



WISCONSIN LEGISLATOR  
BRIEFING BOOK  
2017-18

## CHAPTER 1 – WISCONSIN’S STRUCTURE OF GOVERNMENT AND LAW

In a democracy, the ultimate source of the government’s authority is the consent of the people to be governed. That consent is embodied in governmental and legal systems designed to administer the will of the people. The purposes of these systems include administering order and justice, providing for domestic tranquility and prosperity, managing property systems, and promoting public health and welfare. Wisconsin has a tripartite governmental system of three separate but equal branches - the legislative, executive, and judicial. The principal sources of law in Wisconsin are the United States and Wisconsin Constitutions, which establish the fundamental principles of federal and state law and government. Other important sources of law include the state statutes and judicial rulings.

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## STRUCTURE OF WISCONSIN GOVERNMENT

Wisconsin has a tripartite form of government with three separate but equal branches--the legislative, executive, and judicial. Wisconsin’s Constitution created a separation of the powers of the three branches, giving each branch exclusive “core powers,” in which other branches may not intrude. The Legislature’s core power is legislative, the executive’s core power executory, and the judiciary’s core power judicial. Beyond those “core” powers there is a great deal of overlap in the powers of the three branches. The Wisconsin Supreme Court has described Wisconsin’s government as a system of “separateness but interdependence.” Wisconsin’s tripartite governmental 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.

### The Legislative Branch

The legislative branch in Wisconsin is bicameral, meaning it consists of two houses. The two houses of the Wisconsin Legislature are the Senate and the Assembly. The Legislature sets state policy and designs state programs through enactment of laws and passage of resolutions. The leadership of the Legislature includes the Majority and Minority Leaders in both houses, the President in the Senate, and the Speaker in the Assembly, among others. Both legislative houses elect a Chief Clerk and a Sergeant-At-Arms who, along with their staffs, administer the business of the Legislature. The Legislature is supported by five nonpartisan service agencies that perform various functions such as auditing, legal, fiscal, and policy analysis and research, drafting of bills and other legislative documents, and information technology services.

For more information about the legislative branch, see Chapter 2, *Legislative Documents and Glossary of Terminology*, and Chapter 3, *Legislative Services Agencies and Staff*.

### The Judicial Branch

The Wisconsin judiciary is comprised of trial courts, called circuit courts, and two levels of appellate courts. There are approximately 250 circuit court judges in the state. If someone is unsatisfied with a circuit court’s decision, he or she may appeal to an appellate court. Wisconsin’s two levels of appellate courts are the Court of Appeals, organized into four districts (16 judges), and the Supreme Court (seven justices). The Supreme Court is the state’s highest court. The jurisdiction of the Wisconsin judiciary is derived from the Wisconsin Constitution. Wisconsin statutes also allow municipalities to create their own courts to handle municipal ordinance violations, such as traffic, parking, juvenile matters, and other ordinance matters. There are approximately 240 municipal courts in Wisconsin. A decision of a municipal court may be appealed to the circuit court.

Two of the judicial branch’s checks over the Legislature are its powers to decide the constitutionality of legislative enactments and to address conflicts between local, state, and federal laws.

## The Executive Branch

Most of Wisconsin’s executive branch is headed by the Governor, who is the state’s chief executive. In addition to the Governor, the Wisconsin Constitution provides for the election of five additional “constitutional officers:” Lieutenant Governor, Secretary of State, State Treasurer, Attorney General, and State Superintendent of Public Instruction. Currently, there are approximately 30 State of Wisconsin agencies and departments. There are also special committees, boards, commissions, and councils in the executive branch that have been created by statute or by the Governor that are designed to address specific issues. The executive branch’s core powers are to execute and administer laws, programs, and policies created by the Legislature. Most of the departments and independent agencies are empowered to promulgate administrative rules in order to execute their duties. One of the executive branch’s checks over the Legislature is the power of the Governor to approve or veto legislation.

The Governor has six days (excluding Sunday) to approve or disapprove legislation that has been presented to him or her. Vetoed legislation is returned to the legislative house of origin with the Governor’s objections. A 2/3rds vote by each house is required to override a veto.

The Governor may partially veto a bill only if it is an **appropriations bill**, and if what remains is a complete and workable law and other requirements are met. For further discussion of the partial veto in the context of the biennial budget bill, see Chapter 4, *Budget Process*.

## STATE AND FEDERAL AUTHORITY

### Exclusive and Concurrent Powers

In the United States, our system of “federalism” provides for governance by both a national (federal) government and state governments. The U.S. Constitution grants specific authority and powers to the federal government, such as the exclusive power to coin money, engage in certain foreign affairs, and regulate interstate commerce. All other powers are reserved to the states.

### Federal Preemption

The federal government and the states exercise concurrent powers over some areas of the law. At times, conflicts occur regarding the exercise of these 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] . . . shall be the supreme law of the land . . . and . . . every state shall be bound thereby, anything in the [state]

Constitution or laws of any state to the contrary notwithstanding.” Thus, in the exercise of concurrent powers, state law must yield to **validly enacted** federal law in situations where they are in conflict.

The U.S. Supreme Court has developed guidelines for determining when a federal law, if within the scope of federal powers, will preempt a state law. Preemption requires one of the following:

- 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 than that additional state regulation of the subject matter is preempted.
- 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.

## SOURCES OF LAW IN WISCONSIN

The Constitution vests the U.S. Congress with primary federal lawmaking authority, subject to the veto power of the President and review for constitutional compatibility and interpretation by the federal judiciary. Even with constitutional restrictions, the states retain substantial legislative authority. Each state has developed a large body of state law that has a direct impact on the day-to-day lives of its citizens. In addition to the U.S. Constitution and federal laws, the basic sources of law that form the foundation of government at the state and local level in Wisconsin include:

**The Wisconsin Constitution.** In Wisconsin, the fundamental principles of state law and government, the rights and obligations of citizens, and much of the structure of the relationship between the state and local governments are expressed in the Wisconsin Constitution. The Wisconsin 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 review for constitutional sufficiency and interpretation by the state judiciary.

**Statutes.** Statutes are laws that are passed by the Legislature, signed into law by the Governor (or enacted notwithstanding a gubernatorial veto), and formally codified in the Wisconsin Statutes.

**Administrative rules.** Administrative rules are promulgated by executive branch state agencies to interpret and implement state statutes. A state agency cannot adopt rules that exceed or are outside the scope of its statutory authorization, and the content of such rules must also be consistent with state law. The Governor and Legislature play key roles in the

statutory rule review process that occurs prior to the promulgation of a rule. For more information about administrative rules, see Chapter 5, *Administrative Rulemaking*.

**Ordinances.** Ordinances are laws created by local governments (counties and municipalities) and are limited in scope by the Wisconsin Constitution and statutes.

**Common law.** Unlike the U.S. Constitution, Wisconsin’s founders expressly provided that the “common law” 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.” The common law is an accumulation of judicial decisions in specific cases, arising both from before and after the ratification of our State Constitution. A large body of common law has been developed over the years. Some of the most important and far-reaching laws in Wisconsin can only be found in the common law. While the importance of the common law has diminished as it has been superseded in part by legislative enactments, it continues as an important source of law.

## CRIMINAL AND NON-CRIMINAL LAW

Wisconsin’s criminal law is the body of law that 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 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.

For more information about criminal law and the criminal justice system, see Chapter 10, *Criminal Justice, Corrections, and Juvenile Justice*.

At the state level, all laws and legal proceedings not involving the matters listed above make up the body of law that is outside of the criminal context. 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 ordinance, usually involve minor offenses such as parking violations, local dwelling code violations, and minor hunting and fishing violations.

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