by the authorities having charge of the dependent, or by the board in charge of the institution where such dependent person * * * is; but no child of school age shall be compelled to labor contrary to the child labor laws.

SECTION 3. 49.07 (2) and (3) of the statutes are renumbered 52.01 (2) and (3).

SECTION 4. 49.07 (4) and (5) of the statutes are renumbered 52.01 (4) and (5) and amended to read:

52.01 (4) The county judge * * * after hearing in a summary way * * * the allegations and proofs of the parties * * * shall by order require maintenance from such relatives, if they have * * * sufficient ability (having due regard for their own future maintenance and making reasonable allowance for the protection of the property and investments from which they derive their living and their care and protection in old age) in the following order: First the * * * spouse; then the father; then the children; and lastly the mother. Such order shall specify a sum which will be sufficient for the support of such dependent person, to be paid weekly or monthly, during a period fixed therein, or until the further order of the court. If satisfied that any such relative is unable wholly to maintain such dependent person, but is able to contribute to his support, the judge may direct 2 or more such relatives to maintain him and prescribe the proportion each shall contribute and if satisfied that such relatives are unable together wholly to maintain such dependent person, but are able to contribute something therefor, the judge shall direct a sum to be paid weekly or monthly by each such relative in proportion to his ability. Upon application of any party affected thereby and upon like notice and procedure, the said judge may modify such order. Obedience to such order may be enforced by proceedings as for a contempt.

(5) Any party aggrieved by such order may appeal therefrom to the circuit court pursuant to the provisions of ch. 324 of the Statutes of 1949, so far as applicable and necessary, but when the appeal is taken by the authorities having charge of the dependent person an undertaking need not be filed.

SECTION 5. 49.07 (6) of the statutes is renumbered 52.01 (6).

SECTION 6. 49.13 of the statutes is renumbered 52.03.

SECTION 7. 351.30 (1) of the statutes is renumbered 52.05 (1) and amended to read:

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52.05 ABANDONMENT OF CHILD OR WIFE; UNIFORM ACT. (1) PENALTY. Any person who * * *, without just cause, * * * *deserts* or wilfully * * * *neglects* or * * * *refuses* to provide for the support and maintenance of his wife or child under 18 (*legitimate or illegitimate*) in destitute or necessitous circumstances * * * shall be * * * *fined* not * * * *more than* \$500, or * * * *imprisoned* not *more than* * * * 2 years, or both * * *. The parent of any illegitimate child who * * * *has* made provision for the support of such child by giving bond, or by settlement with the proper officers in accordance with * * * *ss. 52.21 to 52.45*, shall not be subject * * * to this section.

SECTION 8. 351.30 (1a) of the statutes is repealed.

SECTION 9. 351.30 (2) of the statutes is renumbered 52.05 (2) and amended to read: 52.05 (2) ANY PERSON MAY MAKE COMPLAINT. Proceedings under this section may be instituted upon complaint made under oath or affirmation by the wife or a child * * *, the superintendent or acting superintendent or other officer in charge of public welfare agencies, the director of the department of public welfare or case work supervisor II, or by any other person * * * or organization, against any person guilty of either of the above-named offenses.

SECTION 10. 351.30 (3) to (6) of the statutes are renumbered 52.05 (3) to (6).

SECTION 11. 351.31 (1) and (2) of the statutes are renumbered 52.06 and 52.07 and amended to read:

52.06 JURISDICTION. The several county and municipal courts shall have concurrent jurisdiction with the circuit courts of offenses arising under * * * *s. 52.05*, and every such court shall be at all times open to hear, try and determine all cases arising thereunder. Process may issue and proceedings be had for the arrest and examination of offenders under * * * *ch. 354*. If, upon examination, the * * * *defendant* is bound over or held for trial the court or officer who conducts the examination shall forthwith transmit the record thereof to the circuit, county or municipal court of the county in which the examination was held, and shall order the * * * *defendant* forthwith to appear before the court to which * * * *he* has been held, there to stand trial.

52.07 PROCEDURE. The district attorney shall file an information against * * * the *defendant* as soon thereafter as practicable, and the defendant shall be arraigned upon the same. If he pleads guilty sentence shall be immediately awarded; if * * * *he pleads* not guilty * * * a jury shall forthwith be impaneled and the defendant put upon trial, unless a continuance * * * *is granted* for cause. If at the time a plea of not guilty is made there * * * *is not* * * * a regular panel of jurors in attendance upon such court the court shall order * * * the sheriff to summon * * * a *specified* number of jurors * * * from the residents of the county qualified to serve as jurors in courts of record. * * * The trial and all proceedings therein and subsequent thereto shall be, as * * * *nearly as* * * * *possible*, in conformity with the practice in the circuit courts in criminal cases, and the clerk of the circuit court of the county in which the trial is had shall act as clerk of the county court in all such cases tried therein, and shall receive the same fees as are allowed for like services in the circuit court.

SECTION 12. 49.135 of the statutes is renumbered 52.10.

SECTION 13. 247.095 of the statutes is renumbered 52.11 and amended to read:

52.11 ACTIONS TO COMPEL SUPPORT BY HUSBAND. If any * * * husband fails or refuses, without lawful or reasonable excuse, to provide for the support and maintenance of his wife or minor children, *the wife* may commence an action in any court having jurisdiction in actions for divorce, to compel such husband to provide for the support and maintenance of herself and such minor children as he may be legally required to support. The court, in such action, may determine and adjudge the amount such husband should reasonably contribute to the support and maintenance of said wife or children and how such sum should be paid. The amount so ordered to be paid may be changed or modified by the court upon notice of motion or order to show cause by either the husband or wife upon sufficient evidence. Such determination may be enforced by contempt proceedings.

SECTION 14. The title to Chapter 166 of the statutes is repealed.

SECTION 15. 166.06 of the statutes is renumbered 52.21 and amended to read:

52.21 JURISDICTION OF ILLEGITIMACY ACTIONS. Any judge of a court of record, in vacation as well as in open court, and all court commissioners, except in counties containing cities having a population of * * * *500,000* or more, shall have concurrent jurisdiction with justices of the peace in all complaints and proceedings arising under * * * *ss. 52.21 to 52.45*.

SECTION 16. 166.08 of the statutes is renumbered 52.22 and amended to read:

52.22 PROSECUTION. The district attorney shall appear and prosecute all illegitimacy proceedings including both the preliminary examination in justice court and the proceedings in the trial court and all subsequent proceedings brought to modify the original judgment or agreement. Private counsel in behalf of the complainant may appear with the district attorney, and reasonable attorneys' fees may be allowed and taxed against the defendant. * * *. In counties having a population of 500,000 or more the corporation counsel of such county or an assistant corporation counsel shall have all the powers and perform all the duties conferred or imposed upon the district attorney by * * * ss. 52.21 to 52.45 exclusively and in lieu of such district attorney.

SECTION 17. 166.19 of the statutes is renumbered 52.23 and amended to read:

52.23 PROSECUTION CONTINUED BY DISTRICT ATTORNEY. * * * If the mother of an illegitimate child commences * * * an illegitimacy proceeding and fails to prosecute * * *, the district attorney, * * * if he * * * determines it to be to the best interest of the child shall prosecute the proceedings commenced by the mother to final judgment.

SECTION 18. 166.20 of the statutes is renumbered 52.24 and amended to read:

52.24 INQUIRY BY DISTRICT ATTORNEY. If any * * * woman bears an illegitimate child which is or is likely to become a public charge, or * * * is pregnant with a child likely to be born * * * illegitimate * * * and to become a public charge, the district attorney, if he believes it to be to the best interest of the child, shall apply to any justice of the peace of the county, who shall thereupon examine such * * * woman on oath respecting the father of such child, the time when and the place where such child was begotten and * * * such other circumstances as he may deem necessary; and such justice shall reduce such examination to writing and shall thereupon issue his warrant, without further or formal complaint, to apprehend the reputed father, and the same proceeding shall be had thereon and with the like effects as are * * * provided in cases of complaint made by such * * * woman.

SECTION 19. 166.01 of the statutes is renumbered 52.25 and amended to read:

52.25 ILLEGITIMACY; PROCEEDINGS ON COMPLAINT. On complaint * * * made to any justice of the peace by any * * * woman who * * * has borne an illegitimate child or who * * * is pregnant with a child which, when born, may be illegitimate, accusing * * * a named person of being the father of such child, the justice shall take such complaint in writing, under oath of such * * * woman, and shall thereupon issue his warrant * * *, directed to the sheriff or any constable of his county, commanding him forthwith to bring such accused person before the justice to answer such complaint. With the consent of the complainant, a summons may be issued * * * as provided in s. 354.02. No such warrant or summons shall be issued and no action for the establishment of paternity shall be commenced after the expiration of 5 years from the date of the birth of such child, except in cases where the parties thereto enter into * * * an agreement for the support of such child in accordance with * * * s. 52.28.

SECTION 20. 166.21 of the statutes is renumbered 52.26 and amended to read:

52.26 WARRANT; ATTENDANCE OF COMPLAINANT. Any warrant issued under * * * ss. 52.21 to 52.45 may be executed in any part of this state; and in all cases the justice may compel the * * * woman to attend and testify the same as witnesses in other cases.

SECTION 21. 166.02 of the statutes is renumbered 52.27 and amended to read:

52.27 PRELIMINARY EXAMINATION. On the return of * * * the warrant * * * with the defendant or on the defendant's appearance after service of the summons, the justice shall examine the complainant under oath respecting the cause of complaint * * *; * * * the * * * defendant may cross-examine her and put any questions necessary for his defense. Witnesses may be examined on behalf of either party. If the action is commenced by service of summons, and the defendant does not appear, the justice shall proceed in the same manner as though he were present, and shall make such orders as if the defendant were in court. The justice may at his discretion exclude the * * * public from attendance at such examination. All testimony taken and proceedings had shall be reduced to writing; the proceedings for cause shown may be adjourned from time to time * * *; on such adjournment the * * * defendant may * * * give bail for his appearance for such examination as provided in ss. 360.07 and 360.08 * * *, and in default thereof * * * shall be committed, pending such examination, to the county jail. The * * * defendant shall be entitled to a removal of such action as in criminal examination before justices of the peace.

SECTION 22. 166.07 of the statutes is renumbered 52.28 and amended to read:

52.28 SETTLEMENT AGREEMENTS. A * * * woman who has * * *

borne an illegitimate child or who * * * is pregnant with a child which, when born, may be illegitimate, may enter into an agreement with the person claimed by her to be the father of the child. Such agreement may be entered into at any time prior to final judgment, either before or after issuance of process. No agreement shall be entered into before the birth of the child unless the court finds that there are special circumstances making it advisable to do so. The agreement shall include a determination of all facts and orders * * * which s. 52.37 requires the court to determine in its order for judgment, except that where the parties are unable to agree as to the paternity of the child, the alleged father may deny paternity in the agreement. By the terms of the agreement the defendant must submit personally to the jurisdiction of the court, and consent to entry of judgment in accordance with the terms of the agreement. Upon motion of the district attorney, the judge of * * * a court of record having power to enter final judgment in illegitimacy proceedings, being satisfied with the terms of the agreement, shall order judgment in accordance therewith if paternity of the child is admitted. Where the paternity of the child is not admitted, after said agreement is approved by the court, it shall be filed but judgment shall not be rendered until there is a default of the payments agreed upon, when, upon motion of the district attorney, judgment shall be rendered and entered forthwith. All agreements referred to in * * * ss. 52.21 to 52.45 shall be drawn by the district attorney. No other agreement or settlement of any illegitimacy proceedings shall be valid.

SECTION 23. 166.22 of the statutes is renumbered 52.29.

SECTION 24. 166.03 of the statutes is renumbered 52.30 and amended to read:

52.30 DISCHARGE OF DEFENDANT. If the * * * defendant enters into agreement with the complainant as provided in * * * s. 52.28 or 52.29, the justice shall make a memorandum of said agreement on his docket, and upon entry of judgment on such agreement shall discharge such * * * defendant.

SECTION 25. 166.04 of the statutes is renumbered 52.31 and amended to read:

52.31 BAIL AND COMMITMENT. (1) * * * If the defendant does not enter into a settlement agreement with the complainant as provided in s. 52.28 or 52.29 and there is probable cause to believe * * * him guilty the justice shall * * * commit him for trial at the next term of the circuit court for the proper county * * *. The defendant may * * * give bail as provided in ss. 360.07 and 360.08.

(2) * * * The justice shall thereupon certify and return the examination and all testimony so taken before him with all process and papers in the case to the clerk of said circuit court. * * * If any examination has been had as provided by law, and the person complained of has been discharged for want of sufficient evidence to raise a probability of his guilt, and the district attorney * * * afterwards * * * discovers admissible evidence sufficient, in his judgment, to convict the person discharged, he may, notwithstanding such discharge, cause another complaint to be made before any officer authorized by law to make such examination, and thereupon another proceeding shall be had.

SECTION 26. 166.05 of the statutes is renumbered 52.32 and amended to read:

52.32 VENUE; CHANGE OF VENUE. All cases begun under * * * ss. 52.21 to 52.45 shall be tried in the county where the action is properly commenced unless it * * * appears to the satisfaction of the court by affidavit that a fair and impartial trial cannot be had in such county, in which case the court may direct that the * * * defendant be tried in some adjoining county where a fair and impartial trial can be had; the * * * defendant shall be entitled to * * * only one change of venue * * *.

SECTION 27. 166.09 of the statutes is renumbered 52.33 and amended to read:

52.33 CONTINUANCE; BAIL. If at the next term of the court to which the * * * defendant is * * * bound over or to which the venue has been changed the complainant * * * has not * * * borne her child or * * * is not * * * able to attend, or if at any time there * * * is any other sufficient reason * * * the court may order a continuance of the cause * * *. If the sureties * * * on the bond at any term of court object to being any longer held liable or if the court * * * for any cause * * * deems it proper such court may order a new * * * bond to be * * * given and the defendant shall be committed until he gives such new * * * bond.

SECTION 28. 166.16 of the statutes is renumbered 52.34.

SECTION 29. 166.10 of the statutes is renumbered 52.35 and amended to read:

52.35 TRIAL; EVIDENCE. Upon the trial of the proceedings the issue shall be whether the * * * defendant is guilty or not guilty. The trial shall be by jury, if either party demands a jury, otherwise by the court. If the mother * * * is dead or * * * becomes insane or cannot be found within the jurisdiction, the proceeding does not

abate, but the child shall be substituted as complainant. The testimony of the mother taken at the preliminary hearing may in any such case be read in evidence, and in all cases it shall be read in evidence if demanded by the defendant upon the trial. The judge may at his discretion exclude the * * * public from attendance at such trial.

SECTION 30. 166.105 of the statutes is renumbered 52.36 and amended to read:

52.36 EVIDENCE; BLOOD TESTS. * * * *If it * * * is relevant to the prosecution or the defense in an illegitimacy action, the trial court, by order, may direct that the complainant, her child and the defendant submit to one or more blood tests to determine whether or not the defendant can be excluded as being the father of the child. The result of the test shall be receivable in evidence but only in cases where definite exclusion is established. The tests shall be made by a duly qualified physician * * * or physicians, or by another duly qualified person * * * or persons, not to exceed 3, to be appointed by the court and to be paid by the county. Such experts shall be subject to cross-examination by both parties after the court has caused them to disclose their findings to the court or to the court and jury. Whenever the court orders such blood tests to be taken and one of the parties * * * refuses to submit to such test, such fact shall be disclosed upon the trial unless good cause is shown to the contrary.*

SECTION 31. 166.11 (1), (1m), (2) and (3) of the statutes are renumbered 52.37 (1), (2), (3) and (4).

SECTION 32. 166.12 (1) of the statutes is renumbered 52.38 (1) and amended to read:

52.38 CONTINUING JURISDICTION; REVISION OF JUDGMENT OR AGREEMENT. (1) Whenever settlement has been made pursuant to * * * s. 52.37 and the defendant fails to comply with the terms of such settlement, or whenever the judgment or agreement providing for the monthly support of an illegitimate child has been docketed or filed, the court shall have continuing jurisdiction and may, on the petition of the district attorney, the trustee, the mother, the named or adjudicated father, or any other person, agency or institution having legal custody of the child or upon stipulation signed by the defendant and the person, agency or institution having legal custody of the child and approved by the district attorney, revise and alter such judgment or agreement respecting the amount of support and the payment thereof and in its discretion may provide for or increase or decrease the amount of future support, and may make such further judgment or order as the circumstances of the parties require.

SECTION 33. 166.12 (2) of the statutes is renumbered 52.38 (2).

SECTION 34. 166.12 (3) of the statutes is renumbered 52.38 (3) and amended to read:

52.38 (3) Nothing in this section shall in any way be considered a derogation of * * * s. 52.05.

SECTION 35. 166.13 of the statutes is renumbered 52.39 and amended to read:

52.39 BOND OR COMMITMENT. If the person * * * adjudged to be the father of such child * * * *pays* the cost of the prosecution, and any lump or total sum adjudged to be paid, he shall be discharged and the judgment satisfied of record; or if he * * * *gives* a bond to the proper town or county in such sum and with such surety as * * * the court *approves*, conditioned * * * *on* the performance of such judgment and the payment of all sums ordered * * * to be paid as therein directed, he shall be discharged; otherwise he shall be committed to the county jail until he * * * *complies* with * * * such judgment or * * * *is* otherwise discharged according to law * * *. The court * * * *may* stay execution of such commitment * * *; execution * * * so stayed shall issue at any time when it * * * *appears* to the court that the defendant has defaulted on any of the provisions of the judgment.

SECTION 36. 166.14 of the statutes is renumbered 52.40 and amended to read:

52.40 WHEN AND HOW DISCHARGED; LIABILITY THEREAFTER. Any person who * * * *has* been so imprisoned 90 days may apply for his discharge from imprisonment in the manner provided by law for the discharge from imprisonment of persons confined in jail upon executions against the person; but notice of the application for such discharge shall be given to the complainant, if * * * *she lives* within the state, and also to the district attorney at least 15 days before such application for discharge is made. Upon defendant's release, if * * * *he* at any time * * * *fails* to comply with the judgment of the court with reference to the continued support of the child, he may be summarily dealt with as for contempt of court, and shall likewise be subject to all the penalties for failure to care for and support such child which are imposed by law upon the father of a legitimate child of like age and capacity, and in

case of such failure to abide by any order of the court, the defendant shall be fully liable for the support of such child without reference to such order.

SECTION 37. 166.15 of the statutes is renumbered 52.41 and amended to read:

52.41 EXECUTION. The court, upon motion by the mother of such child, or the trustee named in the judgment, or of the district attorney, may, from time to time, order execution to issue against the defendant and his sureties in any bond given * * * to secure the performance of any such * * * judgment, or against a defendant who * * * has been discharged under * * * s. 52.40, for such sum as may at any time become due thereon and remain unpaid.

SECTION 38. 166.17 of the statutes is renumbered 52.42 and amended to read:

52.42 RECORDS; PRIVATE. All records of court proceedings in cases under * * * ss. 52.21 to 52.45 shall be withheld from inspection by, and copies shall not be furnished to, persons other than the parties in interest and their attorneys except upon order of the court.

SECTION 39. 166.18 (1) and (2) of the statutes are renumbered 52.43 (1) and (2).

SECTION 40. 166.18 (3) of the statutes is renumbered 52.43 (3) and amended to read:

52.43 (3) Upon filing a final account with the court showing satisfactory evidence of compliance with all orders of the court and * * * with * * * provisions of * * * ss. 52.21 to 52.45 which relate to the trustee, the trustee shall be relieved of all further obligations and discharged.

SECTION 41. 166.185 of the statutes is renumbered 52.44.

SECTION 42. 166.23 of the statutes is renumbered 52.45 and amended to read:

52.45 CONSTRUCTION OF SECTIONS 52.21 TO 52.45. * * * Sections 52.21 to 52.45 shall be so interpreted and construed as to effectuate the protection and welfare of the child involved in any proceedings hereunder.

SECTION 43. 46.03 (3) and 237.06 of the statutes are amended by substituting "ss. 52.21 to 52.45" for "chapter 166".

SECTION 44. 46.21 (5) (b) of the statutes is amended to read:

46.21 (5) (b) * * * Sections 49.08 * * *, 52.01 and 52.03 shall govern the support and maintenance of persons in any of the institutions in charge of said director.

SECTION 45. 49.18 (2) (d), 49.22 (3), 49.61 (2) (d) and 50.10 of the statutes are amended by substituting "52.01" for "49.07".

SECTION 46. 49.19 (4) (d), 56.07 (2), (3) and (4), 57.01 (1) and 57.04 (1) of the statutes are amended by substituting "52.05" for "351.30" wherever it occurs.

SECTION 47. 69.33 (9) of the statutes is amended by substituting "52.37 (3)" for "166.11 (2)".

SECTION 48. 247.23 of the statutes is amended by substituting "52.11" for "247.095".

SECTION 49. 288.13 of the statutes is amended to read:

288.13 FORFEITURES COLLECTED, TO WHOM PAID. All moneys collected in favor of the state for forfeiture, except the portion to be paid to any person who sues with the state therefor, shall be paid by the officer who collects the same (except justices of the peace and town and city treasurers) to the treasurer of the county within which such forfeiture was incurred within 20 days after its receipt by him; and in case of any failure in such payment such county treasurer may collect the same of such officer by action, in his name of office and upon the official bond of such officer, with interest at the rate of 12 per cent per annum from the time when it should have been paid. * * *

Approved April 2, 1953.