

CHAPTER 52.

SUPPORT OF DEPENDENTS.

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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.

(2) Upon failure of relatives so to do said authorities or board shall submit to the district attorney a report of its findings, and upon receipt thereof the district attorney shall, within 60 days, apply to the county court of the county in which such dependent person resides for an order to compel such maintenance. Upon such application said district attorney shall make a written report thereof to the county welfare department, with a copy to the chairman of the county board and to the department.

(3) At least 10 days prior to the hearing on said application notice thereof shall be served upon such relatives in the manner provided for the service of summons in courts of record.

(4) The county court shall in a summary way hear the allegations and proofs of the parties and by order require maintenance from such relatives, if of 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 husband or wife; then the father; then the children and the county court may consider whether or not the parents have supported the children in the manner prescribed by law; 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 court 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 court shall direct a sum to be paid weekly or monthly by each such relative in proportion to his ability. Contributions directed by court order, if for less than full support, shall be paid to the county welfare agency and applied to the dependent person's grant. Upon application of any party affected thereby and upon like notice and procedure, the court 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 but when the appeal is taken by the authorities having charge of the dependent person an undertaking need not be filed.

(6) If any relative who has been ordered to maintain a dependent person neglects to do as ordered, the authorities or board may recover in an action on behalf of the municipality or institution for relief or support accorded the dependent person against such relative the sum prescribed for each week the order was disobeyed up to the time of judgment, with costs.

(7) When the income of a responsible relative is such that he would be expected to make a contribution to the support of the recipient and such recipient lives in the relative's home and requires care, a reasonable amount may be deducted from the expected contribution in exchange for the care provided.

(8) The county shall not be obliged to pay the suit tax as provided in s. 271.21 in any action or special proceeding instituted under this section.

History: 1953 c. 31, 275; 1957 c. 187.

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

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

A proceeding in the county court to require the support of dependent persons by relatives is a statutory proceeding in derogation of the common law, and the statute should be strictly complied with. It is a "special proceeding," in which findings are required, but such findings may be separate from the order. Spies v. Peterson, 271 W 505, 74 NW (2d) 148.

A petition requesting the county court to issue an order under (1) was not objectionable for being signed by the county director of public welfare rather than by the district attorney, the district attorney

appearing for the petitioner and representing him throughout the proceeding, and the director being charged by statute with making the investigation of the relatives and with proceeding, through the district attorney, against those whom his investigation indicates may be financially able to support or contribute to the support of the dependent. Spies v. Peterson, 271 W 505, 74 NW (2d) 148.

An order requiring a son to maintain his dependent mother, and to pay the sum of \$75 "or such other sum as may be required so to maintain" her, and not specifying the periods of payment, is held void for indefiniteness. Spies v. Peterson, 271 W 505, 74 NW (2d) 148.

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

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

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

52.03 Abandonment; seizure of property. (1) When the father, or mother, being a widow or living separate from her husband, absconds or is about to abscond from his or her children, or a husband from his wife, or when such father, mother or husband is about to remove permanently from the municipality in which he or she resides, leaving a wife or children, or both, chargeable or likely to become chargeable upon the public for support, or neglects or refuses to support or provide for such wife or children, the county or municipality where such wife or children may be, by the official or agency designated to administer public assistance, may apply to the county judge or any justice of the peace of any county in which any property, real or personal, of said father, mother or husband is situated for a warrant to seize the property.

(2) Upon due proof of the facts aforesaid such judge or justice shall issue his warrant authorizing such county or municipality to seize the property of such person, wherever found in said county; and they shall, respectively, be vested with all the rights and title, as limited in this section, to such property which such person had at the time of his departure. They shall immediately make an inventory thereof and return the same with said warrant and their proceedings thereon to the county court. All sales and transfers of any real or personal property left in such county, made by him after the issuing of such warrant, shall be absolutely void.

(3) Upon such return the county court may inquire into the facts and circumstances and may confirm such seizure or discharge the same; and if the same be confirmed shall from time to time direct what part of the personal property shall be sold and how much of the proceeds of such sales and the rents and profits of the real estate shall be applied toward the maintenance of the wife or children of such person. All such sales shall be at public auction in accordance with the laws relating to execution sales of personalty and realty as provided in ss. 272.29 and 272.31.

(4) The county or municipality, respectively, shall receive the proceeds of all property so sold and the rents and profits of the real estate of such person and apply the same to the maintenance and support of the wife or children of such person; and they shall account to the court for the moneys so received and for the application thereof from time to time.

(5) If the person whose property has been so seized shall return and support the wife or children so abandoned or give security to the county or municipality, respectively, (to be approved by them) that such wife or children shall not thereafter be chargeable to such municipality, the court shall discharge such warrant and order the restoration of the property seized by virtue thereof and remaining unappropriated, or the unappropriated proceeds thereof, after deducting the expenses of such proceedings.

History: 1953 c. 31.

52.05 Abandonment; 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.

(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.

(3) **ORDER FOR SUPPORT PENDENTE LITE.** At any time before trial, upon petition of the complainant and upon notice to the defendant, the court, or a judge thereof in vacation, may enter such temporary order as may seem just, providing for support of the deserted wife or children, or both, pendente lite, and may punish for violation of such order as for contempt.

(4) **ORDER FOR SUPPORT IN LIEU OF PENALTY; RECOGNIZANCE.** Before the trial, with the consent of the defendant, or at the trial, on entry of a plea of guilty, or after conviction, instead of imposing the penalty hereinbefore provided or in addition thereto, the court in its discretion, having regard to the circumstances, and to the financial ability or earning capacity of the defendant, shall have the power to make an order, which shall be subject to change by the court from time to time, as circumstances may require, directing the defendant to pay a certain sum weekly, semimonthly, monthly, or as the circumstances may permit, for a period not exceeding 2 years, to the wife or to the guardian, curator or custodian of the said minor child or children, or to an organization or individual approved by the court as trustee; and shall also have the power to release the defendant from custody on probation for the period so fixed, upon his or her entering into a recognizance, with or without surety, in such sum as the court or a judge thereof in vacation may order and approve. The condition of the recognizance shall be such that if the defendant shall make his or her personal appearance in court whenever ordered to do so, and shall further comply with the terms of such order of support, or of any subsequent modification thereof, then such recognizance shall be void, otherwise of full force and effect.

(5) **SENTENCE.** If the court be satisfied by information and due proof under oath, that at any time during said period of 2 years the defendant has violated the term of such order, it may forthwith proceed with the trial of the defendant under the original charge, or sentence him or her under the original conviction, or enforce the suspended sentence, as the case may be. In case of forfeiture of recognizance, and enforcement thereof by execution, the sum recovered may, in the discretion of the court, be paid, in whole or in part, to the wife, or to the guardian, curator, custodian or trustee of the said minor child or children.

(6) **RULES OF EVIDENCE.** No other or greater evidence shall be required to prove the marriage of such husband and wife, or that the defendant is the father or mother of such child or children, whether legitimate or illegitimate, than is or shall be required to prove such facts in a civil action. In no prosecution under this section shall any existing statute or rule of law prohibiting the disclosure of confidential communications between husband and wife apply, and both husband and wife shall be competent and compellable witnesses to testify against each other to any and all relevant matters, including the fact of such marriage and the parentage of such child or children; provided, that neither shall be compelled to give evidence incriminating himself or herself, proof of the desertion of such wife, child or children in destitute or necessitous circumstances or of neglect or refusal to provide for the support and maintenance of such wife, child or children shall be prima facie evidence that such desertion, neglect or refusal is wilful.

History: 1953 c. 31.

A Wisconsin court would not have jurisdiction under 351.30 [52.05] and 351.31 [52.06] to penalize a father residing in Wisconsin for failure to support his children during periods when the latter were residing in another state with their mother. 39 Atty. Gen. 164.

The term "wilfully" here means an intent on the part of the defendant to evade his parental duty to support and maintain his minor child. (For probation under this section see note to 57.025 citing this case.) State v. Schlueter, 262 W. 602, 55 NW (2d) 878.

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. 954. 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.

History: 1953 c. 31.

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.

History: 1953 c. 31.

52.10 Uniform reciprocal enforcement of support act. (1) **PURPOSES.** The purposes of this section are to improve and extend by reciprocal legislation the enforcement of duties of support and to make uniform the law with respect thereto.

(2) **DEFINITIONS.** As used in this section unless the context requires otherwise:

(a) "State" includes any state, territory or possession of the United States and the Commonwealth of Puerto Rico in which this or a substantially similar reciprocal law has been enacted.

(b) "Initiating state" means any state in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced.

(c) "Responding state" means any state in which any proceeding pursuant to the proceeding in the initiating state is or may be commenced.

(d) "Court" means the family court branch of circuit court or, if there is none, the court having jurisdiction under s. 52.05 to enforce support and, when the context requires, means the court of any other state as defined in a substantially similar reciprocal law. All proceedings to enforce support under this section pending in a juvenile court on July 1, 1956 shall be transferred to the court specified above.

(e) "Law" includes both common and statute law.

(f) "Duty of support" includes any duty of support imposed or imposable by law, or by any court order, decree or judgment, whether interlocutory or final, whether incidental to a proceeding for divorce, judicial separation, separate maintenance or otherwise.

(g) "Obligor" means any person owing a duty of support.

(h) "Obligee" means any person to whom a duty of support is owed.

(3) **REMEDIES ADDITIONAL TO THOSE NOW EXISTING.** The remedies herein provided are in addition to and not in substitution for any other remedies.

(4) **OBLIGOR IN THIS STATE BOUND.** Duties of support arising under the law of this state when applicable under sub. (7) bind the obligor, present in this state, regardless of the presence or residence of the obligee.

(5) **EXTRADITION.** The governor may demand from the governor of any other state the surrender of any person found in such other state who is charged in this state with the crime of failing to provide for the support of any person in this state. The governor may surrender on demand by the governor of any other state any person found in this state who is charged in such other state with the crime of failing to provide for the support of a person in such other state. The provisions for extradition of criminals not inconsistent herewith shall apply to any such demand although the person whose surrender is demanded was not in the demanding state at the time of the commission of the crime and although he had not fled therefrom. Neither the demand, the oath nor any proceedings for extradition pursuant to this subsection need state or show that the person whose surrender is demanded has fled from justice, or at the time of the commission of the crime was in the demanding or the other state.

(6) **RELIEF FROM SUBSECTION (5).** Any obligor contemplated by sub. (5) who submits to the jurisdiction of the court of such other state and complies with the court's order of support shall be relieved of extradition for desertion or nonsupport entered in the courts of this state during the period of such compliance.

(7) CHOICE OF LAW. Duties of support applicable under this section are those imposed or impossible under the laws of any state where the obligor was present during the period for which support is sought. The obligor is presumed to have been present in the responding state during the period for which support is sought until otherwise shown.

(8) REMEDIES OF A STATE OR POLITICAL SUBDIVISION FURNISHING SUPPORT. If the state or a political subdivision thereof has furnished support to an obligee it has the same right to invoke the provisions of this section as the obligee to whom the support was furnished for the purpose of securing reimbursement of expenditures so made and of obtaining continuing support.

(9) HOW DUTIES OF SUPPORT ARE ENFORCED. Proceedings for enforcement of support, if the obligor is in this state, shall be commenced by summons and petition. The summons shall name a day certain for the appearance of the defendant. Proceedings under this section are special proceedings within the meaning of s. 260.03. Duties of support are enforceable by petition irrespective of relationship between the obligor and obligee.

(10) CONTENTS OF PETITION FOR SUPPORT. The petition shall be verified and shall state the name and, so far as known to the petitioner, the address and circumstances of the defendant and his dependents for whom support is sought and all other pertinent information. The petitioner may include in or attach to the petition any information which may help in locating or identifying the defendant including, but without limitation by enumeration, a photograph of the defendant, a description of any distinguishing marks of his person, other names and aliases by which he has been or is known, the name of his employer, his finger prints or social security number.

(11) OFFICIALS TO REPRESENT PETITIONER. The district attorney upon the request of the court or the person in charge of county welfare activities shall, or upon his own initiative may, represent the petitioner in any proceeding under this section.

(12) PETITION FOR A MINOR. A petition on behalf of a minor obligee may be brought by a person having legal custody of the minor without appointment as guardian ad litem.

(13) ACTION ON PETITION BY INITIATING COURT. If the court of this state acting as an initiating state finds that the petition sets forth facts from which it may be determined that the defendant owes a duty of support and that a court of the responding state may obtain jurisdiction of the defendant or his property, it shall so certify and shall send 3 copies of the petition, of its certificate and of this section to the court of the responding state. If the name and address of such court is unknown and the responding state has an information agency comparable to that established in the initiating state it shall cause such copies to be transmitted to the state information agency or other proper official of the responding state, with a request that it forward them to the proper court, and that the court of the responding state acknowledge their receipt to the court of the initiating state.

(14) COSTS AND FEES. A court of this state acting either as an initiating or responding state may in its discretion direct that any part of or all fees and costs incurred in this state, including without limitation by enumeration, fees for filing, service of process, seizure of property, and stenographic service of both petitioner and defendant or either, shall be paid by the county. Where the proceeding is brought by the state or a political subdivision thereof, there shall be no filing fee.

(15) JURISDICTION BY ARREST. When the court of this state, acting either as an initiating or responding state, has reason to believe that the defendant may flee the jurisdiction it may (a) as an initiating state request in its certificate that the court of the responding state obtain the body of the defendant by appropriate process if that is permissible under the law of the responding state; or (b) as a responding state, obtain the body of the defendant by proceeding under ch. 264. No bond shall be required under s. 264.05, and the order under s. 264.06 shall require the sheriff to return the defendant on a named day.

(16) STATE INFORMATION AGENCY. The attorney-general is designated as the state information agency for purposes of this section. He shall:

(a) Compile a list of the courts in this state having jurisdiction under this section and their addresses and transmit it to the state information agencies of every other state which has adopted this section or a substantially similar act.

(b) Maintain a register of such lists received from other states and transmit copies of such lists to every court in this state having jurisdiction under this section.

(17) ACTION ON PETITION BY RESPONDING COURT. When the court of this state, acting as a responding state, receives from the court of an initiating state the material mentioned in sub. (13), it shall docket the cause, notify the district attorney, set a time and place for a hearing, and take action to obtain jurisdiction.

(18) FURTHER DUTY OF RESPONDING COURT. If a court of this state, acting as a responding state, is unable to obtain jurisdiction of the defendant or his property due to inaccuracies or inadequacies in the petition or otherwise, the court shall communicate this fact to the court in the initiating state, shall on its own initiative use all means at its disposal to trace the defendant or his property, and shall hold the case pending the receipt of more accurate information or an amended petition from the court in the initiating state.

(19) ORDER OF SUPPORT. If the court of this state acting as the responding state finds a duty of support, it may order the defendant to furnish support or reimbursement therefor and subject the property of the defendant to such order.

(20) RESPONDING COURT TO TRANSMIT COPIES TO INITIATING COURT. The court of this state when acting as a responding state shall transmit to the court of the initiating state a copy of all orders of support or for reimbursement therefor.

(21) ORDERS TO DEFENDANT BY RESPONDING COURT. A court of this state when acting as the responding state has the power to subject the defendant to such terms and conditions as the court may deem proper to assure compliance with its orders and in particular:

(a) To require the defendant to furnish recognizance in the form of a cash deposit or bond of such character and in such amount as the court may deem proper to assure payment of any amount required to be paid by the defendant.

(b) To require the defendant to make payments at specified intervals to an officer of the court or to the obligee and to report personally to such officer at such times as may be deemed necessary.

(c) To punish the defendant who violates any order of the court to the same extent and in the same manner as is provided by law for civil contempt of court.

(22) HANDLING DEFENDANT'S PAYMENTS IN RESPONDING COURT. The court of this state when acting as a responding state shall have the following duties which may be carried out through an officer of the court:

(a) Upon the receipt of a payment made by the defendant pursuant to any order of the court or otherwise, to transmit the same forthwith to the court of the initiating state, and

(b) Upon request to furnish to the court of the initiating state a certified statement of all payments made by the defendant.

(23) HANDLING DEFENDANT'S PAYMENTS IN INITIATING COURT. The court of this state when acting as an initiating state shall have the duty which may be carried out through officers of the court to receive and disburse forthwith all payments made by the defendant or transmitted by the court of the responding state.

(24) EVIDENCE OF HUSBAND AND WIFE. Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this section. Husband and wife are competent witnesses and may be compelled to testify to any relevant matter, including marriage and parentage.

(25) APPLICATION OF PAYMENTS. Any order of support issued by a court of this state when acting as a responding state shall not supersede any previous order of support issued in a divorce or separate maintenance action, but the amounts for a particular period paid pursuant to either order shall be credited against amounts accruing or accrued for the same period under both.

(26) EFFECT OF PARTICIPATION IN PROCEEDINGS. Participation in any proceedings under this section shall not confer upon any court jurisdiction of any of the parties thereto in any other proceeding.

(27) ENFORCEMENT AGAINST OBLIGORS FROM OTHER STATES. Whenever an obligor shall take asylum in this state after abandoning the obligees in another state and said obligees come to this state, the court of this state shall have authority to summarily enforce the support of the obligees by the commencement of proceedings as provided herein for the commencement of proceedings in the initiating state. After the commencement of initiating proceedings, the court of this state shall have the same jurisdiction and powers now vested by the provisions of this section in a responding state in the matter of conducting hearings, making orders and the enforcement of the same.

History: 1951 c. 23; 1953 c. 31, 247, 587; 1955 c. 575, 663.

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.

History: 1953 c. 31.

See note to 46.10, citing *Steffenson v. Steffenson*, 259 W 51, 47 NW (2d) 445.

A wife in leaving her husband without just cause is not entitled to be supported by him, but such fact does not justify his refusal to support the minor children, and he cannot avoid this by offering to support them if they are returned to his custody. A father of sufficient means must support his child, regardless of the financial standing of either the mother or the child. *Schade v. Schade*, 274 W 519, 80 NW (2d) 416.

52.21 Jurisdiction of paternity proceedings. 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.

History: 1953 c. 31.

52.22 Prosecution. The district attorney shall appear in and prosecute every paternity proceeding where the complainant is not represented by private counsel, 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. Where the complainant is a minor or incompetent the district attorney shall automatically act as her guardian ad litem without court order in every such proceeding which he prosecutes. Private counsel in behalf of the complainant may appear instead of the district attorney after a warrant or summons is issued pursuant to s. 52.25; and reasonable attorney's fees may be allowed and taxed against the defendant. In every case where private counsel does so appear in behalf of the complainant, the private counsel shall be charged with the duty of prosecuting the proceeding in all respects thereafter (except that any settlement agreement in such case shall be drawn by the district attorney as provided in s. 52.28); and the private counsel shall be automatically substituted by the court as complainant's counsel in place of the district attorney, who shall thereafter withdraw from the case. If a complainant represented by private counsel is a minor or incompetent, the private counsel may also be appointed as her guardian ad litem with court approval; provided that if a conflict of interest should thereafter arise on the part of said private counsel, the court may then appoint another qualified person to act as guardian ad litem. 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.

History: 1953 c. 31; 1957 c. 296.

52.23 Prosecution continued by district attorney. If the mother of a child born out of wedlock commences a paternity 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.

History: 1953 c. 31; 1957 c. 296 s. 15.

52.24 Inquiry by district attorney. If any woman bears a child out of wedlock which is or is likely to become a public charge, or is pregnant with a child likely to be born out of wedlock 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.

History: 1953 c. 31; 1957 c. 296 s. 15.

52.25 Paternity; proceedings on and contents of complaint. On complaint made to any justice of the peace or district attorney by any woman who has borne a child out of wedlock or who is pregnant with a child likely to be born out of wedlock, accusing a named person of being the father of such child, the justice or district attorney shall take such complaint in writing, under oath of such woman, and shall thereupon issue his warrant, returnable before such justice or, if issued by a district attorney, before a magistrate of the county, directed to the sheriff or any constable of his county, commanding him forthwith to bring such accused person before the justice or magistrate before whom the warrant is returnable to answer such complaint. The district attorney shall forthwith deliver any complaint filed with him to the magistrate before whom the warrant is re-

turnable. With the consent of the complainant and the district attorney, a summons may be issued as provided in s. 954.02.

History: 1953 c. 31, 481; 1957 c. 296.

52.26 Warrant; attendance of parties; arraignment and bail. Any warrant issued under ss. 52.21 to 52.45 may be executed in any part of this state; and in all cases a copy of the complaint shall be served upon the defendant and the justice may compel the complainant and defendant to attend and testify the same as witnesses in other cases. At the time of arraignment, the defendant may give bail, as provided in ss. 960.07 and 960.08, to insure his appearances at the time of the preliminary examination and all subsequent stages of the proceedings until entry of judgment or until the matter is dismissed or he is otherwise discharged by the court; and in default thereof he shall be committed pending such proceedings, to the county jail.

History: 1953 c. 31; 1957 c. 296.

52.27 Preliminary examination. On the entry of defendant's plea denying paternity, or on the date to which the matter is then adjourned, 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 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; and the proceedings for cause shown may be adjourned from time to time. The defendant shall be entitled to a removal of such action as in criminal examination before justices of the peace.

History: 1953 c. 31; 1957 c. 296.

52.28 Settlement agreements. A woman who has borne a child out of wedlock or who is pregnant with a child which is likely to be born, out of wedlock, 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, or at any time while said judgment is still in effect. 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 paternity 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 paternity proceeding shall be valid.

History: 1953 c. 31; 1957 c. 296.

A settlement agreement entered into pursuant to this section is a contract and subject to the law of contracts. The defendant was not entitled to have the agreement set aside and be granted a trial on merits, where there was no showing of mistake but only that the defendant entered into the agreement, denying paternity, for reasons appealing to him and because in the uncertainty

he considered it the wiser course, and where there was no claim of fraud or duress. A denial of paternity in a settlement agreement prevents the illegitimate child from being considered as the heir of the alleged father, 237.06. State ex rel. Ullrich v. Gliese, 257 W 242, 43 NW (2d) 18.

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

52.29 Agreement by district attorney. In all cases where the mother commences any proceedings under this chapter and fails to prosecute the same, or where she has been delivered of a child born out of wedlock which is likely to become a public charge or shall be pregnant with a child likely to be born out of wedlock and to become a public charge, the district attorney of the county in which she resides shall have power to make an agreement with the putative father in the same manner and with the same force and effect as might be made by the mother.

History: 1953 c. 31; 1957 c. 296 s. 15.

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.

History: 1953 c. 31.

52.31 When bound over for trial; new proceedings, when had if discharged. (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 to be the father of the child, the justice shall cause him to be bound over for trial at the next term of the circuit court for the proper county.

(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 paternity, 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.

History: 1953 c. 31; 1957 c. 296 s. 5, 15.

52.32 Venue; change of venue. All cases begun under ss. 52.21 to 52.45 shall be tried in the county where the complainant resides (or if said complainant is a nonresident of the state, then in the county where the defendant resides), 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 or in the county where the defendant resides; the defendant shall be entitled to only one change of venue.

History: 1953 c. 31; 1957 c. 296.

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.

History: 1953 c. 31.

52.34 Absence of defendant at trial. If the defendant fails to appear, the security for his appearance shall be forfeited and shall be applied on account of the payment of the judgment, but the trial shall proceed as if he were present.

History: 1953 c. 31.

52.35 Trial; evidence. Upon the trial of the proceedings the issue shall be whether the defendant is or is not the father of complainant's child. The trial shall be by jury, if either party demands a jury, otherwise by the court; provided that such demand shall be made in writing at the time when the defendant is bound over for trial or within 20 days thereafter, and any neglect to make such demand shall be a waiver of the right to trial by jury. The court may in its discretion order a trial by jury of any issue of fact unless waived by the parties. As provided in s. 270.27, the court may, and when requested by either party, before the introduction of any testimony in his behalf, shall direct the jury to find a special verdict. If the mother is dead or becomes insane or cannot be found within the jurisdiction or fails to prosecute, the proceeding does not abate, but the child shall be substituted as complainant and the case prosecuted as provided in s. 52.23. The testimony of the mother taken at the preliminary hearing may in any such case be read in evidence insofar as it is competent, relevant and material. The judge may at his discretion exclude the public from attendance at such trial.

History: 1953 c. 31; 1957 c. 296.

The defendant in a bastardy action is entitled to the presumption of innocence which attends throughout the trial, and the defendant is not required to prove that some other man is the father of the child, but it is the state's burden to prove, beyond a reasonable doubt, that the defendant is the father, and if the defendant succeeds in raising reasonable doubt of that fact he must be acquitted. *Timm v. State*, 262 W 162, 54 NW (2d) 46.

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

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

52.355 Burden of proof. The complainant shall have the burden of proving the issues involved by clear and satisfactory evidence, which shall be greater than a clear preponderance of the evidence required in other civil cases, but which shall be less than proof beyond a reasonable doubt required in criminal cases; provided that if the child whose paternity is at issue was born to the complainant while she was the lawful wife of a specified man the complainant shall then have the burden, as required in s. 328.39, of proving beyond all reasonable doubt that the husband is not the father of such child.

History: 1957 c. 296.

52.36 Evidence: blood tests. (1) If it is relevant to the prosecution or defense in a paternity proceeding, or if the defendant enters a plea admitting paternity (subject to a blood test finding that he cannot be excluded as the father), the trial court, if requested, shall order that the complainant, her child and the defendant and any male witness who has testified in the proceeding and who is directly involved in the controversy, submit to one or more blood tests as provided in sub. (2).

(2) When the court determines that a blood test is relevant to any proceeding under sub. (1) or s. 325.23 the court shall, upon request of any party, order that such test be made by a duly qualified physician or physicians, each of whom has specialized in the field of clinical pathology and who possess a certificate of qualification as a certified pathologist issued by the American board of pathology. In cases where definite exclusion is established by the first such test the court, if requested, shall order a second such test to be performed by an independent physician who possesses the same qualifications as the first, as set forth above. The court may order that the testimony of such physician or physicians be taken by deposition prior to the trial and they shall be subject to cross-examination by any person involved in the controversy. All arrangements for such tests shall be made by the party requesting the same and any failure on the part of said party to have said tests performed prior to the date of trial shall be deemed a waiver of said party's right to such tests unless good cause is shown to the contrary. The physician's fees for such tests shall be advanced by the county; and any physician's fees for blood tests advanced by the county shall be taxed as costs pursuant to s. 271.04 as necessary fees of officers allowed by law.

(3) Whenever the results of said tests exclude the defendant as the father of the child the same shall be conclusive evidence of such fact and the court shall dismiss said action, but such tests shall be receivable in evidence only in cases where definite exclusion of any person is established. If any party refuses to submit to such test such fact shall be disclosed upon trial.

History: 1953 c. 31; 1957 c. 180.

52.37 Judgment. (1) If the defendant is found the father of the child, or admits the truth of the allegation, or enters into a settlement agreement, he shall be adjudged to be the father of such child, unless paternity is denied in such settlement agreement, and shall be ordered to pay all expenses incurred for lying-in and attendance of the mother during pregnancy, and also for the past care and support of the child, from the time of its birth until the date of the approval of the agreement or the entry of judgment. If the child is dead at time of trial he shall pay the expenses of the funeral and the expenses of the last illness. All payments and expenses stated herein shall be paid by the accused to a trustee, and the settlement agreement or judgment shall specifically provide for the amount of disbursement and indicate the person to whom the trustee shall make such disbursement.

(2) The defendant shall also pay to the county the costs of the action and is chargeable for the future support of the child until it attains the age of 18 years. Payments for such future support shall be directed to be made in either of the 2 following methods:

(a) Payment of a specified monthly sum until the child is 18 years of age;

(b) Payment of a specified lump sum to be paid upon the approval of an agreement or entry of judgment, or in specified minimum monthly instalments and other necessary instalments within 4 years following a period of 30 days after the date of such approval or entry of judgment, subject to the condition that upon default in any monthly instalment, the court reserves the right to require the defendant to pay monthly support money for the child until it attains the age of 18 years. All payments for the future support of the child shall be paid to a trustee and shall be held by him for the benefit of the child, subject to the order of the court, and shall be paid by him to the person, agency or institution having legal custody of the child in such manner and amounts as the court directs.

(3) All of the foregoing matters shall be ascertained and fixed by the court and, together with such attorneys' fees as have been allowed, shall be inserted in the judgment, with an order directed to the clerk of the court to file with the state registrar of vital statistics a certified copy of all judgments determining the paternity of the child, and a report showing the name, date and place of birth of the child and the name, color, residence, age, birthplace and occupation of the father of the child. The registrar shall there-

upon issue a new certificate, pursuant to and in accordance with the judgment of the court. Such new certificate shall be issued substantially in accordance with the provisions of ss. 69.33 and 69.24 (1) (e) and the clerk of the court shall collect a fee of \$1 which shall be transmitted to the bureau of vital statistics. Judgments entered upon agreement of the parties shall conform to the above unless the parties are unable to agree as to the paternity of the child, when such adjudication may be omitted.

(4) All such judgments shall be satisfied of record by the clerk on payment to him of the costs and the filing of satisfaction of judgment executed and acknowledged by the complainant and trustee, if a trustee be appointed, and whenever ordered so to do by a written order of the court.

History: 1953 c. 31; 1957 c. 296 s. 9, 15.

Costs in illegitimacy proceedings are to be taxed under 959.055, as in criminal cases. (52.36), or the cost of the transcript of the Under this section there is no authority for preliminary hearing. 45 Atty. Gen. 2.

52.39 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 a child born out of wedlock 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.

(2) Whenever a petition is brought to the court as hereinabove set forth, the district attorney, the defendant, and the person, agency or institution having legal custody of the child, must be served with a copy of the petition at least 10 days before the date set for the hearing.

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

History: 1953 c. 31; 1957 c. 296 s. 15.

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, but not more than once in any one calendar year, 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. The provisions of s. 56.08 relating to the employment of misdemeanants shall at his request be applicable to any person committed to the county jail under ss. 52.21 to 52.45.

History: 1953 c. 31; 1957 c. 296.

52.40 When and how discharged; liability thereafter. Any person who has been so imprisoned 90 days commencing in any one calendar year may apply for his discharge from such imprisonment as 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.

History: 1953 c. 31; 1957 c. 296.

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.

History: 1953 c. 31.

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.

History: 1953 c. 31.

52.43 Trustee. (1) The trustee to whom payment for the future support of the child shall be made pursuant to the judgment or agreement shall be the county official in charge of the relief of the poor, the clerk of the court, or such other person, corporation or state board or officer authorized so to act as may be designated by the court. Such trustee shall furnish such bond as the court may require, except that whenever a county officer shall be designated as trustee he shall not be required to furnish bond other than that furnished in his official capacity. The trustee shall administer such funds under the direction of the court and shall report to the court annually or oftener, as directed by the court, the amounts received and paid over.

(2) Whenever such child dies, any unexpended funds remaining in the hands of the trustee after payment of lying-in expenses, past support payments to the date of the death of the child, expenses of last illness and funeral expenses, shall be paid to the mother of the child.

(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.

History: 1953 c. 31.

52.44 Adoption. (1) Upon the adoption of a child born out of wedlock, subsequent to approval of an agreement or entry of judgment, the trustee therein appointed shall promptly file with the court an accounting of his trust, together with an affidavit advising the court of all circumstances and asking the court for an order as to the disposition of any and all funds in the hands of the trustee; the court shall thereupon make and enter an order for the disposition of said funds, if any, by the trustee.

(2) At such time as the court makes the order, provided for in sub. (1) of this section the court may, in its discretion, refund to the defendant any payments made pursuant to agreement or judgment for the period, pending final adoption, during which the child was living in the home of the adopting parents.

History: 1953 c. 31; 1957 c. 296 s. 15.

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. Any proceeding commenced under the foregoing sections is a civil special proceeding, and all such proceedings shall be commenced in the name of the state on the relation of the complainant, or on relation of the child if the complainant is dead, or insane, or does not prosecute. Such proceeding shall be commenced and conducted and the orders and judgments therein enforced according to the provisions of these statutes with respect to civil actions and civil proceedings in courts of record, as far as applicable except as otherwise provided in this chapter; provided that no fee shall be required for filing any such proceeding in court. Wherever the language "child born out of wedlock" is used in this chapter, it shall be construed to mean either a child born to an unmarried woman, or a child which, although born to a married woman, is either alleged or adjudicated not to be the issue of her marriage.

History: 1953 c. 31; 1957 c. 296.