

Wisconsin Legislative Council

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Wisconsin's Legal Framework

The Functions of Law

Laws help society function by:

- Providing a basic structure or framework for meeting the common expectations and needs of citizens regarding the transactions, relationships, and planned and unforeseen events of daily life.
- Overseeing the operations and processes of government, including the protection of citizens against the excesses or unfairness of government.
- Maintaining societal order against violence or harm to persons and property.
- Providing a means for the peaceful settlement of disputes.
- Protecting citizens against unfair or excessive private power.
- Assuring the opportunity of citizens to enjoy at least minimum economic and health standards.
- Providing general and specific ethical and moral standards for society.

Sources of Law in Wisconsin

U.S. Constitution and Federalism. The American Revolution spawned the development of an entirely new legal system based on the concepts of: (1) democratic representative government; (2) divided legal authority through separate branches of government with a system of "checks and balances" to curb abuses of power; and (3) "federalism" whereby the independence of the original colonies (states) was generally maintained but subjugated to the authority of legal institutions at the national level.

The Constitution of the United States became the cornerstone of our system of law and government. As the "supreme law of the land," the provisions of the U.S. Constitution can only be changed

by amendment proposed by 2/3rds of the members of both houses of the U.S. Congress or by a convention called on application of the legislatures of 2/3rds of the states, followed by ratification by 3/4ths of the states. The Constitution vests the U.S. Congress, the national legislative body, with primary federal lawmaking authority, subject to the veto power of the President and, as it later developed, interpretive review and review for constitutional compatibility by the federal judiciary.

Rights of the States Under the Constitution

The Constitution expressly delegates certain exclusive types of lawmaking powers to the federal government (e.g., regulation of foreign affairs and interstate commerce) and expressly prohibits the states from establishing certain types of laws (e.g., the making of treaties). However, even with constitutional restrictions, the states retain substantial rights under the Tenth Amendment to the U.S. Constitution. The states remain free to develop a large body of state law that, in retrospect, has given each state the opportunity to develop laws that have the most direct and profound impact on the day-to-day lives of its citizens.

Law at the State and Local Level

In addition to the U.S. Constitution and federal laws, the basic forms of law that have formed the foundation of government at the state and local level in Wisconsin include:

- **The Common Law.** When most people in the United States contemplate the meaning of “the law” in its abstract sense, they are usually thinking of the enormous body of principles, standards, and rules, both general and specific, promulgated and codified by federal, state, and local governments. However, the earliest notion of “the law” in Western civilization was not an enumeration of basic principles as adopted by a constitutional or legislative body, but a judgment in a particular court case in which a general precept was established by a judge at the moment of adjudication.

The gradual accumulation of judicial decisions in specific cases became the early foundation of the “common law” in England and her New World colonies. Although a large body of “common law” principles established through a series of cumulative decisions by judges in specific cases takes many years to develop, English and colonial “common law” performed many of the same functions as our current legal institutions in shaping, guiding, and regulating human conduct and interaction within an established social order.

While the importance of the common law has diminished, it continues as a source of law.

- **The Northwest Ordinance.** The Northwest Ordinance, signed in 1787, established provisions for governing the Northwest Territory, an area that eventually became five states, including the State of Wisconsin. Among other things, the Ordinance provided that individual rights and freedoms would be extended to settlers moving west. These rights included freedom of religion, trial by jury, elimination of cruel or unusual punishment for crimes, and the elimination of imprisonment or confiscation of property without a trial. The guarantees of religious and civil freedoms preceded the Bill of Rights by four years. The Ordinance also prohibited slavery and extended certain protections to Native Americans. The Northwest Ordinance is an important document in the United States and Wisconsin history. Not only did it provide for extension of the laws above, but also it provided a mechanism for a territory to become a state equal with the original 13 states.
- **The Organic Law.** In 1836, the U.S. Congress passed the Organic Law establishing the Wisconsin Territory, as of July 3, 1836. It prescribed that the existing laws of the Territory of Michigan, to which Wisconsin had belonged, were to be “extended over the said territory (Wisconsin) . . . subject, nevertheless, to be altered, modified or repealed, by the governor and legislative assembly.”

- **The Wisconsin Constitution.** The Wisconsin Constitution continued the laws of the Territory of Wisconsin, by providing in section 2 of Article XIV: "All laws now in force in the territory of Wisconsin which are not repugnant to this constitution shall remain in force until they expire by their own limitation or be altered or repealed by the legislature."

In Wisconsin, the fundamental principles of state law and government, the rights and obligations of citizens and the relationship between the state and local governments are expressed in the Wisconsin Constitution which, similar to the U.S. Constitution, can only be amended by legislative action and subsequent ratification by referendum.

The Wisconsin Constitution, like the U.S. Constitution, vests primary lawmaking powers with an elected legislative body, the Wisconsin Legislature, subject to the "checks and balances" of executive veto and interpretive review and review for constitutional sufficiency by the state judiciary. However, it is interesting to note that, unlike the U.S. Constitution, Wisconsin's founders expressly provided that the "common law," i.e., judicial precedent, of the territory not inconsistent with the Wisconsin Constitution "shall be and shall continue part of the law of this state until altered or suspended by the legislature."

- **Statutory and Nonstatutory Laws.** Statutory laws are laws with such state-wide significance, that when they are passed by the Legislature and signed into law by the Governor, they are formally written into the Wisconsin statutes.
Nonstatutory laws are enacted the same way, but because they affect a smaller number of people, they are not codified into the Wisconsin statutes. This includes both **private laws** (governing private persons and/or their property) and **local laws** (governing a particular locality).
- **Administrative Rules.** Administrative rules are promulgated by executive branch state agencies to interpret and implement state statutes. A state agency cannot adopt rules which exceed or are outside the scope of its statutory authorization and the content of such rules must also be consistent with state law. In addition, the Legislature plays a key role in the statutory rule review process that occurs prior to the promulgation of a rule.
- **Ordinances.** Ordinances are laws created by local governments (counties and municipalities). Ordinances are limited in scope by what the constitution and statutes allow local governments to regulate.

Civil Law and Criminal Law

Criminal Law and Civil Law Distinguished

Wisconsin law is divided into two bodies, criminal and civil. Basically, Wisconsin's criminal law is that body of law which does the following:

- Prohibits persons from engaging in specified conduct or activity and authorizes the imposition of penalties against violators in the form of a **fine or imprisonment, or both**.
- Establishes or authorizes procedures for law enforcement and the apprehension and detention of persons accused or suspected of committing criminal offenses.
- Sets forth the rights of alleged criminal offenders.
- Establishes procedures for the trial of alleged offenders and the sentencing of persons convicted of crimes.
- Provides post-conviction remedies for offenders and establishes procedures and criteria for probation and parole.

- Establishes a general framework for the administration of penal justice.

At the state level, all laws and legal proceedings not involving those matters listed above are civil in nature because they involve either the private rights and remedies of citizens or the policies and internal workings of an established system of civil order or government.

Felonies Versus Misdemeanors

There are two types of criminal offenses, felonies, and misdemeanors. Generally, felonies include crimes that are considered more serious in nature and therefore carry harsher maximum penalties than misdemeanors. Wisconsin statutes define a felony as a crime punishable by confinement in prison, generally one year or more. A person convicted of a felony offense is also subject to certain civil disabilities after service of the sentence, such as ineligibility to run for and hold elective public office. All other crimes are misdemeanors, punishable only by a fine or a shorter maximum imprisonment.

Civil Offenses Punishable by Forfeiture

Some prohibitions on conduct are civil offenses rather than crimes. In these instances, violators are neither fined nor imprisoned, but only a monetary penalty known as a “forfeiture” may be imposed. These civil forfeitures, which can be authorized by state law or local ordinances adopted pursuant to state law, usually involve minor offenses such as parking violations, local dwelling code violations, minor hunting and fishing violations, and so forth.

The Legislature and Its Relationship to the Judicial and Executive Branches

Separation of Powers

Wisconsin has a tripartite form of government, meaning that it has three separate but equal branches—the legislative, executive, and judicial branch. Wisconsin’s Constitution created a separation of powers, giving each branch exclusive “core powers,” in which other branches may not intrude.¹ The Legislature’s core power is legislative, the executive’s core power executory, and the judiciary’s core power judicial. The Wisconsin Supreme Court says that “beyond these core constitutional powers lie ‘great borderlands of power’ which are not exclusively judicial, legislative or executive. [Wisconsin’s] system of government envisions the branches sharing the powers found in these great borderlands.”² The Court describes Wisconsin’s government as a system of “separateness but interdependence.”³ Powers may be shared, as long as the power is not a “core” power.⁴

Wisconsin’s separation of powers structure also gives each branch the power to check and balance the other branches. For example, one of the Legislature’s checks on the executive branch is the power to impeach the Governor. Another is the Legislature’s power to remove Wisconsin Supreme Court judges by a 2/3rds vote as a check on the judiciary.

¹ *Panzer v. Doyle*, 2004 WI 52, ¶50, 271 Wis. 2d 295, 331.

² *Id.*, ¶51, at 332.

³ *Id.*, ¶50, at 331.

⁴ *Id.*, ¶51, at 332.

The Judicial Branch

The Wisconsin judiciary is comprised of trial courts and appellate courts. Citizens must take their conflicts to trial courts. Wisconsin's trial courts are circuit courts. There are 69 circuit courts (246 judges) in the state. Wisconsin statutes allow municipalities to create their own courts to handle municipal ordinance violations. There are 252 municipal courts (254 judges). If someone is unsatisfied with the trial court's resolution, he or she may appeal to an appellate court. Wisconsin's two appellate courts are the Court of Appeals, organized into four districts (16 judges), and Supreme Court (seven justices). In some cases, circuit courts may also be considered appellate courts (i.e., appeals from municipal courts or administrative courts).

For administrative purposes, the circuit courts are divided into 10 judicial administrative districts (ranging in size from one county—Milwaukee County—to 13 counties). The judicial business of each district is supervised by a chief justice selected by the Supreme Court. The chief judge is assisted by a district court administrator, an employee of the Director of State Courts Office.

The Courts and Rules of Statutory Construction

State courts determine the appropriate limits of government by deciding conflicts resulting from how state and some federal laws are interpreted or executed. This means that courts interpret a statute by looking at its language, as well as the specific application of the statute in light of the facts and circumstances of particular cases. Although there is a strong **presumption of the constitutionality** of state statutes in most cases, a court may, in appropriate cases, find a statute unconstitutional or beyond the powers of the Legislature.

Several of the most significant commonly applied **rules of statutory construction** are discussed below. In general, these rules of construction are used by courts when a statutory provision is ambiguous (unclear because it is capable of more than one meaning or just unclear in its meaning) and the court is attempting to discern legislative intent.

- **Plain or Literal Meaning.** This rule provides that when a statute is capable of two or more conflicting interpretations, the courts will favor the interpretation which is most consistent with the actual language or "plain meaning" of the statute. Again, the courts have not uniformly applied the "plain meaning" rule, particularly when confronted with overriding policy considerations or when it is concluded that application of the rule would lead to ludicrous results which could not have been intended by the Legislature.

- **Express Mention, Implied Exclusion.** This rule embodies the concept that when a statute contains an enumeration of specific items, the Legislature intended to exclude from the scope of the statute any other item except those expressly enumerated.

For example, when a statute defines the term "wages" as meaning "salaries, commissions, vacation pay and severance pay," application of the rule would preclude the court from interpreting the provision to include any other form of compensation not specifically enumerated, such as "overtime pay."

- **On the Same Matter or Subject.** This rule provides that when a court finds that all or part of a statute is ambiguous or in conflict with another statutory provision, the courts will review the entire statute as well as other related statutes, if any. By looking at all statutes dealing with the same subject matter, the courts attempt to determine legislative intent in order to resolve the ambiguity or conflict.
- **General Versus Specific.** This rule is often involved when a **general** statutory provision is in conflict with a **specific** statutory provision, both dealing with the same subject matter. In such cases, the courts will usually resolve the conflict

by holding that the provisions of the specific statute supersede the general statute.

- **Later Enactment Takes Precedence.** This rule provides that statutory language and changes in an act with the latest effective date takes precedence over an earlier enactment affecting the same statutory language. For example, if a 2001 law (Wisconsin Act 42) revises s. 346.63 (1) of the statutes and then 2001 Wisconsin Act 43 repeals that subsection, the Wisconsin Act 43 change (the repeal) takes precedence and the subsection is repealed.
- **Strict Construction of Penal Statutes.** This rule is often invoked by the courts in cases involving alleged ambiguities in penal statutes which carry criminal sanctions, such as a fine, imprisonment, or both. In interpreting these statutes, which have potentially serious ramifications for persons accused of crimes, the courts have fostered a policy of resolving ambiguities and conflicts in criminal statutes by narrowly construing the law to favor the defendant.

It is important to note that in dealing with penal statutes, the term “strict construction” does not mean “literal construction” as required by the “plain meaning rule.” Instead, it means that, when resolving an ambiguity, the scope of a penal statute should not be expanded beyond the clear and obvious intent of its actual language if such construction would be harmful to the defendant.

- **Of the Same Genus or Class.** This rule provides that when a statute contains a series of specific enumerations followed by a general inclusionary clause, the application of the inclusionary clause should be construed in light of the common characteristics of the specific enumerations. For example, if a statute refers to “automobile, truck, motorcycle or other vehicle,” application of the rule would preclude the inclusion of a “bicycle” within the meaning of the clause “or other vehicle” because, unlike those vehicles specifically mentioned, a bicycle is not a motorized vehicle.

The Executive Branch

Wisconsin’s executive branch is directed by six officers, created by the Wisconsin Constitution. These officers are: Governor (the chief executive), Lieutenant Governor, Secretary of State, State Treasurer, Attorney General, and State Superintendent of Public Instruction. There are 17 state administrative departments and 12 independent agencies. There are also special committees, commissions, and councils created by statute or the Governor designed to address specific public issues. The executive branch’s core powers are to execute and administer laws, programs, and policies, created by the Legislature. The departments and independent agencies may create administrative rules and regulations in order to execute them.

The Governor’s Authority to Veto and Partial Veto Legislation

One of the executive branch’s checks over the Legislature is the power to accept or reject legislation in the form of vetoes, discussed below.

- **Governor’s General Veto Power.** The Governor has six days (excluding Sunday) to approve or disapprove a bill. This period begins when the clerk of the house of origin sends the bill to the Governor at the request of the Governor, at the direction of the presiding officer, or pursuant to the session schedule. If the Governor entirely disapproves the bill, the Governor returns it to the house of origin with his or her objections. The return constitutes a veto of the bill. A 2/3rds vote by each house is required to override a veto. The Governor’s objections to a bill are generally written as a veto message.
- **Governor’s Partial Veto Power.** The Governor may veto any part of an appropriation bill if what remains is a complete and workable law, except that he or she may not create new words by rejecting individual letters of words in the bill. The Governor may also not create a new sentence by combining two or more sentences of the bill. The Governor may reduce the amount of an appropriation by substituting (writing) a smaller amount. If a partial veto occurs, the part ap-

proved becomes law and the part objected to does not become law unless a 2/3rds majority in each house overrides the veto.

State and Federal Relations

Exclusive and Concurrent Powers

As noted above, our system of “federalism” means the country is governed by both a national government and various state governments. The U.S. Constitution grants specific authority and powers to the national government, and all powers not therein granted to the national government are reserved to the states.

Within this framework, the U.S. Constitution permits only the national government to exercise certain powers; for example, only the federal government may coin money. However, certain areas of law have historically been considered the **exclusive** province of the states.

There are areas of law where federal authority and state authority are clear and conflicts are easily avoided. However, in other areas, the federal government and the states exercise **concurrent powers** and certain conflicts inevitably result.

An example of a concurrently exercised power is the regulation of commerce. The U.S. Constitution grants to the federal government the power to regulate foreign and interstate commerce. However, the power of the states to enact laws for the safety, health, morals, and general welfare of their residents has traditionally been viewed as including the power to regulate matters affecting commerce.

Federal Preemption

When conflicts occur regarding the exercise of concurrent powers, the U.S. Constitution provides: “the laws of the United States [i.e., the Constitution, Acts of Congress and federal regulations, and federal court decisions interpreting federal law] . . . shall be the supreme law of the land . . . and . . . every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding.” Thus, in the exercise of concurrent powers, state law must yield to federal law in situations where they are in conflict.

When federal-state conflicts are neither obvious nor direct, the U.S. Supreme Court has developed the following guidelines for determining when a federal law will preempt a state law:

- Federal law will supersede state law when Congress has expressly declared its intent that federal law is exclusive as to a specific subject matter.
- Federal law will supersede state law when the extent of federal regulation over a specific subject matter is so pervasive that no other conclusion regarding congressional intent can be permitted.
- Federal law will supersede state law whenever the federal interest in uniformity is of such dominance that state regulation of a given subject matter should be precluded.

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