ANNOTATED

WISCONSIN CONSTITUTION

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Note: An index to the Wisconsin Constitution follows. The general index contains references to the Wisconsin Constitution under the head "Constitution, Wisconsin."

PREAMBLE

We, the people of Wisconsin, grateful to Almighty God for our freedom, in order to secure its blessings, form a more perfect government, insure domestic tranquility and promote the general welfare, do establish this constitution.

Interpreting the Wisconsin Constitution. Suhr. 97 MLR 93 (2013).
The Making of the Wisconsin Constitution. Ranney. Wis. Law. Sept. 1992.
A Jurist's Language of Interpretation. Diedrich. Wis. Law. July/Aug. 2020.

ARTICLE I.

DECLARATION OF RIGHTS

Equality; inherent rights. SECTION 1. [*As amended Nov. 1982 and April 1986*] All people are born equally free and independent, and have certain inherent rights; among these are life, liberty and the pursuit of happiness; to secure these rights, governments are instituted, deriving their just powers from the consent of the governed. [*1979 J.R. 36, 1981 J.R. 29, vote Nov. 1982; 1983 J.R. 40, 1985 J.R. 21, vote April 1986*]

EQUAL PROTECTION

The fact that there is no mandatory release date for persons convicted of first degree murder as there is for other crimes does not amount to denial of equal protection. Bies v. State, 53 Wis. 2d 322, 193 N.W.2d 46 (1972).

Legislative classifications violate equal protection only if they are irrational or arbitrary. Any reasonable basis for the classification validates the statute. There is a five point test to determine reasonableness. Omernik v. State, 64 Wis. 2d 6, 218 N.W.2d 734 (1974).

There is a meaningful distinction between governmental employees and nongovernmental employees. The statutory strike ban imposed on public employees is based upon a valid classification and the legislation creating it is not unconstitutional as a denial of equal protection. Hortonville Education Ass'n v. Hortonville Joint School District No. 1, 66 Wis. 2d 469, 225 N.W.2d 658 (1975).
Reversed on other grounds. 426 U.S. 482, 96 S. Ct. 2308, 49 L. Ed. 2d 1 (1976).

The statutory distinction between parolees out of state under s. 57.13 [now s. 304.13] and absconding parolees, denying extradition to the former but not the latter, is a constitutionally valid classification. State ex rel. Niederer v. Cady, 72 Wis. 2d 311, 240 N.W.2d 626 (1976).

In order for a female prostitute to avoid prosecution upon equal protection grounds, it must be shown that the failure to prosecute male patrons was selective, persistent, discriminatory, and without justifiable prosecutorial discretion. State v. Johnson, 74 Wis. 2d 169, 246 N.W.2d 503 (1976).

Equal protection does not require symmetry in probation and parole systems. State v. Aderhold, 91 Wis. 2d 306, 284 N.W.2d 108 (Ct. App. 1979).

Discussing discriminatory prosecution. Sears v. State, 94 Wis. 2d 128, 287 N.W.2d 785 (1980).

A gender–based rule must serve important governmental objectives and the means employed must be substantially related to the achievement of those objectives. The common law doctrine of necessaries does not deny equal protection. Marshfield Clinic v. Discher, 105 Wis. 2d 506, 314 N.W.2d 326 (1982).

It does not violate equal protection to classify employees according to retirement date for purposes of pension benefits. Bence v. City of Milwaukee, 107 Wis. 2d 469, 320 N.W.2d 199 (1982).

A grandfather clause granting a perpetual exception from police power regulation for certain persons for purely economic reasons denied equal protection. Wisconsin Wine & Spirit Institute v. Ley, 141 Wis. 2d 958, 416 N.W.2d 914 (Ct. App. 1987).

A prostitution raid focusing only on female participants amounts to selective prosecution in violation of equal protection. State v. McCollum, 159 Wis. 2d 184, 464 N.W.2d 44 (Ct. App. 1990).

A prisoner who is a defendant in a civil tort action is entitled to a meaningful opportunity to be heard. If no liberty interest is at stake there is no constitutional right to appointed counsel, and there is a rebuttable presumption against such appointment. Piper v. Popp, 167 Wis. 2d 633, 482 N.W.2d 353 (1992).

A nonlawyer may not sign and file a notice of appeal on behalf of a corporation. To do so constitutes practicing law without a license in violation of s. 757.30 and voids the appeal. Requiring a lawyer to represent a corporation in filing the notice does not violate constitutional guarantees of equal protection and due process. Jadair Inc. v. United States Fire Insurance Co., 209 Wis. 2d 187, 562 N.W.2d 401 (1997), 95–1946.

"Selective prosecution" when referring to the failure to prosecute all known lawbreakers has no standing in equal protection law. Only "selective prosecution" when referring to the decision to prosecute in retaliation for the exercise of a constitutional right gives rise to an actionable right under the constitution. County of Kenosha v. C&S Management, Inc., 223 Wis. 2d 373, 588 N.W.2d 236 (1999), 97–0642.

The state and federal constitutions provide identical procedural due process and equal protection safeguards. County of Kenosha v. C&S Management, Inc., 223 Wis. 2d 373, 588 N.W.2d 236 (1999), 97–0642.

A prosecutor's exercise of selectivity in enforcement does not create a constitutional violation. A violation occurs when there is persistent selective and intentional discrimination in the enforcement of a statute in the absence of a valid exercise of prosecutorial discretion. A defendant has the initial burden to present a prima facie showing of discriminatory prosecution before being entitled to an evidentiary hearing. State v. Kramer, 2001 WI 132, 248 Wis. 2d 1009, 637 N.W.2d 35, 99–2580.

For a prima facia case of selective prosecution, a defendant must show a discriminatory effect, that the defendant has been singled out for prosecution while others similarly situated have not, and a discriminatory purpose, that the prosecutor's selection was based on an impermissible consideration such as race, religion, or other arbitrary classification. In cases involving solitary prosecutions, a defendant may also show that the government's discriminatory selection for prosecution is based on a desire to prevent the exercise of constitutional rights or is motivated by personal vindictiveness. State v. Kramer, 2001 WI 132, 248 Wis. 2d 1009, 637 N.W.2d 35, 99–2580.

Wausau's restaurant smoking ban that provided differential treatment of restaurants and private clubs did not violate equal protection as there was a rational basis for the differential treatment. Absent the ordinance's narrow definition of private clubs as non–profit organizations controlled by their members, ordinary for–profit restaurants seeking the public's patronage would be able to avoid enforcement of the smoking ban by creating the illusion of private clubs. The ordinance's method of distinguishing private clubs from other restaurants sought to protect the greatest number of restaurant patrons while preserving the right to associate in truly private clubs that were not open to the public. City of Wausau v. Jusufi, 2009 WI App 17, 315 Wis. 2d 780, 763 N.W.2d 201, 08–1107.

A legislative classification satisfies the rational basis standard if it meets the following five criteria: 1) the classification is based upon substantial distinctions that make one class really different from another; 2) the classification is germane to the purpose of the law; 3) the classification is not based upon existing circumstances only; 4) to whatever class a law may apply, it applies equally to each member of the class; 5) the characteristics of each class are so far different from those of other classes as to reasonably suggest at least the propriety, having regard to the public good, of substantially different legislation. Blake v. Jossart, 2016 WI 57, 370 Wis. 2d 1, 884 N.W.2d 484, 12–2578.

To show that a statute unconstitutionally denies equal protection of the law, a party must demonstrate that the statute treats members of similarly situated classes differently. The right to equal protection does not require that such similarly situated classes be treated identically, but rather requires that the distinction made in treatment have some relevance to the purpose for which classification of the classes is made. In cases in which a statutory classification does not involve a suspect class or a fundamental interest, the classification will be upheld if there is any rational basis to support it. Blake v. Jossart, 2016 WI 57, 370 Wis. 2d 1, 884 N.W.2d 484, 12–2578.

When a party claims an equal protection violation that does not involve a suspect class or fundamental interest, the court is presented with three questions: 1) does the challenged statute create distinct classes of persons; 2) is a class treated differently from others similarly situated; and 3) is there a rational basis for different treatment. Arty's, LLC v. DOR, 2018 WI App 64, 384 Wis. 2d 320, 919 N.W.2d 590, 17–0886.

Although counties may charge reasonable fees for the use of facilities in their county parks, they may not charge such fees only to out–of–state residents while allowing all Wisconsin residents to utilize such facilities free of charge simply because ORAP or ORAP–200 funds are involved. Such action would create an arbitrary and unreasonable distinction based on residence and unconstitutionally deny residents of other states equal protection of the laws. 60 Atty. Gen. 18.

A requirement that deputy sheriffs and police officers be citizens does not deny equal protection to resident aliens. 68 Atty. Gen. 61.

Classifications by gender must serve important government objectives and must be substantially related to achievement of those objectives. Orr v. Orr, 440 U.S. 268, 99 S. Ct. 1102, 59 L. Ed. 2d 306 (1979).

A citizenship requirement for public teachers in New York did not violate equal protection. Ambach v. Norwick, 441 U.S. 68, 99 S. Ct. 1589, 60 L. Ed. 2d 49 (1979).

A Massachusetts civil service preference for veterans did not deny equal protection to women. Personnel Administrator v. Feeney, 442 U.S. 256, 99 S. Ct. 2282, 60 L. Ed. 2d 870 (1979).

A worker's compensation law that required men, but not women, to prove disability or dependence on a deceased spouse's earnings violated equal protection. Wengler v. Druggists Mutual Insurance Co., 446 U.S. 142, 100 S. Ct. 1540, 64 L. Ed. 2d 107 (1980).

A racial classification did not violate the equal protection clause. Fullilove v. Klutznick, 448 U.S. 448, 100 S. Ct. 2758, 65 L. Ed. 2d 902 (1980). But see Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 115 S. Ct. 2097, 132 L. Ed. 2d 158 (1995).

A statutory rape law applicable only to males had a "fair and substantial relationship" to legitimate state ends. Michael M. v. Superior Court, 450 U.S. 464, 101 S. Ct. 1200, 67 L. Ed. 2d 437 (1981).

A state university open only to women violated equal protection. Mississippi University for Women v. Hogan, 458 U.S. 718, 102 S. Ct. 3331, 73 L. Ed. 2d 1090 (1982).

A state's policy of preserving county boundaries in a reapportionment plan justified a population deviation averaging 13 percent. Brown v. Thomson, 462 U.S. 835, 103 S. Ct. 2690, 77 L. Ed. 2d 214 (1983).

A layoff plan giving preference on the basis of race to accomplish affirmative action goals was not sufficiently narrowly tailored and, therefore, violated equal protection. Wygant v. Jackson Board of Education, 476 U.S. 267, 106 S. Ct. 1842, 90 L. Ed. 2d 260 (1986).

Student body diversity is a compelling state interest that can justify the use of race in university admissions. A race–conscious admissions program cannot use a quota system, but may consider race or ethnicity as a plus factor for an applicant, without insulating the individual from comparison with all other candidates for the available seats. An admissions program must be flexible enough to consider all pertinent elements of diversity in light of the particular qualifications of each applicant, and to place them on the same footing for consideration, although not necessarily according them the same weight. Race–conscious admissions policies must be limited in time. Grutter v. Bollinger, 539 U.S. 306, 123 S. Ct. 2325, 156 L. Ed. 2d 304 (2003). See also Gratz v. Bollinger, 539 U.S. 244, 123 S. Ct. 2411, 156 L. Ed. 2d 257 (2003).

Strict scrutiny was the proper standard of review for an equal protection challenge to a California corrections policy of racially segregating prisoners in double cells each time they entered a new correctional facility. All racial classifications imposed by government must be analyzed under strict scrutiny even when they may be said to burden or benefit the races equally. There is no exception to the rule that strict scrutiny applies to all racial classifications in the prison context. Johnson v. California, 543 U.S. 499, 125 S. Ct. 1141, 160 L. Ed. 2d 949 (2005).

It is impermissible for a school district to rely upon an individual student's race in assigning that student to a particular school so that the racial balance at the school falls within a predetermined range based on the racial composition of the school district as a whole. Parents Involved in Community Schools v. Seattle School District No. 1, 551 U.S. 701, 127 S. Ct. 2738, 168 L. Ed. 2d 508 (2007).

A public employee cannot state a claim under the equal protection clause by alleging that the employee was arbitrarily treated differently from other similarly situated employees, with no assertion that the different treatment was based on the employee's membership in any particular class. Engquist v. Oregon Department of Agriculture, 553 U.S. 591, 128 S. Ct. 2146, 170 L. Ed. 2d 975 (2008).

Under *Grutter*, 539 U.S. 306 (2003), strict scrutiny must be applied to any university admissions program using racial categories or classifications. Once the university has established that its goal of diversity is consistent with strict scrutiny, however, there must still be a further judicial determination that the admissions process meets strict scrutiny in its implementation. The university must prove that the means chosen by the university to attain diversity are narrowly tailored to that goal. Strict scrutiny imposes on the university the ultimate burden of demonstrating, before turning to racial classifications, that available, workable race–neutral alternatives do not suffice. *Grutter* did not hold that good faith would forgive an impermissible consideration of race. Fisher v. University of Texas at Austin, 570 U.S. 297, 133 S. Ct. 2411, 186 L. Ed. 2d 474 (2013). See also Fisher v. University of Texas at Austin, 579 U.S. 365, 136 S. Ct. 2198, 195 L. Ed. 2d 511 (2016).

There is no equal protection violation in a state classifying as nonresidents for tuition purposes persons who are residents for all other purposes. Lister v. Hoover, 655 F.2d 123 (1981).

The postconviction detention of a person is a violation of equal protection if it is occasioned by the prisoner's indigency. Taylor v. Gray, 375 F. Supp. 790 (1974).

The contrast between the percentage of the black population of a city, 17.2 percent, and the percentage of black composition of "fixed wage" skilled craft positions available in the city, 3.1 percent, evidenced a substantial disparity between the proportion of minorities in the general population and the proportion in a specific job classification and established a prima facie case of unlawful racial discrimination, absent a showing by the city that the statistical discrepancy resulted from causes other than racial discrimination. Crockett v. Green, 388 F. Supp. 912 (1975).

Discussing civil rights actions against municipalities. Starstead v. City of Superior, 533 F. Supp. 1365 (1982).

Zoning—Equal Protection. Cooper. 1976 WLR 234.

Constitutional Law—Equal Protection—Sex Discrimination—Selective Service Laws. Ruhl. 1976 WLR 330.

Transgender Rights in Wisconsin. Diedrich. Wis. Law. Mar. 2018.

DUE PROCESS

Although a person may invoke the right against self incrimination in a civil case in order to protect the person in a subsequent criminal action, an inference against the person's interest may be drawn as a matter of law based upon an implied admission that a truthful answer would tend to prove that the witness had committed the criminal act or what might constitute a criminal act. Molloy v. Molloy, 46 Wis. 2d 682, 176 N.W.2d 292 (1970).

A school board's refusal to renew a teacher's coaching duties in addition to full–time teaching duties, without notice and hearing, did not violate the right to due process when no charge was made that reflected on an invoked protected liberty interest and when no legal right in the job gave rise to a protected property interest. Richards v. Board of Education, 58 Wis. 2d 444, 206 N.W.2d 597 (1973).

A property interest in employment conferred by state law is protected by the due process provisions of both the state and federal constitutions. State ex rel. DeLuca v. Common Council, 72 Wis. 2d 672, 242 N.W.2d 689 (1976).

The due process standard in juvenile proceedings is fundamental fairness. Discussing basic requirements. D.H. v. State, 76 Wis. 2d 286, 251 N.W.2d 196 (1977).

A permanent status public employee forfeits due process property interests in a job by accepting an inter–departmental promotion. DHSS v. State Personnel Board, 84 Wis. 2d 675, 267 N.W.2d 644 (1978).

If an attorney is permitted to withdraw on the day of trial without notice, due process requires granting a continuance. Sherman v. Heiser, 85 Wis. 2d 246, 270 N.W.2d 397 (1978).

Discussing liberty interests in public employment. Nufer v. Village Board, 92 Wis. 2d 289, 284 N.W.2d 649 (1979).

When a city ordinance specified narrow grounds upon which civil service applicants may be screened out, an applicant had no right to know the grounds for being screened out. Taplick v. City of Madison Personnel Board, 97 Wis. 2d 162, 293 N.W.2d 173 (1980).

Discussing due process rights of students at expulsion hearings. Racine Unified School District v. Thompson, 107 Wis. 2d 657, 321 N.W.2d 334 (Ct. App. 1982).

Due process was not violated when a defendant was illegally arrested in an asylum state and involuntarily brought to trial. State v. Monje, 109 Wis. 2d 138, 325 N.W.2d 695 (1982).

Due process rights of a tenured professor who was alleged to have resigned were not protected by a hearing to determine eligibility for unemployment compensation. Patterson v. Board of Regents, 119 Wis. 2d 570, 350 N.W.2d 612 (1984).

Discussing attributes of property interests protected by due process. Waste Management of Wisconsin, Inc. v. DNR, 128 Wis. 2d 59, 381 N.W.2d 318 (1986).

Enumerating due process rights of a probationer at a hearing to modify probation. State v. Hays, 173 Wis. 2d 439, 496 N.W.2d 645 (Ct. App. 1992).

Discussing the tort of intentional denial of due process. Old Tuckaway Associates v. City of Greenfield, 180 Wis. 2d 254, 509 N.W.2d 323 (Ct. App. 1993).

An inmate has a protected liberty interest in earned good−time credits and in not being placed in segregation. Post−deprivation remedies provided by the state are adequate. Irby v. Macht, 184 Wis. 2d 831, 522 N.W.2d 9 (1994). But see Sandin v. Conner, 515 U.S. 472, 115 S. Ct. 2293, 132 L. Ed. 2d 418 (1995).

A property interest conferred by a statute subsequently amended to make an appointed governmental position at−will is terminated upon the conclusion of the appointing official's term of office. Unertl v. Dane County, 190 Wis. 2d 145, 526 N.W.2d 775 (Ct. App. 1994).

A procedural due process claim arises when there is a deprivation of a right without sufficient process. Generally a predeprivation hearing is required, but when a deprivation results from a random act of a state employee, the question becomes the adequacy of postdeprivation remedies. Jones v. Dane County, 195 Wis. 2d 892, 537 N.W.2d 74 (Ct. App. 1995), 92−0946.

Substantive due process requires that the state not deprive its citizens of life, liberty, or property without due process. Absent a special relationship, it does not impose an affirmative obligation upon the state to ensure the protection of those rights from a private actor, even when governmental aid may be necessary to secure a person's life, liberty, or property. Jones v. Dane County, 195 Wis. 2d 892, 537 N.W.2d 74 (Ct. App. 1995), 92−0946.

When a prisoner could not show that a period of segregated confinement that exceeded the time allowed by rule was not atypical of the prisoner's prison life generally, there was no unconstitutional due process deprivation. The only time factor that courts will be concerned with in determining a procedural due process deprivation is the time the inmate is ultimately required to spend confined under the authority of the state. Chaney v. Renteria, 203 Wis. 2d 310, 554 N.W.2d 503 (Ct. App. 1996), 94−2557.

Foster children have a constitutional right under the due process clause to safe and secure placement in a foster home. Whether a public official violated that right will be determined based on a professional judgment standard. Kara B. v. Dane County, 205 Wis. 2d 140, 555 N.W.2d 630 (1996), 94−1081.

An inmate has a constitutionally protected liberty interest in not having the inmate's mandatory release date extended. Due process is violated in a prison discipline case when guilt is found if there is not "some evidence" that supports the finding of guilt. Santiago v. Ware, 205 Wis. 2d 295, 556 N.W.2d 356 (Ct. App. 1996), 95−0079.

A nonlawyer may not sign and file a notice of appeal on behalf of a corporation. To do so constitutes practicing law without a license in violation of s. 757.30 and voids the appeal. Requiring a lawyer to file the notice does not violate constitutional guarantees of equal protection and due process. Jadair Inc. v. United States Fire Insurance Co., 209 Wis. 2d 187, 562 N.W.2d 401 (1997), 95−1946.

Whether to proceed with civil litigation or to hold it in abeyance while a party is incarcerated depends on the nature of the case, the practical concerns raised by the prisoner's appearance, and the alternative methods available to provide the prisoner with access to the hearing. Schmidt v. Schmidt, 212 Wis. 2d 405, 569 N.W.2d 74 (Ct. App. 1997), 96−3699.

The state and federal constitutions provide identical procedural due process and equal protection safeguards. County of Kenosha v. C&S Management, Inc., 223 Wis. 2d 373, 588 N.W.2d 236 (1999), 97−0642.

In a procedural due process claim, it is not the deprivation of property or liberty that is unconstitutional; it is the deprivation without due process of law. Arneson v. Jezwinski, 225 Wis. 2d 371, 592 N.W.2d 606 (1999), 95−1592.

Substantive due process guarantees protect citizens against arbitrary action of government. To violate substantive due process guarantees, a decision must involve more than simple errors in law or an improper exercise of discretion; it must shock the conscience. Eternalist Foundation, Inc. v. City of Platteville, 225 Wis. 2d 759, 593 N.W.2d 84 (Ct. App. 1999), 98−1944.

A criminal proceeding may be conclusive against a third party only if the third party and criminal defendant have sufficient identity of interest so that in the prior proceeding the third party had a full opportunity to fairly adjudicate the issues leading to the conviction. If not, the third party's due process rights would be violated by the application of issue preclusion. Paige K.B. v. Steven G.B., 226 Wis. 2d 210, 594 N.W.2d 370 (1999), 97−0873.

A deprivation of the due process right of a fair warning can occur, not only from vague statutory language, but also from unforeseeable and retroactive interpretation of that statutory language. Elections Board v. Wisconsin Manufacturers & Commerce, 227 Wis. 2d 650, 597 N.W.2d 721 (1999), 98−0596.

The retroactive application of a substantive statute must meet the test of due process determined by balancing the public interest served by retroactive application against the private interests that are overturned. Neiman v. American National Property & Casualty Co., 2000 WI 83, 236 Wis. 2d 411, 613 N.W.2d 160, 99−2554.

The imposition of liability without fault, even when the statute imposes punitive sanctions, does not in itself violate due process. Statutes that are within the police power of the state may impose even criminal liability on a person whose acts violate the statute, even if the person did not intend to do so. Gross v. Woodman's Food Market, Inc., 2002 WI App 295, 259 Wis. 2d 181, 655 N.W.2d 718, 01−1746.

A parent who has a substantial relationship with the parent's child has a fundamental liberty interest in parenting the child. It is fundamentally unfair to terminate parental rights based solely on a parent's status as a victim of incest. Monroe County Department of Human Services v. Kelli B., 2004 WI 48, 271 Wis. 2d 51, 678 N.W.2d 831, 03−0060.

The due process clause of the 14th amendment includes the fundamental right of parents to make decisions concerning the care, custody, and control of their children, including the right to direct the upbringing and education of children under their control, but that right is neither absolute nor unqualified. Parents do not have a fundamental right to direct how a public school teaches their child or to dictate the curriculum at the public school to which they have chosen to send their child. Larson v. Burmaster, 2006 WI App 142, 295 Wis. 2d 333, 720 N.W.2d 134, 05−1433.

A prisoner has a liberty interest in avoiding forced nutrition and hydration, but the Department of Corrections may infringe on the prisoner's liberty interest by forcing the prisoner to ingest food and fluids against the prisoner's will. A court may enter a temporary ex parte order for involuntarily feeding and hydration if exigent circumstances require immediate involuntary treatment in order to avoid serious harm to or the death of an inmate. If a prisoner disputes the department's allegations, a circuit court may not continue the order for involuntary feeding and hydration without providing the prisoner an opportunity to meaningfully participate in an evidentiary hearing. The order for involuntary feeding and hydration cannot be of indefinite or permanent duration without a mechanism for periodic review. DOC v. Saenz, 2007 WI App 25, 299 Wis. 2d 486, 728 N.W.2d 765, 05−2750.

The due process clause protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children. Nevertheless, a parent's fundamental right to make decisions concerning the parent's child is not unlimited. Parents' fundamental right to make decisions for their children about religion and medical care does not prevent the state from imposing criminal liability on a parent who fails to protect the child when the parent has a legal duty to act. State v. Neumann, 2013 WI 58, 348 Wis. 2d 455, 832 N.W.2d 560, 11−1044.

A statute creating a presumption that operates to deny a fair opportunity to rebut it violates the due process clause of the 14th amendment. However, the irrebuttable presumption doctrine does not prevent the legislature from creating a classification in social welfare legislation whereby those who satisfy certain criteria are ineligible from receiving subsidized child care payments. Blake v. Jossart, 2016 WI 57, 370 Wis. 2d 1, 884 N.W.2d 484, 12−2578.

The threshold question when reviewing a substantive due process claim is whether a fundamental right is implicated or whether a suspect class is disadvantaged by the challenged legislation. If the claim involves neither a fundamental right nor a suspect class, courts conduct a rational basis review to evaluate whether the statute is rationally related to achieving a legitimate governmental interest. Blake v. Jossart, 2016 WI 57, 370 Wis. 2d 1, 884 N.W.2d 484, 12−2578.

A law is retroactive if it takes away or impairs vested rights acquired under existing laws or creates a new obligation, imposes a new duty, or attaches a new disability in respect to transactions or considerations already past. A statute does not operate retroactively simply because it is applied in a case arising from conduct antedating the statute's enactment or upsets expectations based on prior law. The mere expectation of a future benefit or contingent interest does not create a vested right. Lands' End, Inc. v. City of Dodgeville, 2016 WI 64, 370 Wis. 2d 500, 881 N.W.2d 702, 15−0179.

Any right to confrontation and cross−examination implicated by the due process clause is relaxed at a suppression hearing. Ultimately, due process is flexible and calls for such procedural protections as the particular situation demands. In this case, the arresting officer's death rendered him unavailable to testify at the suppression hearing. However, testimony by a second officer established that the recording from the dashboard camera on the arresting officer's squad car accurately and continuously documented the portions of the stop observed by the second officer and the audio portion of that same recording captured a statement made by the arresting officer to the defendant. The circuit court's reliance on that hearsay statement did not offend the reduced standard for due process of law required at a suppression hearing. State v. Zamzow, 2017 WI 29, 374 Wis. 2d 220, 892 N.W.2d 637, 14−2603.

Denying a defendant the opportunity to present the defendant's case−in−chief in a termination of parental rights proceeding is a structural error, the consequence of which is an automatic new trial. State v. C.L.K., 2019 WI 14, 385 Wis. 2d 418, 922 N.W.2d 807, 17−1413.

The test for whether this state can, consistent with due process, exercise its police power to regulate an out−of−state entity is whether the out−of−state entity has incidents and requires activities within the state intimately related to local welfare. Payday Loan Resolution, LLC v. DFI, 2019 WI App 28, 388 Wis. 2d 117, 931 N.W.2d 279, 18−0821.

Constitutional due process protections are unavailable to probationary employees. A probationary employee has no more than a unilateral expectation of completing the employee's probation and being hired as a permanent employee. That expectation is insufficient for procedural due process protections to attach. An employee must instead have a legitimate claim of entitlement to the position to give rise to a property interest warranting protection. State ex rel. Massman v. City of Prescott, 2020 WI App 3, 390 Wis. 2d 378, 938 N.W.2d 602, 18−1621.

To establish specific personal jurisdiction, there must be some act by which the defendant purposefully availed itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws. The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum state. This purposeful availment requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of random, fortuitous, or attenuated contacts, or of the unilateral activity of another party or a third person. In this case, the defendant's sole contact with Wisconsin was its contract with a Wisconsin business. A corporation's contract with an out−of−state party alone is not enough to automatically establish the

requisite minimum contacts needed to satisfy the 14th amendment's due process clause. CITGO Petroleum Corp. v. MTI Connect, LLC, 2020 WI App 57, 394 Wis. 2d 126, 949 N.W.2d 577, 18–1555.

The due process requirement of *Loudermill*, 470 U.S. 532 (1985), does not require any formal written notice listing all policy violations at issue in a municpality's discipline action against an employee, or that an employee's right to respond to those violations be available during a formal contested hearing before a neutral adjudicator prior to the discipline. In fact, *Loudermill* holds to the contrary. Namely, when sufficient post–disciplinary procedures are available, due process is satisfied as long as an employee is provided notice and given some opportunity to respond to the alleged charges against the employee before discipline is imposed. Green Bay Professional Police Ass'n v. City of Green Bay, 2021 WI App 73, 399 Wis. 2d 504, 966 N.W.2d 107, 21–0102.

Discussing prisoners' due process rights. Wolff v. McDonnell, 418 U.S. 539, 94 S. Ct. 2963, 41 L. Ed. 2d 935 (1974).

Public high school students facing temporary suspension have property and liberty interests protected by due process. Goss v. Lopez, 419 U.S. 565, 95 S. Ct. 729, 42 L. Ed. 2d 725 (1975).

Garnishment of corporate bank accounts must comply with the due process protections of *Fuentes*, 407 U.S. 67 (1972), and *Sniadach*, 395 U.S. 337 (1969). North Georgia Finishing, Inc. v. Di–Chem, Inc., 419 U.S. 601, 95 S. Ct. 719, 42 L. Ed. 2d 751 (1975).

The Wisconsin Medical Examining Board does not deny due process by both investigating and adjudicating a charge of professional misconduct. Withrow v. Larkin, 421 U.S. 35, 95 S. Ct. 1456, 43 L. Ed. 2d 712 (1975).

States may deny benefits to those who fail to prove they did not quit jobs in order to obtain benefits. Lavine v. Milne, 424 U.S. 577, 96 S. Ct. 1010, 47 L. Ed. 2d 249 (1976).

Due process does not disqualify an agency as a decision maker merely because of familiarity with the facts of a case. Hortonville Joint School District No. 1 v. Hortonville Education Ass'n, 426 U.S. 482, 96 S. Ct. 2308, 49 L. Ed. 2d 1 (1976).

Dismissal from medical school for academic deficiencies without a hearing did not violate the due process clause. Board of Curators v. Horowitz, 435 U.S. 78, 98 S. Ct. 948, 55 L. Ed. 2d 124 (1978).

Utility customers' due process rights were violated when the utility shut off service for nonpayment without advising the customers of available administrative procedures. Memphis Light, Gas & Water Division v. Craft, 436 U.S. 1, 98 S. Ct. 1554, 56 L. Ed. 2d 30 (1978).

A father's acquiescence in his daughter's desire to live with her mother in California did not confer jurisdiction over the father in California courts. Kulko v. Superior Court, 436 U.S. 84, 98 S. Ct. 1690, 56 L. Ed. 2d 132 (1978).

The due process clause was not violated when the Internal Revenue Service (IRS) monitored a conversation with the defendant in violation of IRS rules. United States v. Caceres, 440 U.S. 741, 99 S. Ct. 1465, 59 L. Ed. 2d 733 (1979).

A state may not exercise quasi in rem jurisdiction over a defendant having no forum contacts by attacking the contractual obligation of the defendant's insurer licensed in the state. Rush v. Savchuk, 444 U.S. 320, 100 S. Ct. 571, 62 L. Ed. 2d 516 (1980).

Involuntary transfer of a prisoner to a mental hospital implicated protected liberty interests. Vitek v. Jones, 445 U.S. 480, 100 S. Ct. 1254, 63 L. Ed. 2d 552 (1980).

The termination of appointed assistant public defenders, who were neither policymakers nor confidential employees, solely on grounds of political affiliation was a denial of 1st and 14th amendment rights. Branti v. Finkel, 445 U.S. 507, 100 S. Ct. 1287, 63 L. Ed. 2d 574 (1980).

Segregation confinement of a prisoner without prior hearing may violate due process if postponement of procedural protections is not justified by apprehended emergency conditions. Hughes v. Rowe, 449 U.S. 5, 101 S. Ct. 173, 66 L. Ed. 2d 163 (1980).

When an accident involving only Wisconsin residents occurred in Wisconsin, the fact that the decedent had been employed in Minnesota conferred jurisdiction on Minnesota courts, and Minnesota insurance law was applicable. Allstate Insurance Co. v. Hague, 449 U.S. 302, 101 S. Ct. 633, 66 L. Ed. 2d 521 (1981).

A statute that required a putative father in a paternity suit to pay for blood tests denied due process to indigent putative fathers. Little v. Streater, 452 U.S. 1, 101 S. Ct. 2202, 68 L. Ed. 2d 627 (1981).

Due process does not require appointment of counsel for indigent parents in every parental status termination proceeding. Lassiter v. Department of Social Services, 452 U.S. 18, 101 S. Ct. 2153, 68 L. Ed. 2d 640 (1981).

A life prisoner had no due process right to a statement of reasons why the board did not commute his life sentence. Connecticut Board of Pardons v. Dumschat, 452 U.S. 458, 101 S. Ct. 2460, 69 L. Ed. 2d 158 (1981).

An ordinance regulating the sale of drug paraphernalia was constitutional. Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489, 102 S. Ct. 1186, 71 L. Ed. 2d 362 (1982).

Revocation of probation for failure to pay a fine, without a determination that the probationer had not made a bona fide effort to pay or that alternate forms of punishment did not exist, denied due process and equal protection. Bearden v. Georgia, 461 U.S. 660, 103 S. Ct. 2064, 76 L. Ed. 2d 221 (1983).

Notice by publication did not satisfy due process requirements in a tax sale. Mennonite Board of Missions v. Adams, 462 U.S. 791, 103 S. Ct. 2706, 77 L. Ed. 2d 180 (1983).

An individual's contract with an out–of–state party alone cannot automatically establish sufficient minimum contacts in the other party's home forum for purposes of personal jurisdiction. A contract is ordinarily but an intermediate step serving to tie up prior business negotiations with future consequences which themselves are the real object of the business transaction. It is these factors—prior negotiations and contemplated future consequences, along with the terms of the contract and the parties' actual course of dealing—that must be evaluated in determining whether the defendant purposefully established minimum contacts within the forum. Burger King Corp. v. Rudzewicz, 471 U.S. 462, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985).

A minority set–aside program violated due process. City of Richmond v. J.A. Croson Co., 488 U.S. 469, 109 S. Ct. 706, 102 L. Ed. 2d 854 (1989).

Abortion restrictions complied with constitutional protections. Webster v. Reproductive Health Services, 492 U.S. 490, 109 S. Ct. 3040, 106 L. Ed. 2d 410 (1989).

Assuming that a competent person has a constitutional right to refuse treatment, a state may require clear and convincing evidence that an incompetent patient desired withdrawal of treatment. Cruzan v. Director, Missouri Department of Health, 497 U.S. 261, 110 S. Ct. 2841, 111 L. Ed. 2d 224 (1990).

Substantive due process is not violated by a police officer who causes death through deliberate or reckless indifference to life in a high speed chase aimed at apprehending a suspect. Only a purpose to cause harm unrelated to the legitimate object of arrest satisfies the element of arbitrary conduct shocking to the conscience necessary for a due process violation. County of Sacramento v. Lewis, 523 U.S. 833, 118 S. Ct. 1708, 140 L. Ed. 2d 1043 (1998).

In lieu of exclusive reliance on a judge's personal inquiry into the judge's actual bias, or on appellate review of the judge's determination respecting actual bias, the due process clause has been implemented by objective standards that do not require proof of actual bias. In defining these standards the U.S. Supreme Court has asked whether, under a realistic appraisal of psychological tendencies and human weakness, the interest poses such a risk of actual bias or prejudgment that the practice must be forbidden if the guarantee of due process is to be adequately implemented. Caperton v. A.T. Massey Coal Co., 556 U.S. 868, 129 S. Ct. 2252, 173 L. Ed. 2d 1208 (2009).

There is a serious risk of actual bias, based on objective and reasonable perceptions, when a person with a personal stake in a particular case had a significant and disproportionate influence in placing the judge on a case by raising funds or directing the judge's election campaign while the case was pending or imminent. The inquiry centers on the contribution's relative size in comparison to the total amount of money contributed to the campaign, the total amount spent in the election, and the apparent effect the contribution had on the outcome of the election. Whether campaign contributions were a necessary and sufficient cause of a judge's victory is not the proper inquiry. Due process requires an objective inquiry into whether the contributor's influence on the election under all the circumstances would offer a possible temptation to the average judge to lead the judge not to hold the balance "nice, clear, and true." Caperton v. A.T. Massey Coal Co., 556 U.S. 868, 129 S. Ct. 2252, 173 L. Ed. 2d 1208 (2009).

Under the due process clause there was an impermissible risk of actual bias when a judge earlier had significant, personal involvement as a prosecutor in a critical decision regarding the defendant's case. Williams v. Pennsylvania, 579 U.S. 1, 136 S. Ct. 1899, 195 L. Ed. 2d 132 (2016).

The 14th amendment limits the personal jurisdiction of state courts. Because a state court's assertion of jurisdiction exposes defendants to the state's coercive power, it is subject to review for compatibility with the 14th amendment's due process clause, which limits the power of a state court to render a valid personal judgment against a nonresident defendant. Specific jurisdiction is confined to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction. For specific jurisdiction, a defendant's general connections with the forum are not enough. A specific connection between the forum and specific claims at issue is required. Bristol–Myers Squibb Co. v. Superior Court, 582 U.S. ___, 137 S. Ct. 1773, 198 L. Ed. 2d 395 (2017).

The forum state may exercise specific jurisdiction if the plaintiff's claims arise out of "or relate to" the defendant's contacts with the forum. The "relate to" standard contemplates that some relationships will support jurisdiction without a causal showing. Specific jurisdiction attaches when a company like Ford Motor Company serves a market for a product in a state and that product causes injury in the state to one of its residents, and the state's courts may entertain the resulting suit, even if the particular car involved was not first sold, designed, or manufactured in the forum state. Ford Motor Co. v. Montana Eighth Judicial District Court, 592 U.S. ___, 141 S. Ct. 1017, 209 L. Ed. 2d 225 (2021).

It is not a violation of the due process clause to tow an illegally parked car without first giving the owner notice and opportunity to be heard regarding the lawfulness of the towing. Sutton v. City of Milwaukee, 672 F.2d 644 (1982).

A village board's denial of an application for a liquor license did not deprive the applicant of either liberty or property. Scott v. Village of Kewaskum, 786 F.2d 338 (1986).

Where an economic regulation is challenged on substantive due process grounds, the rational basis test is applied. To uphold the statute, a court need only find a reasonably conceivable state of facts that could provide a rational basis for the classification. Consumer protection and promoting commerce are both legitimate state interests. On rational–basis review, the state does not need to present actual evidence to support its proffered rationale for the law, which can be based on rational speculation unsupported by evidence or empirical data. Minerva Dairy, Inc. v. Harsdorf, 905 F.3d 1047 (2018).

Specific personal jurisdiction requires that a defendant's contacts with the forum state show that the defendant purposefully availed itself of the privilege of conducting business in the forum state or purposefully directed the defendant's activities at the state. This analysis focuses on the defendant's contacts with the forum state itself, not the defendant's contacts with persons who reside there. Deliberate contact with the resident of a state is not the same thing as deliberate contact with the state itself. Lexington Insurance Co. v. Hotai Insurance Co., 938 F.3d 874 (2019).

A teacher's alleged de facto tenure is not a protected property interest. Discussing liberty interests. Stevens v. Joint School District No. 1, 429 F. Supp. 477 (1977).

A sheriff violated a tenant's protectible property interest by executing a stale writ of restitution. Wolf–Lillie v. Kenosha County Sheriff, 504 F. Supp. 1 (1979).

One cannot have a constitutionally protected interest solely in a state law procedure; a separate property interest must also be present. Molgaard v. Town of Caledonia, 527 F. Supp. 1073 (1981).

A high school student enjoys no constitutionally protected property interest in participation in interscholastic athletics. Isabella A. v. Arrowhead Union High School District, 323 F. Supp. 3d 1052 (2018).

The Original Understanding of "Property" in the Constitution. Larkin. 100 MLR 1 (2016).

Demon Rum and the Dirty Dance: Reconsidering Government Regulation of Live Sex Entertainment After California v. LaRue. Diel & Salinger. 1975 WLR 161.

Constitutional Law—Schools & School Districts—Reasonable Corporal Punishment by School Official Over Parental Objection is Constitutional. Splain. 1976 WLR 689.

Procedural Due Process in Public Schools: The "Thicket" of Goss v. Lopez. Ransom. 1976 WLR 934.

Constitutional Law—Due Process—Administrative Law—Impartial Decisionmaker—Authority of School Board to Dismiss Striking Teachers. Gallagher. 1977 WLR 521.

Constitutional Law—Due Process—Property Interest—Government Employment—State Law Defines Limitation of Entitlement. Jensen. 1977 WLR 575.

When Roles Collide: Deference, Due Process, and the Judicial Dilemma. Buchmeyer. 2019 WLR 1589.

Conscience Shocking in the Age of Trump. Farnsworth. 2020 WLR 805.

MISCELLANEOUS

An adult bookstore has no right to protect the privacy rights of its customers in a public, commercial establishment. City News & Novelty, Inc. v. City of Waukesha, 170 Wis. 2d 14, 487 N.W.2d 316 (Ct. App. 1992).

A narrowly drawn anti−cruising ordinance did not violate the right to assemble or travel. Scheunemann v. City of West Bend, 179 Wis. 2d 469, 507 N.W.2d 163 (Ct. App. 1993).

The right to intrastate travel, including the right to move about one's neighborhood in an automobile, is fundamental, but infringements on the right are not subject to strict scrutiny. Cruising ordinances, reasonable in time, place, and manner, do not violate this right. Brandmiller v. Arreola, 199 Wis. 2d 528, 544 N.W.2d 894 (1996), 93−2842.

A father who intentionally refused to pay child support could, as a condition of probation, be required to avoid having another child, unless he showed that he could support that child and his current children. In light of the defendant's ongoing victimization of his children and record manifesting his disregard for the law, this condition was not overly broad and was reasonably related to the defendant's rehabilitation. State v. Oakley, 2001 WI 103, 245 Wis. 2d 447, 629 N.W.2d 200, 99−3328.

Banishment from a particular place is not a per se violation of the right to travel. There is no exact formula for determining whether a geographic restriction is narrowly tailored. Each case must be analyzed on its own facts, circumstances, and total atmosphere to determine whether the geographic restriction is narrowly drawn. Predick v. O'Connor, 2003 WI App 46, 260 Wis. 2d 323, 660 N.W.2d 1, 02−0503.

In order for a putative biological father to have the necessary foundation for a constitutionally protected liberty interest in his putative paternity, he would have to have taken affirmative steps to assume his parental responsibilities for the child. Randy A.J. v. Norma I.J., 2004 WI 41, 270 Wis. 2d 384, 677 N.W.2d 630, 02−0469.

Parental status that rises to the level of a constitutionally protected liberty interest does not rest solely on biological factors, but rather, is dependent upon an actual relationship with the child where the parent assumes responsibility for the child's emotional and financial needs. Stuart S. v. Heidi R., 2015 WI App 19, 360 Wis. 2d 388, 860 N.W.2d 538, 14−1487.

Personhood Under the Fourteenth Amendment. Samar. 101 MLR 287 (2017).

Domestic Relations—Putative Father's Right to Custody of His Child. 1971 WLR 1262.

Slavery prohibited. SECTION 2. There shall be neither slavery, nor involuntary servitude in this state, otherwise than for the punishment of crime, whereof the party shall have been duly convicted.

Free speech; libel. SECTION 3. Every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right, and no laws shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions or indictments for libel, the truth may be given in evidence, and if it shall appear to the jury that the matter charged as libelous be true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

FREE SPEECH

A city can validly prohibit picketing private homes when the subject of the picketing has no relationship to any activity carried on there. City of Wauwatosa v. King, 49 Wis. 2d 398, 182 N.W.2d 530 (1971).

A journalist has a constitutional right to the privilege not to disclose sources of information received in a confidential relationship, but when such confidence is in conflict with the public's overriding need to know, it must yield to the interest of justice. The state need not affirmatively demonstrate proof of compelling need or lack of an alternative method of obtaining the information sought when the crimes involved and the prevention of repetition of those crimes constitute a compelling need. State v. Knops, 49 Wis. 2d 647, 183 N.W.2d 93 (1971).

Only that portion of an obscenity ordinance defining obscenity in *Roth−Memoirs* terms is unconstitutional, and the remainder is a viable, effective ordinance when supplemented by the *Chobot*, 61 Wis. 2d 354 (1973), obscenity definition as augmented by the "community standards" definition. City of Madison v. Nickel, 66 Wis. 2d 71, 223 N.W.2d 865 (1974).

Prohibiting the solicitation of prostitutes does not violate the right of free speech. Shillcutt v. State, 74 Wis. 2d 642, 247 N.W.2d 694 (1976).

When a radio talk show announcer was fired for allowing talk show guests to slander minorities, the announcer's right of free speech was not infringed. Augustine v. Anti−Defamation League of B'nai B'rith, 75 Wis. 2d 207, 249 N.W.2d 547 (1977).

When the record did not indicate that a tenant union provided inadequate, unethical, or complex legal advice to tenants, the tenant union's information service was protected by free speech guarantees. Hopper v. City of Madison, 79 Wis. 2d 120, 256 N.W.2d 139 (1977).

The public's right to be aware of all facts surrounding an issue does not interfere with the right of a newspaper to reject advertising. Wisconsin Ass'n of Nursing Homes, Inc. v. Journal Co., 92 Wis. 2d 709, 285 N.W.2d 891 (Ct. App. 1979).

Setting procedures to determine whether a journalist may properly invoke privilege to prevent disclosure of confidential sources. State ex rel. Green Bay Newspaper Co. v. Circuit Court, 113 Wis. 2d 411, 335 N.W.2d 367 (1983).

The right of free speech applies against state action, not private action. Jacobs v. Major, 139 Wis. 2d 492, 407 N.W.2d 832 (1987).

News gatherers have no constitutional right of access to disaster scenes beyond that accorded the general public. City of Oak Creek v. King, 148 Wis. 2d 532, 436 N.W.2d 285 (1989).

Commercial speech is protected by the 1st amendment. The government must show that a restriction directly advances a substantial interest for it to be constitutional. City of Milwaukee v. Blondis, 157 Wis. 2d 730, 460 N.W.2d 815 (Ct. App. 1990).

A sentence based on an activity protected by the 1st amendment is constitutionally invalid, but when a sufficient link to criminal activity is shown, the activity is no longer protected. State v. J.E.B., 161 Wis. 2d 655, 469 N.W.2d 192 (Ct. App. 1991).

Although music is accorded a presumption of being protected speech, an ordinance prohibiting all unreasonable noise was not an unconstitutionally vague encroachment on free speech. City of Madison v. Baumann, 162 Wis. 2d 660, 470 N.W.2d 296 (1991).

An employee's free speech rights were not violated when the employer's need for confidentiality and discipline clearly outweighed the employee's interest in disclosing confidential information. Barnhill v. Board of Regents, 166 Wis. 2d 395, 479 N.W.2d 917 (1992).

The 1st amendment rights of inmates are subject to limitation and regulation. Interception and withholding of inter−inmate correspondence was reasonable. Yoder v. Palmeri, 177 Wis. 2d 756, 502 N.W.2d 903 (Ct. App. 1993).

Whether a restriction on nude dancing is overbroad depends on whether the ordinance is targeted at curbing only harmful secondary effects of exotic clubs. Fond du Lac County v. Mentzel, 195 Wis. 2d 313, 536 N.W.2d 160 (Ct. App. 1995), 94−1924.

The state's power to ban the sale of alcoholic beverages under the 21st amendment includes the lesser power to ban nude dancing on premises where alcohol is served. Schultz v. City of Cumberland, 195 Wis. 2d 554, 536 N.W.2d 192 (Ct. App. 1995), 94−3106.

Discussing restrictions upon the free speech rights of inmates. Lomax v. Fiedler, 204 Wis. 2d 196, 554 N.W.2d 841 (Ct. App. 1996), 95−2304.

A zoning ordinance that did not set aside any area where an adult bookstore would be allowed was impermissible. Town of Wayne v. Bishop, 210 Wis. 2d 218, 565 N.W.2d 201 (Ct. App. 1997), 95−2387.

A public nudity ordinance will meet a challenge that it is facially overbroad if it is drafted in a manner that addresses the secondary effects of adult entertainment without suffocating protected expression in a real and substantial manner. Lounge Management, Ltd. v. Town of Trenton, 219 Wis. 2d 13, 580 N.W.2d 156 (1998), 96−1853.

Obscenity is, and has been, an abuse of the right to speak freely on all subjects under the state constitution. The breadth of protection offered by the Wisconsin Constitution in the context of obscenity is no greater than that afforded by the 1st amendment. County of Kenosha v. C&S Management, Inc., 223 Wis. 2d 373, 588 N.W.2d 236 (1999), 97−0642.

When an ordinance regulates 1st amendment activities, the government normally has the burden of defending the regulation beyond a reasonable doubt, but when prior restraints are concerned and the government action at issue is the review of an applicant's qualifications for a business license, the city does not bear the burden of going to court to effect the denial of a license, nor does it bear the burden of proof once in court. City News & Novelty, Inc. v. City of Waukesha, 231 Wis. 2d 93, 604 N.W.2d 870 (Ct. App. 1999), 97−1504.

Unfiled pretrial materials in a civil action between private parties are not public records and neither the public nor the press has either a common law or constitutional right of access to those materials. State ex rel. Mitsubishi Heavy Industries America, Inc. v. Circuit Court, 2000 WI 16, 233 Wis. 2d 1, 605 N.W.2d 868, 99−2810.

A town ordinance prohibiting nudity on premises operating under a retail Class B liquor license was constitutional under *City of Erie*, 529 U.S. 277 (2000). Urmanski v. Town of Bradley, 2000 WI App 141, 237 Wis. 2d 545, 613 N.W.2d 905, 99−2330.

Only a "true threat" is punishable under statutes criminalizing threats. A true threat is a statement that a speaker would reasonably foresee that a listener would reasonably interpret as a serious expression of a purpose to inflict harm, as distinguished from hyperbole, jest, innocuous talk, expressions of political views, or other similarly protected speech. It is not necessary that the speaker have the ability to carry out the threat. State v. Perkins, 2001 WI 46, 243 Wis. 2d 141, 626 N.W.2d 762, 99−1924.

Purely written speech, even if it fails to cause an actual disturbance, can constitute disorderly conduct, but the state has the burden to prove that the speech is constitutionally unprotected "abusive" conduct. "Abusive" conduct is conduct that is injurious, improper, hurtful, offensive, or reproachful. True threats clearly fall within the scope of this definition. State v. Douglas D., 2001 WI 47, 243 Wis. 2d 204, 626 N.W.2d 725, 99−1767.

Although the 1st amendment prohibits law enforcement officials from prosecuting protected speech, it does not necessarily follow that schools may not discipline students for such speech. Like law enforcement officials, educators may not punish students merely for expressing unpopular viewpoints, but the 1st amendment must

be applied in light of the special characteristics of the school environment. Schools may limit or discipline conduct that for any reason materially disrupts classwork or involves substantial disorder or invasion of the rights of others. State v. Douglas D., 2001 WI 47, 243 Wis. 2d 204, 626 N.W.2d 725, 99−1767.

Application of the disorderly conduct statute to speech alone is permissible under appropriate circumstances. When speech is not an essential part of any exposition of ideas, when it is utterly devoid of social value, and when it can cause or provoke a disturbance, the disorderly conduct statute can be applicable. State v. A.S., 2001 WI 48, 243 Wis. 2d 173, 626 N.W.2d 712, 99−2317.

A county public assembly ordinance that contained a 60−day advance filing requirement, a 45−day processing time period, a prohibition against advertising, promoting, and selling tickets before a license was issued, a required certification by the zoning administrator, and a license fee in excess of $100 per application was not narrowly tailored to achieve a significant government interest and violated the 1st amendment free speech guarantee. Sauk County v. Gumz, 2003 WI App 165, 266 Wis. 2d 758, 669 N.W.2d 509, 02−0204.

The exception to protection for "true threats" is not limited to threats directed only at a person or group of individuals, nor is it limited to a threat of bodily harm or death. State v. Robert T., 2008 WI App 22, 307 Wis. 2d 488, 746 N.W.2d 564, 06−2206.

In this case, supervisory conditions limiting the defendant's internet use were not unconstitutionally overbroad and did not impermissibly infringe the defendant's 1st amendment rights when the conditions were crafted to provide protection for the public, and the defendant had a history of violating similar conditions. The circuit court could reasonably conclude that the defendant's prior violations of internet conditions raised significant concerns about the need to protect the public and children in light of the defendant's convictions for using a computer to facilitate a sex crime, child enticement, sexual assault of a child, and child abuse. State v. King, 2020 WI App 66, 394 Wis. 2d 431, 950 N.W.2d 891, 19−1642.

Discussing free speech and the state's campaign finance law in light of *Buckley*, 424 U.S. 1 (1976). 65 Atty. Gen. 145.

Car card space on a city transit system is not a free speech forum. Lehman v. City of Shaker Heights, 418 U.S. 298, 94 S. Ct. 2714, 41 L. Ed. 2d 770 (1974).

A flag misuse statute was unconstitutional as applied to a flag hung upside down with a peace symbol affixed when the context imbued the display with protected elements of communication. Spence v. Washington, 418 U.S. 405, 94 S. Ct. 2727, 41 L. Ed. 2d 842 (1974).

Commercial advertising is protected free speech. Bigelow v. Virginia, 421 U.S. 809, 95 S. Ct. 2222, 44 L. Ed. 2d 600 (1975).

Campaign expenditure limitations unduly restrict political expression. Contribution limits impose serious burdens on free speech only if they are so low as to prevent candidates and political committees from amassing the resources necessary for effective advocacy. Buckley v. Valeo, 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976). See also McConnell v. Federal Election Commission, 540 U.S. 93, 124 S. Ct. 619, 157 L. Ed. 2d 491 (2003).
Reversed in part. Citizens United v. Federal Election Commission, 558 U.S. 310, 130 S. Ct. 876, 175 L. Ed. 2d 753 (2010). See also Randall v. Sorrell, 548 U.S. 230, 126 S. Ct. 2479, 165 L. Ed. 2d 482 (2006); Federal Election Commission v. Wisconsin Right to Life, Inc., 551 U.S. 449, 127 S. Ct. 2652, 168 L. Ed. 2d 329 (2007); McCutcheon v. Federal Election Commission, 572 U.S. 185, 134 S. Ct. 1434, 188 L. Ed. 2d 468 (2014).

Discussing prior restraint of news media to limit pretrial publicity. Nebraska Press Ass'n v. Stuart, 427 U.S. 539, 96 S. Ct. 2791, 49 L. Ed. 2d 683 (1976).

A board of education may not prevent a non−union teacher from speaking on a bargaining issue at an open meeting. City of Madison Joint School District v. WERC, 429 U.S. 167, 97 S. Ct. 421, 50 L. Ed. 2d 376 (1976).

Discussing corporations' free speech rights. First National Bank of Boston v. Bellotti, 435 U.S. 765, 98 S. Ct. 1407, 55 L. Ed. 2d 707 (1978).

The 1st amendment prohibited the prosecution of a newspaper for publishing confidential proceedings of a commission investigating judicial conduct. Landmark Communications, Inc. v. Virginia, 435 U.S. 829, 98 S. Ct. 1535, 56 L. Ed. 2d 1 (1978).

Collective activity undertaken to obtain meaningful access to courts is a fundamental right protected by the 1st amendment. In re Primus, 436 U.S. 412, 98 S. Ct. 1893, 56 L. Ed. 2d 417 (1978).

A newspaper office may be searched for evidence of a crime even though the newspaper is not suspected of a crime. Zurcher v. Stanford Daily, 436 U.S. 547, 98 S. Ct. 1970, 56 L. Ed. 2d 525 (1978).

The 1st amendment does not guarantee the public's or media's right of access to sources of information within government control. Houchins v. KQED, Inc., 438 U.S. 1, 98 S. Ct. 2588, 57 L. Ed. 2d 553 (1978).

Public employee private, as well as public, speech is protected. Givhan v. Western Line Consolidated School District, 439 U.S. 410, 99 S. Ct. 693, 58 L. Ed. 2d 619 (1979).

The press and public have no constitutional right to attend a pretrial suppression hearing when the defendant demands a closed hearing to avoid prejudicial publicity. Gannett Co. v. DePasquale, 443 U.S. 368, 99 S. Ct. 2898, 61 L. Ed. 2d 608 (1979).

A public utility had the free speech right to enclose with bills inserts discussing controversial issues of public policy. Consolidated Edison Co. of New York v. Public Service Commission, 447 U.S. 530, 100 S. Ct. 2326, 65 L. Ed. 2d 319 (1980).

For restrictions on commercial speech to stand a constitutional challenge, the restriction must not be more extensive than is necessary to serve the government's interests. Central Hudson Gas & Electric Corp. v. Public Service Commission, 447 U.S. 557, 100 S. Ct. 2343, 65 L. Ed. 2d 341 (1980).

An ordinance prohibiting a live dancing exhibition violated the free speech clause. Schad v. Borough of Mount Ephraim, 452 U.S. 61, 101 S. Ct. 2176, 68 L. Ed. 2d 671 (1981).

A statute that prohibits placing unstamped mailable matter in any box approved by the U.S. Postal Service does not violate the free speech clause. U.S. Postal Service v. Council of Greenburgh Civic Ass'ns, 453 U.S. 114, 101 S. Ct. 2676, 69 L. Ed. 2d 517 (1981).

An ordinance that placed substantial restrictions on billboards other than those used for onsite commercial advertising violated the free speech clause. Metromedia, Inc. v. City of San Diego, 453 U.S. 490, 101 S. Ct. 2882, 69 L. Ed. 2d 800 (1981).

A public university that provided a forum to many student groups but excluded religious student groups violated the principle that state regulation of speech should be content neutral. Widmar v. Vincent, 454 U.S. 263, 102 S. Ct. 269, 70 L. Ed. 2d 440 (1981).

An ordinance regulating the sale of drug paraphernalia was constitutional. Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489, 102 S. Ct. 1186, 71 L. Ed. 2d 362 (1982).

There are constitutional limits on the state's power to prohibit candidates from making promises in the course of an election campaign. Some promises are universally acknowledged as legitimate, indeed indispensable, to decisionmaking in a democracy. Brown v. Hartlage, 456 U.S. 45, 102 S. Ct. 1523, 71 L. Ed. 2d 732 (1982).

A school board's discretion to determine the contents of school libraries may not be exercised in a narrowly partisan or political manner. Board of Education v. Pico, 457 U.S. 853, 102 S. Ct. 2799, 73 L. Ed. 2d 435 (1982).

States are entitled to greater leeway in the regulation of pornographic depictions of children. New York v. Ferber, 458 U.S. 747, 102 S. Ct. 3348, 73 L. Ed. 2d 1113 (1982).

The discharge of a public employee did not deny free speech rights under the facts of this case. Connick v. Myers, 461 U.S. 138, 103 S. Ct. 1684, 75 L. Ed. 2d 708 (1983).

A sidewalk is a "public forum." The prohibition of leaflets denied free speech. United States v. Grace, 461 U.S. 171, 103 S. Ct. 1702, 75 L. Ed. 2d 736 (1983).

The government's substantial interest in maintaining the park in the heart of the capital in an attractive condition sustained a regulation against camping or overnight sleeping in public parks. Free speech was not denied. Clark v. Community for Creative Non−Violence, 468 U.S. 288, 104 S. Ct. 3065, 82 L. Ed. 2d 221 (1984).

A school district did not violate the free speech clause by disciplining a student for giving an offensively lewd and indecent speech at a school assembly. Bethel School District No. 403 v. Fraser, 478 U.S. 675, 106 S. Ct. 3159, 92 L. Ed. 2d 549 (1986).

School administrators may exercise control over style and content of student speech in school−sponsored activities as long as control is reasonably related to "legitimate pedagogical concerns." Hazelwood School District v. Kuhlmeier, 484 U.S. 260, 108 S. Ct. 562, 98 L. Ed. 2d 592 (1988).

A state may not categorically ban targeted, direct−mail advertising by attorneys. Shapero v. Kentucky Bar Ass'n, 486 U.S. 466, 108 S. Ct. 1916, 100 L. Ed. 2d 475 (1988).

A Brookfield ordinance prohibiting picketing of individuals' residences was not facially invalid. Frisby v. Schultz, 487 U.S. 474, 108 S. Ct. 2495, 101 L. Ed. 2d 420 (1988).

A protester's conviction for flag desecration violated the right of free speech. Texas v. Johnson, 491 U.S. 397, 109 S. Ct. 2533, 105 L. Ed. 2d 342 (1989).

The 1st amendment prohibits employment decisions concerning low−level public employees from being based upon political patronage. Rutan v. Republican Party of Illinois, 497 U.S. 62, 110 S. Ct. 2729, 111 L. Ed. 2d 52 (1990).

A public indecency statute barring public nudity and requiring dancers to wear pasties and G−strings did not violate the right of free expression. Barnes v. Glen Theatre, Inc., 501 U.S. 560, 111 S. Ct. 2456, 115 L. Ed. 2d 504 (1991).

Press freedom does not confer a constitutional right to disregard promises that would otherwise be enforceable under state law. A possible promissory estoppel action for breaching an agreement to keep a source confidential was not barred. Cohen v. Cowles Media Co., 501 U.S. 663, 111 S. Ct. 2513, 115 L. Ed. 2d 586 (1991).

A county ordinance requiring permits for all parades, public assemblies, and other private uses of public property that gave the county administrator the power to adjust permit fees to meet police expenses incident to the permitted activity violated the 1st amendment because the ordinance lacked narrowly drawn, reasonable, and definite standards guiding the administrator and because it impermissibly required an analysis of the content of the applicant's message. Forsyth County v. Nationalist Movement, 505 U.S. 123, 112 S. Ct. 2395, 120 L. Ed. 2d 101 (1992).

Exclusion of "fighting words" from free speech protections did not justify a city ordinance banning displays that convey messages of racial, gender, or religious intolerance. A city may not selectively ban fighting words based on the particular idea expressed. R.A.V. v. City of St. Paul, 505 U.S. 377, 112 S. Ct. 2538, 120 L. Ed. 2d 305 (1992).

A city ban on newsracks for commercial publications violated the right to free speech when the city failed to establish a "reasonable fit" between its legitimate interest in safety and aesthetics and the ban. City of Cincinnati v. Discovery Network, Inc., 507 U.S. 410, 113 S. Ct. 1505, 123 L. Ed. 2d 99 (1993).

Denial of the use of a school building to a church seeking to exhibit a film when a nonsectarian group would have been allowed the use of the building to show a secular film on the same topic violated the right of free speech. Lamb's Chapel v. Center Moriches Union Free School District, 508 U.S. 384, 113 S. Ct. 2141, 124 L. Ed. 2d 352 (1993).

For a government employee's speech to be protected, the speech must be on a matter of public concern and the employee's interest in expressing himself or herself on the matter must outweigh the injury the speech could cause the employer in providing public services through its employees. Waters v. Churchill, 511 U.S. 661, 114 S. Ct. 1878, 128 L. Ed. 2d 686 (1994). See also Burkes v. Klauser, 185 Wis. 2d 308, 517 N.W.2d 503 (1994).

A city's ban on almost all residential signs violated the right of free speech. City of Ladue v. Gilleo, 512 U.S. 43, 114 S. Ct. 2038, 129 L. Ed. 2d 36 (1994).

An Ohio statute prohibiting the distribution of anonymous campaign literature violated the right of free speech. McIntyre v. Ohio Elections Commission, 514 U.S. 334, 115 S. Ct. 1511, 131 L. Ed. 2d 426 (1995).

The selection of the makeup a parade is entitled to free speech protection. A parade sponsor's free speech rights include the right to deny a group's participation

who intends to convey a message contrary to the sponsor's. Hurley v. Irish−American Gay, Lesbian & Bisexual Group of Boston, 515 U.S. 557, 115 S. Ct. 2338, 132 L. Ed. 2d 487 (1995).

A state university that funded printing a broad range of student publications but denied funding for a student religious group's publication violated free speech guarantees and was not excused by the need to comply with the establishment of religion clause. Rosenberger v. Rector & Visitors, 515 U.S. 819, 115 S. Ct. 2510, 132 L. Ed. 2d 700 (1995).

As with government employees whose employment may not be terminated for exercising 1st amendment rights, independent contractors may not have their government contracts terminated for refusing to support a political party or its candidates or for exercising free speech rights. Board of County Commissioners v. Umbehr, 518 U.S. 668, 116 S. Ct. 2342, 135 L. Ed. 2d 843 (1996). See also O'Hare Truck Service, Inc. v. City of Northlake, 518 U.S. 712, 116 S. Ct. 2353, 135 L. Ed. 2d 874 (1996).

Discussing the constitutionality of injunctions restraining actions by abortion clinic protesters. Schenck v. Pro−Choice Network of Western New York, 519 U.S. 357, 117 S. Ct. 855, 137 L. Ed. 2d 1 (1997). But see McCullen v. Coakley, 573 U.S. 464, 134 S. Ct. 2518, 189 L. Ed. 2d 502 (2014).

Assessments against commodity producers under an agricultural marketing order to pay for the costs of generic advertising did not violate the producers' free speech rights. Glickman v. Wileman Brothers & Elliott, Inc., 521 U.S. 457, 117 S. Ct. 2130, 138 L. Ed. 2d 585 (1997).

A public broadcasting network's decision to exclude from a televised debate an independent political candidate who had little public support was a reasonable, viewpoint−neutral exercise of journalistic discretion. Arkansas Educational Television Commission v. Forbes, 523 U.S. 666, 118 S. Ct. 1633, 140 L. Ed. 2d 875 (1998).

It is a violation of the 4th amendment for police to bring members of the media or other third persons into a home during the execution of a warrant when the presence of the third persons in the home is not in aid of the execution of the warrant. Wilson v. Layne, 526 U.S. 603, 119 S. Ct. 1692, 143 L. Ed. 2d 818 (1999).

The financing of student organizations through mandatory student fees does not violate the 1st amendment if viewpoint neutrality is the operational principal. Board of Regents v. Southworth, 529 U.S. 217, 120 S. Ct. 1346, 146 L. Ed. 2d 193 (2000).

An ordinance prohibiting public nudity was valid when the government's asserted interest was combating the secondary effect associated with adult entertainment and was unrelated to suppression of the erotic message of nude dancing. City of Erie v. Pap's A.M., 529 U.S. 277, 120 S. Ct. 1382, 146 L. Ed. 2d 265 (2000).

A statute that makes it unlawful within regulated areas near a health care facility for any person to knowingly approach within eight feet of another person, without that person's consent, for the purpose of passing a leaflet or handbill to, displaying a sign to, or engaging in oral protest, education, or counseling with such other person is constitutional. Hill v. Colorado, 530 U.S. 703, 120 S. Ct. 2480, 147 L. Ed. 2d 597 (2000).

Inmate to inmate correspondence that includes legal assistance does not receive more 1st amendment protection than other correspondence. Shaw v. Murphy, 532 U.S. 223, 121 S. Ct. 1475, 149 L. Ed. 2d 420 (2001).

The 1st amendment protects speech that discloses the content of an illegally intercepted telephone call when that speech was by a person not a party to the interception. Bartnicki v. Vopper, 532 U.S. 514, 121 S. Ct. 1753, 149 L. Ed. 2d 787 (2001).

Speech discussing otherwise permissible subjects cannot be excluded from a limited public forum, such as a school, on the grounds that it is discussed from a religious viewpoint. A club's meetings, held after school, not sponsored by the school, and open to any student who obtained parental consent, did not raise an establishment of religion violation that could be raised to justify content−based discrimination against the club. Good News Club v. Milford Central School, 533 U.S. 98, 121 S. Ct. 2093, 150 L. Ed. 2d 151 (2001).

A village ordinance making it a misdemeanor to engage in door−to−door advocacy without first registering with the village and obtaining a permit violated the 1st amendment. Watchtower Bible & Tract Society of New York, Inc. v. Village of Stratton, 536 U.S. 150, 122 S. Ct. 2080, 153 L. Ed. 2d 205 (2002).

A state, consistent with the 1st amendment, may ban cross burning carried out with the intent to intimidate, but a Virginia statute treating any cross burning as prima facie evidence of intent to intimidate was unconstitutional. Instead of prohibiting all intimidating messages, a state may choose to regulate this subset of intimidating messages in light of cross burnings' long and pernicious history as a signal of impending violence. Virginia v. Black, 538 U.S. 343, 123 S. Ct. 1536, 155 L. Ed. 2d 535 (2003).

Regulation of charitable subscriptions, barring fees in excess of a prescribed level, effectively imposes prior restraints on fundraising, and is incompatible with the 1st amendment. However, any and all reliance on the percentage of charitable donations fundraisers retain for themselves is not prohibited. While bare failure to disclose that information to potential donors does not establish fraud, when nondisclosure is accompanied by intentionally misleading statements designed to deceive the listener, a fraud claim is permissible. Illinois ex rel. Madigan v. Telemarketing Associates, Inc., 538 U.S. 600, 123 S. Ct. 1829, 155 L. Ed. 2d 793 (2003).

The 1st amendment requires that an adult business licensing scheme assure prompt judicial review of an administrative decision denying a license. An ordinance providing that the city's final decision may be appealed to state court pursuant to state rules of civil procedure did not violate the 1st amendment. City of Littleton v. Z.J. Gifts D−4, L.L.C., 541 U.S. 774, 124 S. Ct. 2219, 159 L. Ed. 2d 84 (2004).

While a governmental employer may impose certain restraints on the speech of its employees that would be unconstitutional if applied to the general public, the courts have recognized the right of employees to speak on matters unrelated to their employment and to speak on matters of public concern. Because a police officer's off−duty activities were not related to a matter of public concern and were designed to exploit his employer's image, they were not protected under the 1st amendment. City of San Diego v. Roe, 543 U.S. 77, 125 S. Ct. 521, 160 L. Ed. 2d 410 (2004).

When public employees make statements pursuant to their official duties, the employees are not speaking as citizens for 1st amendment purposes, and the constitution does not insulate their communications from employer discipline. Restricting speech that owes its existence to a public employee's professional responsibilities does not infringe any liberties the employee might have enjoyed as a private citizen. It simply reflects the exercise of employer control over what the employer itself has commissioned or created. Garcetti v. Ceballos, 547 U.S. 410, 126 S. Ct. 1951, 164 L. Ed. 2d 689 (2006).

Enforcement of a rule adopted by a statewide membership corporation organized to regulate interscholastic sports among its members that prohibited high school coaches from recruiting middle school athletes did not violate the 1st amendment. There is a difference of constitutional dimension between rules prohibiting appeals to the public at large and rules prohibiting direct, personalized communication in a coercive setting. Bans on direct solicitations are more akin to a conduct regulation than a speech restriction, but restrictions are limited to conduct that is inherently conducive to overreaching and other forms of misconduct. Tennessee Secondary School Athletic Ass'n v. Brentwood Academy, 551 U.S. 291, 127 S. Ct. 2489, 168 L. Ed. 2d 166 (2007).

Schools may take steps to safeguard those entrusted to their care from speech that can reasonably be regarded as encouraging illegal drug use. School officials did not violate the 1st amendment by confiscating a pro−drug banner and suspending the student responsible for it. Morse v. Frederick, 551 U.S. 393, 127 S. Ct. 2618, 168 L. Ed. 2d 290 (2007).

Offers to provide or requests to obtain child pornography are categorically excluded from the 1st amendment. Offers to deal in illegal products or otherwise engage in illegal activity do not acquire 1st amendment protection when the offeror is mistaken about the factual predicate of his or her offer. Impossibility of completing the crime because the facts were not as the defendant believed is not a defense. United States v. Williams, 553 U.S. 285, 128 S. Ct. 1830, 170 L. Ed. 2d 650 (2008).

The free speech clause of the 1st amendment restricts government regulation of private speech; it does not regulate government speech. Although a park is a traditional public forum for speeches and other transitory expressive acts, the display of a permanent monument in a public park is not a form of expression to which forum analysis applies. Instead, the placement of a permanent monument in a public park is best viewed as a form of government speech and is therefore not subject to scrutiny under the free speech clause of the 1st amendment. Pleasant Grove City v. Summum, 555 U.S. 460, 129 S. Ct. 1125, 172 L. Ed. 2d 853 (2009).

The government may regulate corporate political speech through disclaimer and disclosure requirements, but it may not suppress that speech altogether. Federal law prohibiting corporations and unions from using their general treasury funds to make independent expenditures for speech defined as an "electioneering communication" or for speech expressly advocating the election or defeat of a candidate is unconstitutional. Citizens United v. Federal Election Commission, 558 U.S. 310, 130 S. Ct. 876, 175 L. Ed. 2d 753 (2010).

While the prohibition of animal cruelty itself has a long history in American law, depictions of animal cruelty are not outside the reach of the 1st amendment altogether. The guarantee of free speech does not extend only to categories of speech that survive an ad hoc balancing of relative social costs and benefits. A federal statute that criminalized the commercial creation, sale, or possession of certain depictions of animal cruelty, which encompassed common depictions of ordinary and lawful activities and required merely that the conduct be "illegal" where the alleged violation took place, was substantially overbroad and therefore facially invalid under the 1st amendment. United States v. Stevens, 559 U.S. 460, 130 S. Ct. 1577, 176 L. Ed. 2d 435 (2010).

A public university may condition its official recognition of a student group, and the attendant use of school funds and facilities, on the organization's agreement to open eligibility for membership and leadership to all students. In requiring a student religious group, in common with all other student organizations, to choose between welcoming all students and forgoing the benefits of official recognition, a school did not transgress constitutional limitations. The 1st amendment shields groups against state prohibition of the organization's expressive activity, however exclusionary that activity may be, but a group enjoys no constitutional right to state subvention of its selectivity. Christian Legal Society Chapter v. Martinez, 561 U.S. 661, 130 S. Ct. 2971, 177 L. Ed. 2d 838 (2010).

The 1st amendment shielded church members from tort liability for their speech when they picketed near a soldier's funeral service and their picket signs reflected the church's view that the United States is overly tolerant of sin and that God kills American soldiers as punishment. Whether the amendment prohibits liability for speech in this type of case turns largely on whether that speech is of public or private concern, as determined by all the circumstances of the case. Snyder v. Phelps, 562 U.S. 443, 131 S. Ct. 1207, 179 L. Ed. 2d 172 (2011).

A state cannot create new categories of unprotected speech by applying a simple balancing test that weighs the value of a particular category of speech against its social costs and then punishes that category of speech if it fails the test. Without persuasive evidence that a novel restriction on content, such as restrictions on selling or lending "violent" video games to children, is part of a long, if heretofore unrecognized, tradition of proscription, a legislature may not revise the judgment of the American people, embodied in the 1st amendment, that the benefits of its restrictions on the government outweigh the costs. Brown v. Entertainment Merchants Ass'n, 564 U.S. 786, 131 S. Ct. 2729, 180 L. Ed. 2d 708 (2011).

Like the protected books, plays, and movies that preceded them, video games communicate ideas—and even social messages—through many familiar literary devices and through features distinctive to the medium. That suffices to confer 1st amendment protection. Brown v. Entertainment Merchants Ass'n, 564 U.S. 786, 131 S. Ct. 2729, 180 L. Ed. 2d 708 (2011).

The 1st amendment does not permit a public−sector union to adopt procedures that have the effect of requiring objecting nonmembers to lend the union money to be used for political, ideological, and other purposes not germane to collective bargaining. The 1st amendment does not allow a public−sector union to require objecting nonmembers to pay a special fee or dues increase that is levied to meet expenses for the purpose of financing the union's political and ideological activities that were not disclosed when the amount of the regular assessment was set. Knox v. Service Employees International Union, Local 1000, 567 U.S. 298, 132 S. Ct. 2277, 183 L. Ed. 2d 281 (2012).

The federal statute at issue in this case imposed two types of limits on campaign contributions: 1) base limits that restrict how much money a donor may contribute to a particular candidate or committee; and 2) aggregate limits that restrict how much money a donor may contribute in total to all candidates or committees. Base

limits were previously upheld as serving the permissible objective of combatting corruption. The aggregate limits do little, if anything, to address that concern, while seriously restricting participation in the democratic process. The aggregate limits are therefore invalid under the 1st amendment. McCutcheon v. Federal Election Commission, 572 U.S. 185, 134 S. Ct. 1434, 188 L. Ed. 2d 468 (2014).

A Massachusetts act that made it a crime to knowingly stand on a public way or sidewalk within 35 feet of an entrance or driveway to any reproductive health care facility violated the 1st amendment. Although the act was content neutral, it was not narrowly tailored because it burdened substantially more speech than was necessary to further the government's legitimate interests. McCullen v. Coakley, 573 U.S. 464, 134 S. Ct. 2518, 189 L. Ed. 2d 502 (2014).

Judicial candidates have a 1st amendment right to speak in support of their campaigns. States have a compelling interest in preserving public confidence in their judiciaries. When a state adopts a narrowly tailored restriction, like the one at issue in this case, providing that judicial candidates "shall not personally solicit campaign funds . . . but may establish committees of responsible persons" to raise money for election campaigns, those principles do not conflict. A state's decision to elect judges does not compel it to compromise public confidence in their integrity. The 1st amendment permits such restrictions on speech. Williams−Yulee v. Florida Bar, 575 U.S. 433, 135 S. Ct. 1656, 191 L. Ed. 2d 570 (2015).

A law that is content based on its face is subject to strict scrutiny regardless of the government's benign motive, content−neutral justification, or lack of animus toward the ideas contained in the regulated speech. An innocuous justification cannot transform a facially content−based law into one that is content neutral. Because strict scrutiny applies either when a law is content based on its face or when the purpose and justification for the law are content based, a court must evaluate each question before it concludes that the law is content neutral and thus subject to a lower level of scrutiny. Reed v. Town of Gilbert, 576 U.S. 155, 135 S. Ct. 2218, 192 L. Ed. 2d 236 (2015).

A speech regulation targeted at specific subject matter is content based even if it does not discriminate among viewpoints within that subject matter. In this case, the town sign code singled out specific subject matter for differential treatment, even if it did not target viewpoints within that subject matter. Ideological messages were given more favorable treatment than messages concerning a political candidate, which were themselves given more favorable treatment than messages announcing an assembly of like−minded individuals. That is a paradigmatic example of content−based discrimination. Reed v. Town of Gilbert, 576 U.S. 155, 135 S. Ct. 2218, 192 L. Ed. 2d 236 (2015).

A speech regulation is content based if the law applies to particular speech because of the topic discussed or the idea or message expressed. A regulation that targets a sign because it conveys an idea about a specific event is no less content based than a regulation that targets a sign because it conveys some other idea. Reed v. Town of Gilbert, 576 U.S. 155, 135 S. Ct. 2218, 192 L. Ed. 2d 236 (2015).

When government speaks, it is not barred by the free speech clause from determining the content of what it says. That freedom in part reflects the fact that it is the democratic electoral process that first and foremost provides a check on government speech. Thus, government statements and government actions and programs that take the form of speech do not normally trigger the 1st amendment rules designed to protect the marketplace of ideas. As a general matter, when the government speaks it is entitled to promote a program, to espouse a policy, or to take a position. Walker v. Texas Division, Sons of Confederate Veterans, Inc., 576 U.S. 200, 135 S. Ct. 2239, 192 L. Ed. 2d 274 (2015).

Based on the historical context, observers' reasonable interpretation of the messages conveyed by Texas specialty plates, and the effective control that the state exerts over the design selection process, Texas' specialty license plates constituted government speech. Drivers who display a state's selected license plate designs convey the messages communicated through those designs. The 1st amendment stringently limits a state's authority to compel a private party to express a view with which the private party disagrees. But here, just as Texas could not require a group to convey the state's ideological message, the group could not force Texas to include a Confederate battle flag on its specialty license plates. Walker v. Texas Division, Sons of Confederate Veterans, Inc., 576 U.S. 200, 135 S. Ct. 2239, 192 L. Ed. 2d 274 (2015).

With a few exceptions, the U.S. Constitution prohibits a government employer from discharging or demoting an employee because the employee supports a particular political candidate. When an employer demotes an employee out of a desire to prevent the employee from engaging in political activity, the employee is entitled to challenge that unlawful action under the 1st amendment and 42 USC 1983—even if the employer makes a factual mistake about the employee's behavior. A discharge or demotion based upon an employer's belief that the employee has engaged in protected activity can cause the same kind, and degree, of constitutional harm whether that belief does or does not rest upon a factual mistake. Heffernan v. City of Paterson, 578 U.S. 266, 136 S. Ct. 1412, 194 L. Ed. 2d 508 (2016).

A North Carolina statute making it a felony for a registered sex offender to gain access to a number of websites, including commonplace social media websites, violated the 1st amendment. A fundamental principle of the 1st amendment is that all persons have access to places where they can speak and listen, and then, after reflection, speak and listen once more. To foreclose access to social media altogether is to prevent the user from engaging in the legitimate exercise of 1st amendment rights. Packingham v. North Carolina, 582 U.S. 98, 137 S. Ct. 1730, 198 L. Ed. 2d 273 (2017).

Minnesota's political apparel ban lacked objective, workable standards required for a reasonable content−based restriction on speech in a nonpublic forum and therefore violated the 1st amendment. Minnesota Voters Alliance v. Mansky, 585 U.S. ___, 138 S. Ct. 1876, 201 L. Ed. 2d 201 (2018).

The 1st amendment prohibits government officials from retaliating against individuals for engaging in protected speech. Lozman v. City of Riviera Beach, 585 U.S. ___, 138 S. Ct. 1945, 201 L. Ed. 2d 342 (2018). But see Nieves v. Bartlett, 587 U.S. ___, 139 S. Ct. 1715, 204 L. Ed. 2d 1 (2019).

Under Illinois law, if a public−sector collective−bargaining agreement includes an agency−fee provision and the union certifies to the employer the amount of the fee, that amount is automatically deducted from a nonmember's wages. No form of employee consent is required. This procedure violates the 1st amendment and cannot continue. Neither an agency fee nor any other payment to the union may be deducted from a nonmember's wages, nor may any other attempt be made to collect such a payment, unless the employee affirmatively consents to pay. By agreeing to pay, nonmembers are waiving their 1st amendment rights, and such a waiver cannot be presumed. Janus v. AFSCME, 585 U.S. ___, 138 S. Ct. 2448, 201 L. Ed. 2d 924 (2018).

The free speech clause of the 1st amendment constrains governmental actors and protects private actors. To draw the line between governmental and private, the court applies the state−action doctrine. Under that doctrine, a private entity may be considered a state actor when it exercises a function "traditionally exclusively reserved to the state." Operation of public access channels on a cable system is not a traditional, exclusive public function. In operating the public access channels, the plaintiff in this case was a private actor, not a state actor, and therefore was not subject to 1st amendment constraints on its editorial discretion. Manhattan Community Access Corp. v. Halleck, 587 U.S. ___, 139 S. Ct. 1921, 204 L. Ed. 2d 405 (2019).

The special characteristics that give schools additional license to regulate student speech do not always disappear when a school regulates speech that takes place off campus. However, three features of off−campus speech often distinguish schools' efforts to regulate that speech from their efforts to regulate on−campus speech. Those features diminish the strength of the unique educational characteristics that might call for special 1st amendment leeway. Mahanoy Area School District v. B.L., 594 U.S. ___, 141 S. Ct. 2038, 210 L. Ed. 2d 403 (2021).

Generally, the 1st amendment protects a person from being removed from public employment for purely political reasons. However, exemptions from the patronage dismissal ban are allowed on the theory that a newly elected administration has a legitimate interest in implementing the broad policies it was elected to implement without interference from disloyal employees. Pleva v. Norquist, 195 F.3d 905 (1999).

With one exception, the university's system, as required by *Southworth,* for distributing compelled fees collected from university students to student groups that delegates funding decisions to the student government was subject to sufficient limits. Southworth v. Board of Regents, 307 F.3d 566 (2002).

A regulation prohibiting the sale of liquor on the premises of adult entertainment establishments is constitutional if: 1) the state is regulating pursuant to a legitimate governmental power; 2) the regulation does not completely prohibit adult entertainment; 3) the regulation is aimed at combating the negative effects caused by the establishments, not the suppression of expression; and 4) the regulation is designed to serve a substantial governmental interest, is narrowly tailored, and reasonable avenues of communication remain; or alternatively the regulation furthers substantial governmental interests and the restriction is no greater than is essential to further that interest. Ben's Bar, Inc. v. Village of Somerset, 316 F.3d 702 (2003).

A town board was restrained from discharging its police chief until the issue of impermissible consideration of the chief's political activities was resolved. Kuhlmann v. Bloomfield Township, 521 F. Supp. 1242 (1981).

Content−neutral size restrictions placed on a banner proclaiming "Church/State — Separate," after it was hung in the state capitol rotunda, served the state's significant interest in protecting the capitol from visual degradation. That a Christmas tree and Menorah in the rotunda were allowed to remain without restriction did not prove content−based discrimination. Gaylor v. Thompson, 939 F. Supp. 1363 (1996).

Although the 1st amendment establishment clause neither compels nor authorizes the university to categorically exclude funding of activities related to worship, proselytizing, and sectarian religious instruction with segregated fees, the university may nevertheless be able to exclude some or all of the activities to which it objects. The university is free to enact viewpoint neutral rules restricting access to segregated fees, for it may create what is tantamount to a limited public forum if the principles of viewpoint neutrality are respected. However, before excluding an activity from the segregated fee forum pursuant to a content−based distinction, the university must explain specifically why that particular activity, viewed as a whole, is outside the forum's purposes. Roman Catholic Foundation, UW−Madison, Inc. v. Regents of University of Wisconsin System, 578 F. Supp. 2d 1121 (2008).
Affirmed. Badger Catholic, Inc. v. Walsh, 620 F.3d 775 (2010).

A public employer may choose not to hire a particular applicant for a nonpartisan position because of the applicant's history of partisan political activity. This is an appropriate exception to the general rule that public employers may not make employment decisions on the basis of protected 1st amendment activities. However, an applicant's political affiliation and the applicant's history of partisan activities are two distinct considerations. Albers−Anders v. Pocan, 905 F. Supp. 2d 944 (2012).

The 1st amendment accommodates reasonable restrictions on the time, place, and manner of speech as long as they are: 1) content−neutral; 2) narrowly tailored to serve a significant government interest; and 3) leave open ample alternative channels for communication of the information. Even content−neutral regulations may not condition speech on obtaining a license or permit from a government official in that official's boundless discretion. An acceptable regulation must contain adequate standards to guide the official's decision and render it subject to effective judicial review. Candy Lab Inc. v. Milwaukee County, 266 F. Supp. 3d 1139 (2017).

Constitutional Law: Testimonial Privilege of Newsmen. Baxter. 55 MLR 184 (1972).

Constitutional Law: Academic Freedom: Some Tentative Guidelines. Keith. 55 MLR 379 (1972).

Constitutional Law—First Amendment—Protection of Commercial Speech. Lohmann. 60 MLR 138 (1976).

Zurcher: Third Party Searches and Freedom of the Press. Cantrell. 62 MLR 35 (1978).

A Newspaper Cannot Constitutionally Be Compelled to Publish a Paid Advertisement Designed to Be an Editorial Response to Previous Newspaper Reports. Layden. 64 MLR 361 (1980).

Granting Access to Private Shopping Center Property for Free Speech Purposes on the Basis of a State Constitutional Provision Does Not Violate the Shopping Center Owner's Federal Constitutional Property Rights or First Amendment Free Speech Rights. Munroe. 64 MLR 507 (1981).

The First Amendment and Freedom of the Press: A Revised Approach to the Marketplace of Ideas Concept. Garry. 72 MLR 187 (1989).

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Improving the Odds of the *Central Hudson* Balancing Test: Restricting Commercial Speech as a Last Resort. Gollin. 81 MLR 873 (1998).

Social Media Use and Viewpoint Discrimination: A First Amendment Judicial Tightrope Walk with Rights and Risks Hanging in the Balance. Hidy. 102 MLR 1045 (2019).

A Researcher–Subject Testimonial Privilege: What to do Before the Subpoena Arrives. Nejelski & Lerman. 1971 WLR 1085.

Of Shadows and Substance: Freedom of Speech, Expression, and Action. Himes. 1971 WLR 1209.

Constitutional Law—Free Speech on Premises of Privately Owned Shopping Center. Felsenthal. 1973 WLR 612.

Constitutional Protection of Critical Speech and the Public Figure Doctrine: Retreat by Reaffirmation. Backer. 1980 WLR 568.

Corporate "Persons" and Freedom of Speech: The Political Impact of Legal Mythology. Patton & Bartlett. 1981 WLR 494.

Lamb's Chapel v. Center Moriches Union Free School District: Creating Greater Protection for Religious Speech Through the Illusion of Public Forum Analysis. Ehrmann. 1994 WLR 965.

Behind the Curtain of Privacy: How Obscenity Law Inhibits the Expression of Ideas About Sex and Gender. Peterson. 1998 WLR 625.

The Journalist's Privilege. Kassel. Wis. Law. Feb. 1996.

The Price of Free Speech: *Regents v. Southworth.* Furlow. Wis. Law. June 2000.

Regulating the Limits of Speech. Hoffer. Wis. Law. July/Aug. 2018.

Social Media, the First Amendment, and Government Actors. Westerberg & Dumas. Wis. Law. Jan. 2020.

LIBEL

Discussing the burden of proof and determination of damages in libel cases. Dalton v. Meister, 52 Wis. 2d 173, 188 N.W.2d 494 (1971).

In a libel action involving a public figure or a matter of public concern, the defendant is entitled to the "clear and convincing" burden of proof and also to a finding of the type of malice involved. Polzin v. Helmbrecht, 54 Wis. 2d 578, 196 N.W.2d 685 (1972).

In determining punitive damages in libel cases, it is relevant to consider the maximum fine for a similar offense under the criminal code. Wozniak v. Local 1111 of United Electrical Works of America, 57 Wis. 2d 725, 205 N.W.2d 369 (1973).

The executive committee of the medical staff of a private hospital is not a quasi–judicial body so as to render a letter to it privileged. DiMiceli v. Klieger, 58 Wis. 2d 359, 206 N.W.2d 184 (1973).

Defining "public figure" and discussing the constitutional protections of news media and individual defamers. Denny v. Mertz, 106 Wis. 2d 636, 318 N.W.2d 141 (1982).

A private citizen may become a public figure regarding a particular issue that is of substantial public interest and must prove actual malice to prevail in a libel action. Wiegel v. Capital Times Co., 145 Wis. 2d 71, 426 N.W.2d 43 (Ct. App. 1988).

Judicial or quasi–judicial proceedings are protected by absolute privilege, subject to two restrictions: 1) the statement must be in a procedural context recognized as privileged; and 2) it must be relevant to the matter under consideration. Rady v. Lutz, 150 Wis. 2d 643, 444 N.W.2d 58 (Ct. App. 1989).

A fire department captain with considerable power and discretion is a public official who must meet the malice requirement. Defendant firefighters had a common law privilege to comment in writing on the captain's fitness for office. Miller v. Minority Brotherhood of Fire Protection, 158 Wis. 2d 589, 463 N.W.2d 690 (Ct. App. 1990).

If a defamation plaintiff is a public figure, there must be proof of actual malice. The deliberate choice of one interpretation of a number of possible interpretations does not create a jury issue of actual malice. The selective destruction by a defendant of materials likely to be relevant to defamation litigation allows an inference that the materials would have provided evidence of actual malice. Torgerson v. Journal/Sentinel Inc., 210 Wis. 2d 524, 563 N.W.2d 472 (1997), 95–1098.

For purposes of libel law, a "public figure" who must prove malice includes a person who by being drawn into or interjecting himself or herself into a public controversy becomes a public figure for a limited purpose because of involvement in the particular controversy, which status can be created without purposeful or voluntary conduct by the individual involved. Erdmann v. SF Broadcasting of Green Bay, Inc., 229 Wis. 2d 156, 599 N.W.2d 1 (Ct. App. 1999), 98–2660.

A "public dispute" is not simply a matter of interest to the public. It must be a real dispute, the outcome of which affects the general public in an appreciable way. Essentially private concerns do not become public controversies because they attract attention; their ramifications must be felt by persons who are not direct participants. Maguire v. Journal Sentinel, Inc., 2000 WI App 4, 232 Wis. 2d 236, 605 N.W.2d 881, 97–3675.

In defamation cases, circuit courts should ordinarily decide a pending motion to dismiss for failure to state a claim before sanctioning a party for refusing to disclose information that would identify otherwise–anonymous members of an organization. Lassa v. Rongstad, 2006 WI 105, 294 Wis. 2d 187, 718 N.W.2d 673, 04–0377.

Actual malice requires that the allegedly defamatory statement be made with knowledge that it was false or with reckless disregard of whether it was false or not. Actual malice does not mean bad intent, ill–will, or animus. Repeated publication of a statement after being informed that the statement was false does not constitute actual malice so long as the speaker believes it to be true. Actual malice cannot be inferred from the choice of one rational interpretation of a speech over another. Donohoo v. Action Wisconsin, Inc., 2008 WI 56, 309 Wis. 2d 704, 750 N.W.2d 739, 06–0396.

The plaintiff was a public figure for all purposes when the plaintiff was involved in highly controversial and newsworthy activities while in public office; the publicity and controversy surrounding these events continued well after the term of office ended; the plaintiff remained in the news after leaving office as a result of new developments in the various inquiries into his official conduct; and the plaintiff had a connection with another public official in the news. Biskupic v. Cicero, 2008 WI App 117, 313 Wis. 2d 225, 756 N.W.2d 649, 07–2314.

In general, the destruction of notes allows an inference that the notes would have provided evidence of actual malice, but this rule is not absolute. Because the plaintiff had not shown any way the destroyed notes might show actual malice, the destruction of the notes did not create a material factual dispute preventing summary judgment. Biskupic v. Cicero, 2008 WI App 117, 313 Wis. 2d 225, 756 N.W.2d 649, 07–2314.

The elements of a defamatory communication are: 1) a false statement; 2) communicated by speech, conduct, or in writing to a person other than the person defamed; and 3) the communication is unprivileged and is defamatory, that is, tends to harm one's reputation so as to lower the person in the estimation of the community or to deter third persons from associating or dealing with the person. The statement that is the subject of a defamation action need not be a direct affirmation, but may also be an implication. Terry v. Journal Broadcast Corp., 2013 WI App 130, 351 Wis. 2d 479, 840 N.W.2d 255, 12–1682.

In a defamation action brought by a private figure against a media defendant, the plaintiff has the burden of proving that the speech at issue is false; this requirement is imposed in order to avoid the chilling effect that would be antithetical to the 1st amendment's protection of true speech on matters of public concern. Terry v. Journal Broadcast Corp., 2013 WI App 130, 351 Wis. 2d 479, 840 N.W.2d 255, 12–1682.

State libel laws are preempted by federal labor laws to the extent statements made without knowledge of falsity or reckless disregard for truth are at issue. Old Dominion Branch No. 496, National Ass'n of Letter Carriers v. Austin, 418 U.S. 264, 94 S. Ct. 2770, 41 L. Ed. 2d 745 (1974).

A public figure who sues media companies for libel may inquire into the editorial processes of those responsible when proof of "actual malice" is required for recovery. Herbert v. Lando, 441 U.S. 153, 99 S. Ct. 1635, 60 L. Ed. 2d 115 (1979).

Discussing the "public figure" principle in libel cases. Wolston v. Reader's Digest Ass'n, 443 U.S. 157, 99 S. Ct. 2701, 61 L. Ed. 2d 450 (1979).

Defamation Law of Wisconsin. Brody. 65 MLR 505 (1982).

Constitutional Law—Limitations on Damages Awarded to Public Officials in Defamation Suits. Kampen. 1972 WLR 574.

A Misplaced Focus: Libel Law and Wisconsin's Distinction Between Media and Nonmedia Defendants. Maguire. 2004 WLR 191.

Right to assemble and petition. SECTION 4. The right of the people peaceably to assemble, to consult for the common good, and to petition the government, or any department thereof, shall never be abridged.

A narrowly drawn anti–cruising ordinance did not violate the right to assemble or travel. Scheunemann v. City of West Bend, 179 Wis. 2d 469, 507 N.W.2d 163 (Ct. App. 1993).

The right to intrastate travel, including the right to move about one's neighborhood in an automobile, is fundamental, but infringements on the right are not subject to strict scrutiny. Cruising ordinances, reasonable in time, place, and manner, do not violate this right. Brandmiller v. Arreola, 199 Wis. 2d 528, 544 N.W.2d 849 (1996), 93–2842.

The legislature cannot prohibit an individual from entering the capitol or its grounds. 59 Atty. Gen. 8 (1970).

The national democratic party has a protected right of political association and may not be compelled to seat delegates chosen in an open primary in violation of the party's rules. Democratic Party of United States v. Wisconsin ex rel. La Follette, 450 U.S. 107, 101 S. Ct. 1010, 67 L. Ed. 2d 82 (1981).

As with the Speech Clause, to show that an employer interfered with rights under the Petition Clause, an employee, as a general rule, must show that his or her speech was on a matter of public concern. The right of a public employee under the Petition Clause is a right to participate as a citizen, through petitioning activity, in the democratic process. It is not a right to transform everyday employment disputes into matters for constitutional litigation in the federal courts. Bullcoming v. New Mexico, 564 U.S. 647, 131 S. Ct. 2705, 180 L. Ed. 2d 610 (2011). See also Williams v. Illinois, 567 U.S. 50, 132 S. Ct. 2221, 183 L. Ed. 2d 89 (2012).

2011 Wis. Act 10's various restrictions, in their cumulative effect, do not violate union member's associational rights. The 1st amendment does not require the state to maintain policies that allow certain associations to thrive. For the most part, the Bill of Rights enshrines negative liberties. It directs what government may not do to its citizens, rather than what it must do for them. Laborers Local 236, AFL–CIO v. Walker, 749 F. 3d 628 (2014).

Section 947.06, 1969 stats., which prohibits unlawful assemblies, is constitutional. Cassidy v. Ceci, 320 F. Supp. 223 (1970).

Wisconsin, a Constitutional Right to Intrastate Travel, and Anti–Cruising Ordinances. Mode. 78 MLR 735 (1995).

"LOL No One Likes You": Protecting Critical Comments on Government Officials' Social Media Posts Under the Right to Petition. Sweeny. 2018 WLR 73.

Trial by jury; verdict in civil cases. SECTION 5. [*As amended Nov. 1922*] The right of trial by jury shall remain inviolate, and shall extend to all cases at law without regard to the amount in controversy; but a jury trial may be waived by the parties in all cases in the manner prescribed by law. Provided, however, that the legislature may, from time to time, by statute provide that a valid verdict, in civil cases, may be based on the votes of a specified number of the jury, not less than five–sixths thereof. [*1919 J.R. 58, 1921 J.R. 17 A, 1921 c. 504, vote Nov. 1922*]

Note: See also the notes to Article I, Section 7 — Jury Trial and Juror Qualifications for notes relating to jury trials in criminal cases.

When a juror is struck after the trial has commenced, a litigant cannot be required to proceed with 11 jurors in a civil case. The trial court must declare a mistrial or grant a nonsuit with the right to plead over. It was error to grant a nonsuit and then direct a verdict for the defendant because a plaintiff refused to continue with 11 jurors. State ex rel. Polk v. Johnson, 47 Wis. 2d 207, 177 N.W.2d 122.

Neither the constitution, statutes, or common law affords the right to trial by jury in a will contest. Estate of Elvers, 48 Wis. 2d 17, 179 N.W.2d 881.

The requirement that a defendant prepay jury fees in a civil traffic forfeiture action is constitutional. State v. Graf, 72 Wis. 2d 179, 240 N.W.2d 387.

Requiring the payment of a jury fee did not violate the right to a trial by jury. County of Portage v. Steinpreis, 104 Wis. 2d 466, 312 N.W.2d 731 (1981).

The right to 12−member jury can only be waived personally by the defendant. State v. Cooley, 105 Wis. 2d 642, 315 N.W.2d 369 (Ct. App. 1981).

The right to a jury trial does not extend to equitable actions. However defendants who are required to plead legal counterclaims in equitable actions or lose those claims are entitled to a jury trial of their claims. Green Spring Farms v. Spring Green Farms, 172 Wis. 2d 28, 492 N.W.2d 392 (Ct. App. 1992).

Use of collateral estoppel to prevent a civil defendant from testifying that he did not commit an act when in an earlier criminal trial the defendant was convicted by a jury of committing the act did not deny the defendant's right to a jury. Michelle T. v. Crozier, 173 Wis. 2d 681, 495 N.W.2d 327 (1993).

When collateral estoppel compels raising a counterclaim in an equitable action, that compulsion does not result in the waiver of the right to a jury trial. Norwest Bank v. Plourde, 185 Wis. 2d 377, 518 N.W.2d 265 (Ct. App. 1994).

There is neither a statutory nor a constitutional right to have all parties identified to a jury, but as a procedural rule the court should in all cases apprise the jurors of the names of all the parties. Stoppleworth v. Refuse Hideaway, Inc., 200 Wis. 2d 512, 546 N.W.2d 870 (Ct. App. 1996), 93−3182.

A party has a constitutional right to have a statutory claim tried to a jury when: 1) the cause of action created by the statute existed, was known, or recognized at common law at the time of the adoption of the Wisconsin constitution in 1848; and 2) the action was regarded as at law in 1848. Village Food & Liquor Mart v. H & S Petroleum, Inc., 2002 WI 92, 254 Wis. 2d 478, 647 N.W.2d 177, 00−2493.

This section distinguishes the respective roles of judge and jury. It does not curtail the legislative prerogative to limit actions temporally or monetarily. Maurin v. Hall, 2004 WI 100, 274 Wis. 2d 28, 682 N.W.2d 866, 00−0072.

While a defendant has a right to a jury trial in a civil case, there is no vested right under art. I, sec. 5, to the manner or time in which that right may be exercised or waived. These are merely procedural matters to be determined by law. Phelps v. Physicians Insurance Company of Wisconsin, Inc., 2005 WI 85, 282 Wis. 2d 69, 698 N.W.2d 643, 03−0580.

In order to deem the *Village Food* test satisfied, there need not be specific identity between the violation at bar and an 1848 cause of action, so long as there was an 1848 action that only differs slightly and is essentially a counterpart to the current cause. To the extent that the 1849 statutes recognize broad causes of action for civil forfeitures, they are insufficient to support a demand for a 12 person jury in every forfeiture action. Dane County v. McGrew, 2005 WI 130, 285 Wis. 2d 519, 699 N.W.2d 890, 03−1794. See also State v. Schweda. 2007 WI 100, 303 Wis. 2d 353, 736 N.W.2d 49, 05−1507.

A party's waiver of the right of trial by jury need not be a waiver in the strictest sense of that word, that is, an intentional relinquishment of a known right. Instead, a party may waive the right of trial by jury by failing to assert the right timely or by violating a law setting conditions on the party's exercise of the jury trial right. Rao v. WMA Securities, Inc., 2008 WI 73, 310 Wis. 2d 623, 752 N.W.2d 220, 06−0813.

It lies within the circuit court's discretion to determine the appropriate procedure for deciding factual issues in default judgment cases and that the defaulting party therefore has no right of trial by jury. The circuit court did not violate the defendant's right of trial by jury under Art. I, s. 5 when it denied the defendant's motion for a jury trial on the issue of damages. The defendant waived its right of trial by jury in the manner set forth in ss. 804.12 and 806.02 by violating the circuit court's discovery order and by incurring a judgment by default. Rao v. WMA Securities, Inc., 2008 WI 73, 310 Wis. 2d 623, 752 N.W.2d 220, 06−0813.

Comparing the purpose underlying the modern statute to the purpose underlying its alleged common law counterpart will be helpful in applying the first prong of the *Village Food* test. Harvot v. Solo Cup Co., 2009 WI 85, 320 Wis. 2d 1, 768 N.W.2d 176, 07−1396.

An implied statutory right to trial by jury in situations where the legislature has not prescribed such a right and where the constitution does not afford such a right would open a can of worms. Statutes vary widely. Ad hoc judicial discovery of implied statutory rights to trial by jury would not yield a meaningful legal test that could carry over from case to case, but would instead invite ad hoc argument whenever the statutes are silent. Harvot v. Solo Cup Co., 2009 WI 85, 320 Wis. 2d 1, 768 N.W.2d 176, 07−1396.

A statute that creates a cause of action with an essential counterpart at common law becomes no less an essential counterpart simply because it addresses a narrower range of practices. If the legislature focuses and directs the principles of common law fraud to a specific realm it does not strip a litigant of his or her right to a jury trial when it would otherwise exist. Otherwise, a legislative enactment clearly modeled on a common law cause of action but applied to a specific context would carry no right to a jury trial. State v. Abbott Laboratories, 2012 WI 62, 341 Wis. 2d 510, 816 N.W.2d 145, 10−0232.

"Prescribed by law" as used in this section is not restricted to statutory law. Interpreting "prescribed by law" to mean "prescribed by the legislature" assigns to the legislature the task of defining all the possible ways a person might waive his or her right to a jury trial. The text of this section does not limit the manner of jury trial waiver to those set forth by statute, and a court may look to other sources of law to determine whether a putative waiver of the right to a jury trial was valid. Parsons v. Associated Banc−Corp., 2017 WI 37, 374 Wis. 2d 513, 893 N.W.2d 212, 14−2581.

A jury trial is not constitutionally required in the adjudicative phase of a state juvenile court delinquency proceeding. McKeiver v. Pennsylvania, 403 U.S. 528.

Juror intoxication is not an external influence about which jurors may testify to impeach a verdict. Tanner v. United States, 483 U.S. 107 (1987).

Excessive bail; cruel punishments. SECTION 6. Excessive bail shall not be required, nor shall excessive fines be imposed, nor cruel and unusual punishments inflicted.

Imposition of a three−year sentence as a repeater was not cruel and unusual even though the present offense only involved the stealing of two boxes of candy, which carried a maximum sentence of six months. Hanson v. State, 48 Wis. 2d 203, 179 N.W.2d 909.

It was not cruel and unusual punishment to sentence a defendant to 25 years for armed robbery when the maximum was 30 years, when by stipulation the court took into consideration five other uncharged armed robberies. Mallon v. State, 49 Wis. 2d 185, 181 N.W.2d 364.

Current standards of what constitutes cruel and unusual punishment should not be applied in reviewing old sentences of long standing. State ex rel. Warren v. County Court, 54 Wis. 2d 613, 197 N.W.2d 1.

A sentence is not discriminatory and excessive because it is substantially greater than that received by a codefendant. State v. Studler, 61 Wis. 2d 537, 213 N.W.2d 24.

Actions for the forfeiture of property that are commenced by the government and driven in whole or in part by a desire to punish may violate the guarantees against excessive punishment. State v. Hammad, 212 Wis. 2d 343, 569 N.W.2d 68 (Ct. App. 1997), 95−2669.

A prison inmate does not possess a reasonable expectation of privacy in his body that permits a 4th amendment challenge to strip searches. Prisoners convicted of crimes are protected from cruel and unusual treatment that prohibits prison officials from utilizing strip searches to punish, harass, humiliate, or intimidate inmates regardless of their status in the institution. Al Ghashhiyah v. McCaughtry, 230 Wis. 2d 587, 602 N.W.2d 307 (Ct. App. 1999), 98−3020.

Cruel and unusual punishment extends to the denial of medical care if a serious medical need was ignored and prison officials were deliberately indifferent to the inmate's condition. A serious medical need means that the illness or injury is sufficiently serious to make the refusal uncivilized. Deliberate indifference implies an act so dangerous that the defendant's knowledge of the risk of harm from the resulting act can be inferred. Cody v. Dane County, 2001 WI App 60, 242 Wis. 2d 173, 625 N.W.2d 630, 00−0549.

The defendant's life expectancy, coupled with a lengthy sentence, while perhaps guaranteeing that the defendant will spend the balance of his or her life in prison, does not have to be taken into consideration by the circuit court. If the circuit court chooses to consider a defendant's life expectancy, it must explain, on the record, how the defendant's life expectancy fits into the sentencing objectives. State v. Stenzel, 2004 WI App 181, 276 Wis. 2d 224, 688 N.W.2d 20, 03−2974.

In addressing whether a sentence constituted cruel and unusual punishment and was excessive, a court looks to whether the sentence was so excessive and unusual, and so disproportionate to the offense committed, as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances. State v. Davis, 2005 WI App 98, 698 N.W.2d 823, 281 Wis. 2d 118, 04−1163.

A prisoner has a liberty interest in avoiding forced nutrition and hydration, but department of corrections may infringe on the prisoner's liberty interest by forcing him or her to ingest food and fluids against his or her will. A court may enter a temporary ex parte order for involuntarily feeding and hydration, if exigent circumstances require immediate involuntary treatment in order to avoid serious harm to or the death of an inmate. Continuation of the order requires the right to an evidentiary hearing when DOC's allegations are disputed, the opportunity to meaningfully participate in the evidentiary hearing, and that the order cannot be of indefinite or permanent duration without periodic review. DOC v. Saenz, 2007 WI App 25, 299 Wis. 2d 486, 728 N.W.2d 765, 05−2750.

Sentencing a 14−year−old to life imprisonment without the possibility of parole for committing intentional homicide is not categorically unconstitutional and is not unduly harsh and excessive. Fourteen−year−olds who commit homicide do not have the same diminished moral culpability as those juvenile offenders who do not commit homicide. Sentencing a 14−year−old to life imprisonment without parole for committing intentional homicide serves the legitimate penological goals of retribution, deterrence, and incapacitation. That the defendant was 14 years old at the time of the offense and suffered an indisputably difficult childhood does not automatically remove the punishment out of the realm of proportionate. State v. Ninham, 2011 WI 33, 333 Wis. 2d 335, 797 N.W.2d 451, 08−1139. See also State v. Barbeau, 2016 WI App 51, 370 Wis. 2d 736, 883 N.W.2d 520, 14−2876.

While *Saenz* addressed initial authorization for forced feeding, it is consistent with *Saenz* to require that, when the Department of Corrections (DOC) seeks a continuation of that authorization, the focus is on what will likely occur if the authorization to force feed is terminated. In these circumstances DOC must show that: 1) if forced feeding is withdrawn, it is likely the inmate would continue his or her hunger strike; and 2) if the inmate does continue, the inmate would, based on reliable medical opinion, be in imminent danger of suffering serious harm or death. DOC v. Lilly, 2011 WI App 123, 337 Wis. 2d 185, 804 N.W.2d 489, 09−1420.

Because of the presumptive validity of the medical opinions that support the necessity for continued forced feeding of a prisoner, the circuit court must accept them unless there is evidence that they are a substantial departure from accepted medical judgment, practice, or standards. A medical opinion is presumptively a "reliable medical opinion" within the meaning of the showing DOC must make when the opinion is that of a licensed physician who is qualified by training or experience to render the opinion and the opinion is based on a proper evidentiary foundation. DOC v. Lilly, 2011 WI App 123, 337 Wis. 2d 185, 804 N.W.2d 489, 09−1420.

A prisoner's objections to the manner of forced feeding that may implicate the 8th amendment protection against cruel and unusual punishment are properly before the circuit court when DOC seeks a continuation of authorization to force feed the prisoner. When the allegation is one of excessive force, the 8th amendment protects against force that is not applied in a good faith effort to maintain order but is maliciously and sadistically applied to cause harm. DOC v. Lilly, 2011 WI App 123, 337 Wis. 2d 185, 804 N.W.2d 489, 09−1420.

A proportionality test is utilized for determining whether a forfeiture is unconstitutionally excessive, considering the nature of the offense, the purpose of the statute, the maximum potential fine for the offense, and the harm that actually resulted from the defendant's conduct. State v. One 2013, Toyota Corolla, 2015 WI App 84, 365 Wis. 2d 582, 872 N.W.2d 98, 14–2226.

Forfeiture of a convicted drug seller's financial interest in a vehicle did not violate the excessive fines clause, but forfeiture of a co–titleholders full financial interest in the vehicle was a different matter when undisputed testimony was that the co–titleholder had no knowledge of illegal activity and did not consent to it. The co–titleholder was entitled to any remaining proceeds beyond the drug seller's financial interest in the vehicle after its sale. State v. One 2013, Toyota Corolla, 2015 WI App 84, 365 Wis. 2d 582, 872 N.W.2d 98, 14–2226.

The basic precept underlying the prohibition against cruel and unusual punishment is one of proportionality that punishment for the crime should be graduated and proportional to both the offender and the offense. A punishment violates this prohibition if it is inconsistent with evolving standards of decency that mark the progress of a maturing society. In deciding a categorical challenge such as this, a court will first consider objective indicia of society's standards, as expressed in legislative enactments and state practice to determine whether there is a national consensus against the sentencing practice at issue. Second, notwithstanding such objective evidence, a court will exercise its own independent judgment to determine whether the punishment violates the constitutional prohibition. State v. Barbeau, 2016 WI App 51, 370 Wis. 2d 736, 883 N.W.2d 520, 14–2876.

The U.S. Supreme Court in *Miller*, 132 S. Ct. 2455, did not foreclose a sentencer's ability to sentence a juvenile to life without the possibility of parole in homicide cases, but required sentencing courts to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison. Thus, it is not unconstitutional to sentence a juvenile to life imprisonment without the possibility of supervised release for intentional homicide under s. 973.014 (1g) (a) 3. if the circumstances warrant it. State v. Barbeau, 2016 WI App 51, 370 Wis. 2d 736, 883 N.W.2d 520, 14–2876.

The mandatory minimum of 20 years' imprisonment provided by s. 973.014 (1g) (a) 1. as applied to children does not violate the prohibitions against cruel and unusual punishment contained in the U.S. and Wisconsin Constitutions. State v. Barbeau, 2016 WI App 51, 370 Wis. 2d 736, 883 N.W.2d 520, 14–2876.

Paddling students is not cruel and unusual punishment. Ingraham v. Wright, 430 U.S. 651, 97 S. Ct. 1401, 51 L. Ed. 711 (1977).

A defendant's life sentence was not cruel and unusual when the defendant's three property crime felony convictions subjected him to a recidivist penalty. Rummel v. Estelle, 445 U.S. 263, 100 S. Ct. 1133, 63 L. Ed. 2d 382 (1980).

A prison term of 40 years and fine of $20,000 for possession and sale of 9 ounces of marijuana was not cruel and unusual punishment. Hutto v. Davis, 454 U.S. 370, 102 S. Ct. 703, 70 L. Ed. 2d 566 (1982).

The excessive fines clause of U.S. Constitution does not apply to civil punitive damage awards in actions between private parties. Browning–Ferris v. Kelco Disposal, 492 U.S. 257, 109 S. Ct. 2909, 106 L. Ed. 2d 219 (1989).

Exposure to an unreasonable risk of serious damage to future health is a basis for a cause of action for cruel and unusual punishment. Risk from environmental tobacco smoke was a basis for a cause of action. Helling v. McKinney, 509 U.S. 25, 113 S. Ct. 2475, 125 L. Ed. 2d 22 (1993).

A sentence of 25 years to life in prison, imposed for the offense of felony grand theft under the California three strikes law, is not grossly disproportionate and therefore does not violate the prohibition on cruel and unusual punishments. Ewing v. California, 538 U.S. 11, 123 S. Ct. 1179, 155 L. Ed. 2d 108 (2003).

A state is not required to guarantee eventual freedom to a juvenile offender convicted of a nonhomicide crime. The state must give defendants some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation, but the 8th amendment does not require the state to release that offender during his natural life. Graham v. Florida, 560 U.S. 48, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010).

A mandatory life sentence without parole for those under the age of 18 at the time of their crimes violates the 8th amendment's prohibition on cruel and unusual punishments. Miller v. Alabama, 567 U.S. 460, 132 S. Ct. 2455, 182 L. Ed. 2d 407 (2012).

The excessive fines clause of the 8th amendment of the U.S. Constitution is an incorporated protection, applicable to the states under the 14th amendment's due process clause. Timbs v. Indiana, 586 U.S. ____, 139 S. Ct. 682, 203 L. Ed. 2d 11 (2019).

A separate factual finding of permanent incorrigibility is not required before a sentencer imposes a life–without–parole sentence on a murderer under 18 years of age. Jones v. Mississippi, 593 U.S. ___, 141 S. Ct. 1307, 209 L. Ed. 2d 390 (2021).

The "unnecessary and wanton infliction of pain" proscribed by the 8th amendment includes a prohibition on deliberate indifference to the serious medical needs of prisoners. To establish such a claim, a plaintiff must demonstrate that: 1) the prisoner's condition was objectively serious; and 2) the defendants were deliberately indifferent to the prisoner's health or safety. A serious medical condition is one that has been diagnosed by a physician or that is so obvious that even a lay person would perceive the need for a doctor's attention. A medical condition need not be life threatening to be serious; rather, it could be a condition that would result in further significant injury or unnecessary and wanton infliction of pain if not treated. The test for deliberate indifference is subjective: the plaintiff must show that the officials were both aware of facts from which the inference could be drawn that a substantial risk of serious harm existed and that they actually drew the inference. Orlowski v. Milwaukee County, 872 F.3d 417 (2017).

Persons confined in the central state hospital under ss. 51.20, 51.37, 971.14, 971.17, and 975.06 are being subjected to punishment within the meaning of the cruel and unusual punishment clause. Flakes v. Percy, 511 F. Supp. 1325 (1981).

A prisoner has no liberty interest in avoiding transfer to any prison, whether within or without the state. Berdine v. Sullivan, 161 F. Supp. 2d 972 (2001).

Incarcerating a person beyond the termination of his or her sentence without penological justification violates the 8th amendment prohibition against cruel and unusual punishment when it is the product of deliberate indifference. To comply with due process, prison officials cannot ignore an inmate's request to recalculate his or her sentence and must place some procedure in place to address such requests. Russell v. Lazar, 300 F. Supp 2d 316 (2004).

Solitary confinement; punishment within the letter of the law or psychological torture? Thoenig. 1972 WLR 223.

Appellate sentence review. 1976 WLR 655.

Rights of accused. SECTION 7. In all criminal prosecutions the accused shall enjoy the right to be heard by himself and counsel; to demand the nature and cause of the accusation against him; to meet the witnesses face to face; to have compulsory process to compel the attendance of witnesses in his behalf; and in prosecutions by indictment, or information, to a speedy public trial by an impartial jury of the county or district wherein the offense shall have been committed; which county or district shall have been previously ascertained by law.

CONFRONTATION AND COMPULSORY PROCESS

The right to have compulsory process to obtain witnesses in one's behalf does not require that the state be successful in attempting to subpoena the defendant's witnesses, but only that the process issue and that a diligent, good–faith attempt be made by the officer to secure service of the process. Since the primary responsibility for having witnesses present in court rests with the parties and not the court, a motion for a continuance to obtain the attendance of witnesses is addressed to the discretion of the trial court, and the exercise of that discretion will not be disturbed upon appeal or review except when it is clearly shown that there has been an abuse of discretion. Elam v. State, 50 Wis. 2d 383, 184 N.W.2d 176 (1971).

An accused should be allowed to cross–examine to discover why an accomplice has pleaded guilty and has testified against him. Champlain v. State, 53 Wis. 2d 751, 193 N.W.2d 868 (1972).

When a witness is not available for trial and when the defendant has had a prior opportunity to cross–examine that witness, former testimony, including that given at a preliminary examination, may be introduced without violating either constitutional mandates or the hearsay rule of evidence. State v. Lindsey, 53 Wis. 2d 759, 193 N.W.2d 699 (1972).

Because there was no showing that the witness was permanently ill, the defendant was denied the constitutional right to confrontation by the court allowing the use of the witness's deposition. Sheehan v. State, 65 Wis. 2d 757, 223 N.W.2d 600 (1974).

Whether a witness's refusal on 5th amendment grounds to answer otherwise permissible questions violates the defendant's right to confrontation must be determined from the whole record. West v. State, 74 Wis. 2d 390, 246 N.W.2d 675 (1976).

Admission of double hearsay did not violate the defendant's right to confront witnesses. State v. Lenarchick, 74 Wis. 2d 425, 247 N.W.2d 80 (1976).

Introduction into evidence of a victim's hospital records unsupported by testimony of the treating physician did not violate the defendant's right of confrontation and cross–examination. State v. Olson, 75 Wis. 2d 575, 250 N.W.2d 12 (1977).

The trial court did not deny the defendant's right of confrontation by forbidding cross–examination of the sole prosecution witness as to the witness's history of mental illness, since no showing was made that the history was relevant to the witness's credibility. The right of confrontation is also limited by s. 904.03 if the probative value of the desired cross–examination is outweighed by the possibility of unfair or undue prejudice. Chapin v. State, 78 Wis. 2d 346, 254 N.W.2d 286 (1977).

The defendant's right of confrontation was not violated when preliminary examination testimony of a deceased witness was admitted at trial when the defendant had unlimited opportunity to cross–examine the witness and the testimony involved the same issues and parties as at trial. Nabbefeld v. State, 83 Wis. 2d 515, 266 N.W.2d 292 (1978).

A defendant's right to compulsory process did not require admission of an unstipulated polygraph exam. Lhost v. State, 85 Wis. 2d 620, 271 N.W.2d 121 (1978).

The trial court did not err in favoring a witness's right against self–incrimination over the compulsory process rights of the defendant. State v. Harris, 92 Wis. 2d 836, 285 N.W.2d 917 (Ct. App. 1979).

The state's failure to use the Uniform Extradition Act to compel the presence of a doctor whose hearsay testimony was introduced denied the accused's right to confront witnesses and violated the hearsay rule, but the error was harmless. State v. Zellmer, 100 Wis. 2d 136, 301 N.W.2d 209 (1981).

Medical records, as explained to the jury by a medical student, were sufficient to support a conviction and did not deny the right of confrontation. Hagenkord v. State, 100 Wis. 2d 452, 302 N.W.2d 421 (1981).

The trial court properly denied a request to present a defense witness who refused to answer relevant questions during an offer of proof cross–examination. State v. Wedgeworth, 100 Wis. 2d 514, 302 N.W.2d 810 (1981).

Admission of a statement by a deceased co–conspirator did not violate the right of confrontation. State v. Dorcey, 103 Wis. 2d 152, 307 N.W.2d 612 (1981).

Guidelines are set for admission of testimony of hypnotized witnesses. State v. Armstrong, 110 Wis. 2d 555, 329 N.W.2d 386 (1983).

Cross–examination, not exclusion, is the proper tool for challenging the weight and credibility of accomplice testimony. State v. Nerison, 136 Wis. 2d 37, 401 N.W.2d 1 (1987).

A defendant waives the right of confrontation by failing to object to the trial court's finding of witness unavailability. State v. Gove, 148 Wis. 2d 936, 437 N.W.2d 218 (1989).

A prosecutor who obtains an incriminating statement from a defendant is obliged to honor a subpoena and to testify at a suppression hearing if there is a reasonable probability that testifying will lead to relevant evidence. State v. Wallis, 149 Wis. 2d 534, 439 N.W.2d 590 (Ct. App. 1989).

A defendant had no confrontation clause rights as to hearsay at a pretrial motion hearing. The trial court could rely on hearsay in making its decision. State v. Frambs, 157 Wis. 2d 700, 460 N.W.2d 811 (Ct. App. 1990).

Allegations of professional misconduct against the prosecution's psychiatric expert initially referred to the prosecutor's office but immediately transferred to a special prosecutor for investigation and possible criminal proceedings were properly excluded as the subject of cross−examination of the expert due to the lack of a logical connection between the expert and prosecutor necessary to suggest bias. State v. Lindh, 161 Wis. 2d 324, 468 N.W.2d 168 (1991).

The ability of a child witness to speak the truth or communicate intelligently are matters of credibility for the jury, not questions of competency to be determined by the judge. State v. Hanna, 163 Wis. 2d 193, 471 N.W.2d 238 (Ct. App. 1991).

When a witness's "past−recollection recorded statement" was admitted after the witness testified and was found "unavailable" as a result of having no current memory of the murder in question, there was an opportunity for cross−examination and the right to confrontation was not violated. State v. Jenkins, 168 Wis. 2d 175, 483 N.W.2d 262 (Ct. App. 1992).

A defendant charged with trespass to a medical facility is entitled to compulsory process to determine if any patients present at the time of the alleged incident had relevant evidence. State v. Migliorino, 170 Wis. 2d 576, 489 N.W.2d 678 (Ct. App. 1992).

To be entitled to an in camera inspection of privileged records, a criminal defendant must show the sought after evidence is relevant and helpful to the defense or necessary to a fair determination of guilt or innocence. Failure of the record's subject to agree to inspection is grounds for sanctions, including suppressing the record subject's testimony. State v. Shiffra, 175 Wis. 2d 600, 499 N.W.2d 719 (Ct. App. 1993). See also State v. Speese, 191 Wis. 2d 205, 528 N.W.2d 63 (Ct. App. 1995).

An indigent may be entitled to have a court compel the attendance of an expert witness. It may be error to deny a request for an expert to testify on the issue of suggestive interview techniques used with a young child witness if there is a "particularized need" for the expert. State v. Kirschbaum, 195 Wis. 2d 11, 535 N.W.2d 462 (Ct. App. 1995), 94−0899.

In this case, the defendant's right to confrontation was violated when the trial court failed to give the jury a limiting instruction regarding out−of−court statements made by a nontestifying codefendant. State v. Mayhall, 195 Wis. 2d 53, 535 N.W.2d 473 (Ct. App. 1995), 94−0727. But see Gray v. Maryland, 523 U.S. 185, 118 S. Ct. 1151, 140 L. Ed. 2d 294 (1998).

An accused has the right to be present at trial, but the right may be waived by misconduct or consent. A formal on−the−record waiver is favored, but not required. State v. Divanovic, 200 Wis. 2d 210, 546 N.W.2d 501 (Ct. App. 1996), 95−0881.

The right to confrontation is not violated when the court precludes a defendant from presenting evidence that is irrelevant or immaterial. State v. McCall, 202 Wis. 2d 29, 549 N.W.2d 418 (1996), 94−1213.

Evidence of 911 calls, including tapes and transcripts of the calls, is not inadmissible hearsay. Admission does not violate the right to confront witnesses. State v. Ballos, 230 Wis. 2d 495, 602 N.W.2d 117 (Ct. App. 1999), 98−1905.

For a defendant to establish a constitutional right to the admissibility of proffered expert testimony, the defendant must satisfy a two−part inquiry determining whether the evidence is clearly central to the defense and the exclusion of the evidence is arbitrary and disproportionate to the purpose of the rule of exclusion, so that exclusion undermines fundamental elements of the defendant's defense. Under the first part of the inquiry, a defendant must demonstrate that the proffered testimony satisfies each of the following four requirements: 1) the testimony of the expert witness meets the s. 907.02 standards governing the admission of expert testimony; 2) the expert testimony is clearly relevant to a material issue in the case; 3) the expert testimony is necessary to the defendant's case; and 4) the probative value of the expert testimony outweighs its prejudicial effect. Under the second part of the inquiry, the court must determine whether the defendant's right to present the proffered evidence is nonetheless outweighed by the state's compelling interest to exclude the evidence. State v. St. George, 2002 WI 50, 252 Wis. 2d 499, 643 N.W.2d 777, 00−2830.

Cross−examination of a highly qualified witness, who is familiar with the procedures used in performing the tests whose results are offered as evidence, who supervises or reviews the work of the testing analyst, and who renders the expert's own expert opinion is sufficient to protect a defendant's right to confrontation, despite the fact that the expert was not the person who performed the mechanics of the original tests. State v. Williams, 2002 WI 58, 253 Wis. 2d 99, 644 N.W.2d 919, 00−3065.

When the privilege against self−incrimination prevents a defendant from directly questioning a witness about his or her testimony, it may be necessary to prohibit that witness from testifying or to strike portions of the testimony if the witness has already testified. A defendant's right of confrontation is denied in each instance that potentially relevant evidence is excluded. The question is whether the defendant could effectively cross−examine the witness. State v. Barreau, 2002 WI App 198, 257 Wis. 2d 203, 651 N.W.2d 12, 01−1828.

When a witness's memory, credibility, or bias was not at issue at trial, the inability of the defendant to cross−examine the witness at the preliminary hearing with questions that went to memory, credibility, or bias did not present an unusual circumstance that undermined the reliability of the witness's testimony. Admission of the unavailable witness's preliminary hearing testimony did not violate the defendant's constitutional right to confrontation. State v. Norman, 2003 WI 72, 262 Wis. 2d 506, 664 N.W.2d 97, 01−3303.

A violation of the confrontation clause does not result in automatic reversal, but rather is subject to harmless error analysis. State v. Weed, 2003 WI 85, 263 Wis. 2d 434, 666 N.W.2d 485, 01−1746.

Prior testimony may be admitted against a criminal defendant only when that defendant has had a prior opportunity to cross−examine the witness giving that testimony. State v. Hale, 2005 WI 7, 277 Wis. 2d 593, 691 N.W.2d 637, 03−0417.

Unavailability for confrontation purposes requires both that the hearsay declarant not appear at the trial and, critically, that the state make a good−faith effort to produce that declarant at trial. If there is a remote possibility that affirmative measures might produce the declarant, the obligation of good faith may demand their effectuation. The lengths to which the prosecution must go to produce a witness is a question of reasonableness. State v. King, 2005 WI App 224, 287 Wis. 2d 756, 706 N.W.2d 181, 04−2694.

Casual remarks on the telephone to an acquaintance plainly were not testimonial. That an informant overheard the remarks does not transform the informant into a government officer or change the casual remark into a formal statement. Statements made in furtherance of a conspiracy by their nature are not testimonial. State v. Savanh, 2005 WI App 245, 287 Wis. 2d 876, 707 N.W.2d 549, 04−2583.

A witness's claimed inability to remember earlier statements or the events surrounding those statements does not implicate the requirements of the confrontation clause if the witness is present at trial, takes an oath to testify truthfully, and answers the questions put to the witness during cross−examination. In contrast to cases when the witness either invokes the 5th amendment and remains silent or refuses to be sworn in or testify, when a witness takes the stand, agrees to testify truthfully, and answers the questions posed by defense counsel, defense counsel is able to test the witness's recollection, motive, and interest and hold the witness's testimony up so that the jury can decide whether it is worthy of belief. State v. Rockette, 2006 WI App 103, 294 Wis. 2d 611, 718 N.W.2d 269, 04−2732.

Despite the state constitution's more direct guarantee to defendants of the right to meet their accusers face to face, the Wisconsin Supreme Court has generally interpreted the state and federal rights of confrontation to be coextensive. The U.S. Supreme Court's decision in *Crawford*, 541 U.S. 36 (2004), does not represent a shift in confrontation−clause jurisprudence that overturns state and federal precedents permitting a witness to testify from behind a barrier upon a particularized showing of necessity. State v. Vogelsberg, 2006 WI App 228, 297 Wis. 2d 519, 724 N.W.2d 649, 05−1293.

The accused does not have an unfettered right to offer testimony that is incompetent, privileged, or otherwise inadmissible under the standard rules of evidence. When evidence is irrelevant or not offered for a proper purpose, the exclusion of that evidence does not violate a defendant's constitutional right to present a defense. There is no abridgement on the accused's right to present a defense so long as the rules of evidence used to exclude the evidence offered are not arbitrary or disproportionate to the purposes for which they are designed. State v. Muckerheide, 2007 WI 5, 298 Wis. 2d 553, 725 N.W.2d 930, 05−0081.

The confrontation clause places no constraints on the use of prior testimonial statements when the declarant appears for cross−examination. It made no difference in this case in which oral statements of a witness were not disclosed until a subsequent police witness testified whether the burden was on the state or the defendant to show that the witness was available for further cross−examination after the court told the witness he could step down. The witness testified and was cross−examined concerning his statements to the police; therefore, defendant's right to confrontation was not violated. State v. Nelis, 2007 WI 58, 300 Wis. 2d 415, 733 N.W.2d 619, 05−1920.

Inasmuch as a criminal defendant does not have an unqualified right to require the appearance of any persons as witnesses for trial, and a defendant's right to compulsory process at trial must satisfy certain standards, the compulsory process rights of a defendant at the preliminary stage of criminal proceedings also must be subject to reasonable restrictions. The court declines to expand a criminal defendant's compulsory process rights to encompass a right to subpoena police reports and other non−privileged investigatory materials for examination and copying in anticipation of a preliminary hearing. State v. Schaefer, 2008 WI 25, 308 Wis. 2d 279, 746 N.W.2d 457, 06−1826.

By the judge's reading at a criminal trial the transcript of a hearing at which the defendant appeared to be intoxicated, resulting in additional charges, the jury was essentially provided with the judge's and the prosecutor's conclusions at the hearing about the defendant's guilt with the circuit court and the prosecutor essentially testifying against the defendant, denying the right to cross−examination. State v. Jorgensen, 2008 WI 60, 310 Wis. 2d 138, 754 N.W.2d 77, 06−1847.

Affidavits verifying nontestimonial bank records in compliance with s. 891.24 are nontestimonial and their admission does not violate the confrontation clause. The affidavits fulfill a statutory procedure for verifying nontestimonial bank records and do not supply substantive evidence of guilt. State v. Doss, 2008 WI 93, 312 Wis. 2d 570, 754 N.W.2d 150, 06−2254.

Applying the *St. George,* 2002 WI 50, test in an operating while intoxicated (OWI) prosecution, even if a defendant establishes a constitutional right to present an expert opinion that is based in part on portable breath test results, the right to do so is outweighed by the state's compelling interest to exclude that evidence. Permitting the use of that evidence as the basis for an expert opinion would render meaningless the legislature's act forbidding that evidence in OWI prosecutions under s. 343.303, an act that promotes efficient investigations of suspected drunk driving incidents and furthers the state's compelling interest in public safety on its roads. State v. Fischer, 2010 WI 6, 322 Wis. 2d 265, 778 N.W.2d 629, 07−1898.

The U.S. Supreme Court in *Giles,* 554 U.S. 353 (2008), held that forfeiture by wrongdoing required not just that the defendant prevented the witness from testifying, but also that the defendant intended to prevent the witness from testifying. In doing so, the Court reaffirmed the doctrine's viability generally, but chose a narrower view of its scope than *Jensen I*, 2007 WI 26. State v. Baldwin, 2010 WI App 162, 330 Wis. 2d 500, 794 N.W.2d 769, 09−1540.

Nontestimonial statements are not excluded by the confrontation clause and thereby may be analyzed for purposes of a hearsay objection. The broad version of the forfeiture by wrongdoing analysis, specifically approved in *Giles*, 554 U.S. 353 (2008), for nontestimonial statements, deems nontestimonial statements admissible if the witness's unavailability to testify at any future trial was a certain consequence of the murder. State v. Jensen (*Jensen II*), 2011 WI App 3, 331 Wis. 2d 440, 794 N.W.2d 482, 09−0898. But see Jensen v. Clements, 800 F.3d 892 (2015).

The admission of a dying declaration statement violates neither the 6th amendment right to confront witnesses nor the corresponding right under the state constitution. The confrontation right does not apply when an exception to that right was recognized at common law at the time of the founding, which the dying declaration exception was. The fairest way to resolve the tension between the state's interest in presenting a dying declaration and concerns about its potential unreliability is to freely permit the aggressive impeachment of a dying declaration on any grounds that may be relevant in a particular case. State v. Beauchamp, 2011 WI 27, 333 Wis. 2d 1, 796 N.W.2d 780, 09−0806.

A criminal defendant states a violation of the confrontation clause by showing that the defendant was prohibited from engaging in otherwise appropriate cross–examination designed to show a prototypical form of bias on the part of the witness. The right to cross–examination, and thereby confrontation, is not, however, absolute. Whether they are faced with the danger of undue prejudice or the specter of psychological trauma to victims, circuit courts can weigh the probative value of the evidence proffered with the dangers it brings. State v. Rhodes, 2011 WI 73, 336 Wis. 2d 64, 799 N.W.2d 850, 09–0025. But see Rhodes v. Dittmann, 903 F.3d 646 (2018).

The trial court did not violate the defendant's right to confrontation by allowing a crime lab technician to rely on a scientific report that profiled the DNA left on the victims by their attacker. State v. Deadwiller, 2013 WI 75, 350 Wis. 2d 138, 834 N.W.2d 362, 10–2363.

The confrontation clause does not apply to preliminary examinations. State v. O'Brien, 2014 WI 54, 354 Wis. 2d 753, 850 N.W.2d 8, 12–1769.

When a non–testifying analyst documents original tests with sufficient detail for another expert to understand, interpret, and evaluate the results, that other expert's testimony does not violate the confrontation clause. Wisconsin confrontation clause jurisprudence begins with *Williams*, 2002 WI 58, which sets out a two–part framework to analyze the testimony of an expert witness, relying on forensic tests conducted by a non–testifying analyst. The testifying expert witness must have: 1) reviewed the analyst's tests; and 2) formed an independent opinion to which the expert testified at trial. State v. Griep, 2015 WI 40, 361 Wis. 2d 657, 863 N.W.2d 567, 09–3073.

All toxicology reports similar to the one in this case—solely identifying the concentration of substances present in biological samples sent by the medical examiner as a part of an autopsy protocol—are generally non–testimonial when requested by a medical examiner and not at the impetus of law enforcement. The primary purpose of these toxicology reports is not to create evidence against a defendant in a criminal prosecution; rather, the principal purpose is to provide information to the medical examiner searching for the cause of death. Because there was nothing "testimonial" about the toxicology report used during the defendant's trial, the confrontation rights of the defendant were not infringed. State v. Mattox, 2017 WI 9, 373 Wis. 2d 122, 890 N.W.2d 256, 15–0158.

Clark, 576 U.S. 237 (2015), pronounces the controlling principles in determining whether an out–of–court statement is "testimonial" and therefore subject to the confrontation clause. The dispositive question is whether, in light of all the circumstances, viewed objectively, the primary purpose of the out–of–court statement is to create an out–of–court substitute for trial testimony. Some factors relevant in the primary purpose analysis include: 1) the formality/informality of the situation producing the out–of–court statement; 2) whether the statement is given to law enforcement or a non–law enforcement individual; 3) the age of the declarant; and 4) the context in which the statement is given. State v. Mattox, 2017 WI 9, 373 Wis. 2d 122, 890 N.W.2d 256, 15–0158.

The confrontation clause does not apply during suppression hearings. The confrontation right protects defendants at trial, when guilt or innocence is at stake. The confrontation clause does not require confrontation of witnesses at suppression hearings. State v. Zamzow, 2017 WI 29, 374 Wis. 2d 220, 892 N.W.2d 637, 14–2603.

A defendant cannot show that the defendant's rights under the confrontation clause were violated before first showing that the allegedly impermissible statements were testimonial. Under the U.S. Supreme Court's analysis in *Clark*, 576 U.S. 237 (2015), statements between certain types of individuals are highly unlikely to be testimonial. The statements at issue in this case were the result of a conversation between two inmates—the type of statement that the U.S. Supreme Court and other courts have categorized as unequivocally nontestimonial. State v. Nieves, 2017 WI 69, 376 Wis. 2d 300, 897 N.W.2d 363, 14–1623. See also Giles v. California, 554 U.S. 353, 128 S. Ct. 2678, 171 L. Ed. 2d 488 (2008).

When previously unknown information is raised by the circuit court at a sentencing hearing, a defendant does not forfeit a direct challenge to the use of the information by failing to object at the sentencing hearing. State v. Counihan, 2020 WI 12, 390 Wis. 2d 172, 938 N.W.2d 530, 17–2265.

When the primary purpose of a report was neither to "gather evidence for" nor "substitute for testimony in" the prosecution of the defendant, the report and related testimony did not constitute "testimonial" statements. As a result, the confrontation clause was not implicated. State v. Nelson, 2021 WI App 2, 395 Wis. 2d 585, 954 N.W.2d 11, 19–0194. See also State v. Keller, 2021 WI App 22, 397 Wis. 2d 122, 959 N.W.2d 343, 19–1573.

Since *Jensen I*, 2007 WI 26, the U.S. Supreme Court decided two cases that addressed the definition of testimonial hearsay. Neither *Bryant*, 562 U.S. 344 (2011), nor *Clark*, 576 U.S. 237 (2015), altered the confrontation clause analysis set forth in *Crawford*, 541 U.S. 36 (2004), and *Davis*, 547 U.S. 813 (2006), in any way that undermined the reasoning in *Jensen I* that certain hearsay statements were testimonial. *Bryant* and *Clark* represent developments in applying the primary purpose test, but neither is contrary to it. Rather, those decisions were efforts to "flesh out" the test first articulated in *Crawford* and *Davis*. State v. Jensen (*Jensen III*), 2021 WI 27, 396 Wis. 2d 196, 957 N.W.2d 244, 18–1952.

The disclosure of otherwise inadmissible information under this section is to assist the jury in evaluating the expert's opinion, not to prove the substantive truth of the otherwise inadmissible information. In this case, the state's reference to the DNA evidence during closing arguments was a shift from a non–hearsay impeachment purpose to a substantive use to prove the truth of the matter asserted. The DNA evidence was inadmissible hearsay, and it was erroneously received during trial and closing argument as no limiting instructions were given to the jury as to its consideration of the DNA evidence. The DNA evidence, at a minimum, could not be presented to the jury without proper limiting instructions and could not be used by the state as substantive evidence. State v. Thomas, 2021 WI App 55, 399 Wis. 2d 277, 963 N.W.2d 887, 20–0032.

When required by the right effectively to present a defense, the state, having authority to do so, in the exercise of sound discretion must issue, and for an indigent pay the costs of, compulsory process to obtain the attendance of witnesses on behalf of probationers and parolees at revocation proceedings. 63 Atty. Gen. 176.

Introduction of an accomplice's confession for rebuttal purposes, not hearsay, did not violate the defendant's confrontation rights. Tennessee v. Street, 471 U.S. 409, 105 S. Ct. 2078, 85 L. Ed. 2d 425 (1985).

The confrontation clause does not require a showing of unavailability as a condition of admission of out–of–court statements of a non–testifying co–conspirator. United States v. Inadi, 475 U.S. 387, 106 S. Ct. 1121, 89 L. Ed. 2d 390 (1986).

The confrontation clause does not require the defendant to have access to confidential child abuse reports. Due process requires the trial court to undertake an in camera inspection of the file to determine whether it contains material exculpatory evidence. Pennsylvania v. Ritchie, 480 U.S. 39, 107 S. Ct. 989, 94 L. Ed. 2d 40 (1987).

Admission of a nontestifying codefendant's confession violates confrontation rights, even though the defendant's confession was also admitted. Cruz v. New York, 481 U.S. 186, 107 S. Ct. 1714, 95 L. Ed. 2d 162 (1987).

The confrontation clause does not require that the defendant be permitted to be present at a competency hearing of a child witnesses as long as the defendant is provided the opportunity for full and effective cross–examination at trial. Kentucky v. Stincer, 482 U.S. 730, 107 S. Ct. 2658, 96 L. Ed. 2d 631 (1987).

The confrontation clause prohibits the placement of a screen between a child witness and the defendant. Coy v. Iowa, 487 U.S. 1012, 108 S. Ct. 2798, 101 L. Ed. 2d 857 (1988).

If a state makes an adequate showing of necessity, it may use a special procedure, such as one–way closed–circuit television to transmit a child witness's testimony to court without face–to–face confrontation with the defendant. Maryland v. Craig, 497 U.S. 836, 110 S. Ct. 3157, 111 L. Ed. 2d 666 (1990).

In a joint trial, the confession of one defendant naming the other defendant that was read with the word "deleted" replacing the second defendant's name violated the second defendant's right of confrontation. Gray v. Maryland, 523 U.S. 185, 118 S. Ct. 1151, 140 L. Ed. 2d 294 (1998).

The rights to be present at trial and to confront witnesses are not violated by a prosecutor's comment in closing argument that the defendant had the opportunity to hear all witnesses and then tailor his testimony accordingly. Portuondo v. Agard, 529 U.S. 61, 120 S. Ct. 1119, 146 L. Ed. 2d 47 (2000).

The 6th amendment confrontation clause demands unavailability and a prior opportunity for cross–examination. Whatever else the term testimonial covers, it applies at a minimum to prior testimony at a preliminary hearing, before a grand jury, or at a former trial and to police interrogations. Crawford v. Washington, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004).

When testimonial statements are at issue, the only indicium of reliability sufficient to satisfy constitutional demands is confrontation. "Testimonial statements" includes at a minimum prior testimony at a preliminary hearing, before a grand jury, or at a former trial and to police interrogations. Crawford v. Washington, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004).

Statements are nontestimonial under *Crawford*, 541 U.S. 36 (2004), when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency. They are testimonial when the circumstances objectively indicate that there is no such ongoing emergency and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution. A conversation that begins as an interrogation to determine the need for emergency assistance can evolve into testimonial statements. Davis v. Washington, 547 U.S. 813, 126 S. Ct. 2266, 165 L. Ed. 2d 224 (2006).

A defendant does not forfeit the right to confront a witness when a judge determines that a wrongful act by the defendant made the witness unavailable to testify at trial. The "forfeiture by wrongdoing" doctrine applies only when the defendant engaged or acquiesced in wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness. The requirement of intent means that the exception applies only if the defendant has in mind the particular purpose of making the witness unavailable. Giles v. California, 554 U.S. 353, 128 S. Ct. 2678, 171 L. Ed. 2d 488 (2008).

Under *Crawford*, 541 U.S. 36 (2004), analysts' affidavits that certified that evidence was in fact cocaine were testimonial statements and the analysts were "witnesses" for purposes of the 6th amendment confrontation clause. Absent a showing that the analysts were unavailable to testify at trial and that petitioner had a prior opportunity to cross–examine them, petitioner was entitled to be confronted with the analysts at trial. Melendez–Diaz v. Massachusetts, 557 U.S. 305, 129 S. Ct. 2527, 174 L. Ed. 2d 314 (2009).

For purposes of determining whether statements are testimonial for confrontation clause purposes, when an "ongoing emergency," as discussed in *Davis*, 547 U.S. 813 (2006), extends beyond an initial victim to a potential threat to the responding police and the public at large, the relevant inquiry is not the subjective or actual purpose of the individuals involved in a particular encounter, but rather the purpose that reasonable participants would have had, as ascertained from the individuals' statements and actions and the circumstances in which the encounter occurred. An assessment of whether an emergency that threatens the police and public is ongoing cannot narrowly focus on whether the threat to the first victim has been neutralized because the threat to the first responders and public may continue. Michigan v. Bryant, 562 U.S. 344, 131 S. Ct. 1143, 179 L. Ed. 2d 93 (2011).

The confrontation clause does not permit the prosecution to introduce a forensic laboratory report containing a testimonial certification made for the purpose of proving a particular fact through the in–court testimony of a scientist who did not sign the certification or perform or observe the test reported in the certification. The accused's right is to be confronted with the analyst who made the certification, unless that analyst is unavailable at trial and the accused had an opportunity, pretrial, to cross–examine that particular scientist. Bullcoming v. New Mexico, 564 U.S. 647, 131 S. Ct. 2705, 180 L. Ed. 2d 610 (2011).

Under U.S. Supreme Court precedents, a statement cannot fall within the confrontation clause unless its primary purpose was testimonial. When no such primary purpose exists, the admissibility of a statement is the concern of state and federal rules of evidence, not the confrontation clause. That does not mean that the confrontation clause bars every statement that satisfies the "primary purpose" test. The confrontation clause does not prohibit the introduction of out–of–court statements that would have been admissible in a criminal case at the time of the founding. The primary purpose test is a necessary, but not always sufficient, condition for the exclusion of out–of–court statements under the confrontation clause. Ohio v. Clark, 576 U.S. 237, 135 S. Ct. 2173, 192 L. Ed. 2d 306 (2015).

Because at least some statements to individuals who are not law enforcement officers could conceivably raise confrontation concerns, a categorical rule excluding them from the 6th amendment's reach is not adopted. Nevertheless, such statements are much less likely to be testimonial than statements to law enforcement officers. Ohio v. Clark, 576 U.S. 237, 135 S. Ct. 2173, 192 L. Ed. 2d 306 (2015).

Statements by very young children will rarely, if ever, implicate the confrontation clause, and mandatory reporting statutes alone cannot convert a conversation between a concerned teacher and her student into a law enforcement mission aimed primarily at gathering evidence for a prosecution. Statements made to someone who is not principally charged with uncovering and prosecuting criminal behavior are significantly less likely to be testimonial than statements given to law enforcement officers. Ohio v. Clark, 576 U.S. 237, 135 S. Ct. 2173, 192 L. Ed. 2d 306 (2015).

The 6th amendment confrontation clause is not satisfied merely because the evidence offered by a defendant might be properly excluded under s. 904.03. The confrontation clause limits a trial court's ordinary discretion to limit cross−examination and demands careful scrutiny of the purported reason for limiting cross−examination. A trial court violates the confrontation clause when the court applies ordinary s. 904.03 balancing to limit cross−examination by a defendant on issues central to the defense without giving any special consideration to the defendant's constitutional right to confront witnesses against him. Rhodes v. Dittmann, 903 F.3d 646 (2018).

A finding of unavailability of a witness due to mental illness, made on the basis of a confused and stale record, deprived the defendant of the right to confront witnesses, but the error was harmless. Burns v. Clusen, 599 F. Supp. 1438 (1984).

The use of a child victim's statements to a psychologist under s. 908.03 (4) violated the accused sexual assaulter's confrontation rights. Nelson v. Ferrey, 688 F. Supp. 1304 (1988).

The trial court's wholesale exclusion of the defendant's proffered expert and lay testimony regarding post−traumatic stress disorder from the guilt phase of a murder trial, without valid state justification, violated the defendant's right to present a defense and to testify in the defendant's own behalf. Morgan v. Krenke, 72 F. Supp. 2d 980 (1999).

A Bad Case of Indigestion: Internalizing Changes in the Right to Confrontation After *Crawford v. Washington* Both Nationally and in Wisconsin. Kinnally. 89 MLR 625 (2006).

State v. Thomas: Face to Face with *Coy* and *Craig*—Constitutional Invocation of Wisconsin's Child−Witness Protection Statute. Vaillancourt. 1990 WLR 1613.

Hearsay and the Confrontation Clause. Biskupic. Wis. Law. May 2004.

COUNSEL

Note: See also the notes to Article I, Section 8 — Self−incrimination.

A defendant is entitled to the presence of counsel at a post−warrant lineup, but the attorney need not participate or object, and need not be the ultimate trial counsel. Wright v. State, 46 Wis. 2d 75, 175 N.W.2d 646 (1970).

A city attorney should not be appointed defense counsel in a state case in which city police are involved unless the defendant, being fully informed, requests the appointment. Karlin v. State, 47 Wis. 2d 452, 177 N.W.2d 318 (1970).

A conference in chambers between defendant's counsel and the prosecutor in regard to a plea agreement, but without the defendant's presence, was not violative of his constitutional rights and not a manifest injustice since the defendant had the benefit of counsel both during the entry of his plea and at the sentencing and the defendant on the record expressly acquiesced in the plea agreement. Kruse v. State, 47 Wis. 2d 460, 177 N.W.2d 322 (1970).

A disciplinary action against an attorney is a civil proceeding. An indigent attorney is not entitled to the appointment of an attorney. State v. Hildebrand, 48 Wis. 2d 73, 179 N.W.2d 892 (1970).

An indigent defendant is not entitled to a substitution of appointed counsel when he is dissatisfied with the one appointed. Peters v. State, 50 Wis. 2d 682, 184 N.W.2d 826 (1971).

ABA standards relating to the duty of defense counsel while approved by the court, do not automatically prove incompetency or ineffectiveness if violated. State v. Harper, 57 Wis. 2d 543, 205 N.W.2d 1 (1973).

An arrestee has no right to demand that counsel be present while a breathalyzer test is administered. State v. Driver, 59 Wis. 2d 35, 207 N.W.2d 850 (1973).

A defendant has no right to counsel or to be present when photographs are shown to a witness. The right to counsel exists only at or after the initiation of criminal proceedings. Holmes v. State, 59 Wis. 2d 488, 208 N.W.2d 815 (1973).

While it is not desirable, it is not error, to appoint a city attorney from another city, not connected with the testifying police, as defense attorney. Hebel v. State, 60 Wis. 2d 325, 210 N.W.2d 695 (1973).

A person is not entitled to counsel at a lineup prior to the filing of a formal charge, but prosecution may not be delayed while a suspect is in custody merely for the purpose of holding a lineup without counsel. State v. Taylor, 60 Wis. 2d 506, 210 N.W.2d 873 (1973).

A conviction was not overturned because of the absence of counsel at an informal confrontation where the defendant was identified by the victim. Jones v. State, 63 Wis. 2d 97, 216 N.W.2d 224 (1974).

When a conflict arises in dual representation, a defendant must be granted a vacation of sentence and new hearing because a conflict at sentencing per se renders counsel representation ineffective and actual prejudice need not be shown. Hall v. State, 63 Wis. 2d 304, 217 N.W.2d 352 (1974).

Defense counsel's failure to cross−examine the state's principal witness at trial did not constitute ineffective representation when cross−examination had proved fruitless at the preliminary. Krebs v. State, 64 Wis. 2d 407, 219 N.W.2d 355 (1974).

The duty to appoint counsel is upon the judicial system as part of the superintending power of the judicial system. When the appointment of counsel for indigent convicted persons for parole and probation revocation proceedings will be recurrent and statewide, the power of appointment will be exercised by the supreme court. State ex rel. Fitas v. Milwaukee County, 65 Wis. 2d 130, 221 N.W.2d 902 (1974).

The trial judge must unconditionally and unequivocably demonstrate in the record that the defendant intelligently, voluntarily, and understandingly waived the constitutional right to counsel, whether or not the defendant is indigent. Keller v. State, 75 Wis. 2d 502, 249 N.W.2d 773 (1977).

When a state agency seeks to enforce its orders through the coercion of imprisonment for contempt, the full constitutional right to counsel arises. Ferris v. State ex rel. Maass, 75 Wis. 2d 542, 249 N.W.2d 789 (1977).

One charged with a crime carrying a penalty of incarceration has the full constitutional right to counsel, regardless of whether incarceration is ordered. State ex rel. Winnie v. Harris, 75 Wis. 2d 547, 249 N.W.2d 791 (1977).

The mere fact that one attorney represents two defendants charged in the same crime is not sufficient evidence of inadequate representation. The defendant has the burden of showing by clear and convincing evidence that an actual and operative conflict existed. Harrison v. State, 78 Wis. 2d 189, 254 N.W.2d 220 (1977).

A defendant has no right to be actively represented in the courtroom both by self and by counsel. Moore v. State, 83 Wis. 2d 285, 265 N.W.2d 540 (1978).

The test to determine if the denial of a continuance acted to deny a defendant either due process or effective assistance of counsel is discussed. State v. Wollman, 86 Wis. 2d 459, 273 N.W.2d 225 (1979).

The right to counsel does not extend to non−lawyer representatives. State v. Kasuboski, 87 Wis. 2d 407, 275 N.W.2d 101 (Ct. App. 1978).

Withdrawal of a guilty plea on the grounds of ineffective representation by trial counsel is discussed. State v. Rock, 92 Wis. 2d 554, 285 N.W.2d 739 (1979).

A defendant's request on the morning of trial to represent himself was properly denied as untimely. Hamiel v. State, 92 Wis. 2d 656, 285 N.W.2d 639 (1979).

A prerequisite to a claim on appeal of ineffective trial representation is preservation of trial counsel's testimony at a postconviction hearing in which the representation is challenged. State v. Machner, 92 Wis. 2d 797, 285 N.W.2d 905 (Ct. App. 1979).

The trial court did not err in refusing the defendant's request on the second day of trial to withdraw a waiver of the right to counsel. Self−representation is discussed. Pickens v. State, 96 Wis. 2d 549, 292 N.W.2d 601 (1980).

The right to counsel did not preclude incarceration for a second operating while intoxicated conviction when the defendant was not represented by counsel in proceedings leading to the first conviction, since the first offense was a civil forfeiture case. State v. Novak, 107 Wis. 2d 31, 318 N.W.2d 364 (1982).

Counsel was ineffective for failing to raise the heat−of−passion defense in a murder case when a wife who had been maltreated during a 23−year marriage intentionally killed her husband while he lay sleeping. State v. Felton, 110 Wis. 2d 485, 329 N.W.2d 161 (1983).

A defendant's uncorroborated allegations will not support a claim of ineffective representation when counsel is unavailable to rebut the claim of ineffectiveness. State v. Lukasik, 115 Wis. 2d 134, 340 N.W.2d 62 (Ct. App. 1983).

Effective assistance of counsel was denied when the defense attorney did not properly inform the client of the personal right to accept a plea offer. State v. Ludwig, 124 Wis. 2d 600, 369 N.W.2d 722 (1985).

When a trial court fails to make adequate inquiry into a defendant's last−minute request to replace his or her attorney, the right to counsel is adequately protected by a retrospective hearing at which the defendant may present his or her own testimony. State v. Lomax, 146 Wis. 2d 356, 432 N.W.2d 89 (1988).

The 5th and 6th amendment rights to counsel and *Edward*, 451 U.S. 477 (1981) are discussed. State v. McNeil, 155 Wis. 2d 24, 454 N.W.2d 742 (1990). See also the note to *McNeil v. Wisconsin*, 501 U.S. 171, 115 L. Ed. 2d 158 (1991). See also Texas v. Cobb, 532 U.S. 162, 121 S. Ct. 1335, 149 L. Ed. 2d 321 (2001).

Defense counsel's absence at the return of the jury verdict without the defendant's consent and the failure to poll the jury were grounds for automatic reversal. State v. Behnke, 155 Wis. 2d 796, 456 N.W.2d 610 (1990).

When a defendant accepts counsel, the decision to assert or waive a constitutional right is delegated to the attorney. The failure of the defendant to object to the attorney's waiver, is waiver. State v. Wilkens, 159 Wis. 2d 618, 465 N.W.2d 206 (Ct. App. 1990).

There is a two−prong test for ineffective counsel: 1) trial counsel was ineffective; and 2) the defense was prejudiced so that absent error the result would have been different. State v. Wilkens, 159 Wis. 2d 618, 465 N.W.2d 206 (Ct. App. 1990).

A court may disqualify the defendant's chosen counsel over the defendant's objection and waiver of the right to conflict−free representation when actual or a serious potential for a conflict of interest exists. State v. Miller, 160 Wis. 2d 646, 467 N.W.2d 118 (1991).

A determination of indigency by the public defender under s. 977.07 is not the end of the court 's inquiry into the need to appoint counsel. State v. Dean, 163 Wis. 2d 503, 471 N.W.2d 310 (Ct. App. 1991).

To bring a claim of ineffective appellate counsel, defendant must petition the court that heard the appeal for a writ of habeas corpus. State v. Knight, 168 Wis. 2d 509, 484 N.W.2d 540 (1992). See also State ex rel. Warren v. Meisner, 2020 WI 55, 392 Wis. 2d 1, 944 N.W.2d 588, 19−0567.

The question of ineffective counsel is whether there is a reasonable probability that a jury viewing the evidence untainted by counsel's errors would have had a reasonable doubt respecting guilt. State v. Glass, 170 Wis. 2d 146, 488 N.W.2d 432 (Ct. App. 1992).

A defense attorney's ex parte petition to withdraw was improperly granted. A minimal due process hearing was required. State v. Batista, 171 Wis. 2d 690, 492 N.W.2d 354 (Ct. App. 1992).

Absent a clear waiver of counsel and a clear demonstration of a defendant's ability to proceed *pro se*, courts are advised to mandate full representation by counsel. State v. Haste, 175 Wis. 2d 1, 500 N.W.2d 678 (Ct. App. 1993).

The proper test of attorney performance is reasonableness under prevailing professional norms. Counsel is not required to have a total and complete knowledge of all criminal law, no matter how obscure. State v. Hubert, 181 Wis. 2d 333, 510 N.W.2d 799 (Ct. App. 1993).

Appellate counsel's closing of a file because of no merit without the defendant knowing of the right to disagree and compel a no merit report under s. 809.32 is ineffective assistance of counsel. A defendant must be informed of the right to appeal and to a no merit report, but need not be informed orally. State ex rel. Flores v. State, 183 Wis. 2d 587, 516 N.W.2d 362 (1994).

An appellate defendant represented by counsel has no right to have a *pro se* brief considered by the court when counsel has submitted a brief. State v. Debra A. E. 188 Wis. 2d 111, 523 N.W.2d 727 (Ct. App. 1994).

The decision to poll the jury may be delegated to counsel. Waiver by counsel without showing that the waiver was knowingly and voluntarily made by the defendant did not violate a constitutional right. State v. Jackson, 188 Wis. 2d 537, 525 N.W.2d 165 (Ct. App. 1994).

If the same counsel represents co–defendants, the trial court must conduct an inquiry to determine whether the defendant waived the right to separate counsel. When an actual conflict of interest is found, specific prejudice need not be shown. If no inquiry is made by the trial court, the court of appeals will examine the record, reversing if an actual conflict of interest is found. State v. Dadas, 190 Wis. 2d 339, 526 N.W.2d 818 (Ct. App. 1994).

The prejudice prong of the test for ineffective counsel was met when counsel failed to insure that a defense witness would appear without shackles. State v. Tatum, 191 Wis. 2d 548, 530 N.W.2d 407 (Ct. App. 1995).

A suspect's reference to an attorney who had previously or is presently representing the suspect in another matter is not a request for counsel requiring the cessation of questioning. State v. Jones, 192 Wis. 2d 78, 532 N.W.2d 79 (1995).

The right to counsel and right to remain silent are the defendant's. An attorney, not requested by the defendant, could not compel the police to end questioning by stating that no questioning was to take place outside his presence. State v. Jones, 192 Wis. 2d 78, 532 N.W.2d 79 (1995).

A defendant must assert the right to counsel in a timely manner. However, no waiver of counsel is presumed and a waiver must be clear and unequivocal. The state has the burden of overcoming the presumption. Mere inconvenience to the court is insufficient to deny the right to counsel. State v. Verdone, 195 Wis. 2d 476, 536 N.W.2d 172 (Ct. App. 1995), 94–3369.

Withdrawal of a guilty plea after sentencing may be based on ineffective assistance of counsel. Erroneous advice regarding parole eligibility can form the basis for ineffective assistance. State v. Bentley, 195 Wis. 2d 580, 536 N.W.2d 202 (Ct. App. 1995), 94–3310.

A trial court's failure to conduct a hearing to determine if a defendant's waiver of counsel is knowingly made is harmless error absent a showing of prejudice. A trial court need not make a finding that a defendant is competent to proceed without counsel unless there is doubt that the defendant is competent to stand trial. State v. Kessig, 199 Wis. 2d 397, 544 N.W.2d 605 (Ct. App. 1995), 95–1938.

In certain situations a court may find that a defendant has waived counsel without having expressly done so. Waiver was found when the defendant constantly refused to cooperate with counsel while refusing to waive the right and when the court found the defendant's intent was to "delay, obfuscate and compound the process of justice." State v. Cummings, 199 Wis. 2d 721, 516 N.W.2d 406 (1996), 93–2445.

The test for ineffective assistance of counsel under the state constitution is the same as under the federal constitution. In such cases the burden is placed on the defendant to show that the deficient performance of counsel prejudiced the defense. State v. Sanchez, 201 Wis. 2d 219, 548 N.W.2d 69 (1996), 94–0208.

Read together, s. 809.32 (4) and 977.05 (4) (j) create a statutory, but not constitutional, right to counsel in petitions for review and cases before any court, provided counsel does not determine the appeal to be without merit. When counsel fails to timely file a petition for review, the defendant may petition for a writ of habeas corpus and the supreme court has the power to allow late filing. Schmelzer v. Murphy, 201 Wis. 2d 246, 548 N.W.2d 45 (1996), 95–1096.

Whether counsel is deficient by not requesting the polling of individual jurors upon the return of a verdict depends on all the circumstances, not on whether counsel explained to the defendant the right to an individual polling. State v. Yang, 201 Wis. 2d 725, 549 N.W.2d 769 (Ct. App. 1996), 95–0583.

To establish ineffective assistance of counsel based on a conflict of interest there must be an actual conflict that adversely affected the attorney's performance. Simultaneous representation of a criminal defendant and a witness in that case in an unrelated civil case resulted in an actual conflict. State v. Street, 202 Wis. 2d 533, 551 N.W.2d 830 (Ct. App. 1996), 95–2242.

Counsel is not ineffective when the general theory of the defense is discussed with the defendant, and when based on that theory, counsel makes a strategic decision not to request a lesser–included instruction because it would be inconsistent with or harmful to the theory of the defense. State v. Eckert, 203 Wis. 2d 497, 553 N.W.2d 539 (Ct. App. 1996), 95–1877.

When a prosecutor elicits testimony that can only be contradicted by defense counsel or the defendant, if defense counsel could not reasonably foresee the dilemma and the defendant has decided not to testify, defense counsel must be permitted to testify. State v. Foy, 206 Wis. 2d 629, 557 N.W.2d 494 (Ct. App. 1996), 96–0658.

Counsel was deficient when it failed to object at sentencing to a prosecutor's sentence recommendation after agreeing in a plea bargain to make no recommendation. The defendant was automatically prejudiced when the prosecutor materially and substantially breached the plea agreement. State v. Smith, 207 Wis. 2d 259, 558 N.W.2d 379 (1997), 94–3364.

Whenever a defendant seeks to proceed *pro se*, a colloquy to determine whether the waiver is knowing and voluntary is required. The colloquy is to ensure that the defendant: 1) made a deliberate choice to proceed without counsel, 2) was aware of the difficulties and disadvantages of self–representation, 3) was aware of the seriousness of the charge or charges, and 4) was aware of the general range of the possible penalties. When there is no colloquy and post–conviction relief is requested, the court must hold an evidentiary hearing on the waiver and the state must prove by clear and convincing evidence that the waiver was knowingly made for the conviction to stand. State v. Klessig, 211 Wis. 2d 194, 564 N.W.2d 716 (1997), 95–1938.

There is a higher standard for determining competency to represent oneself than for competency to stand trial. The standard is based on the defendant's education, literacy, fluency in English, and any disability that may affect the ability to communicate a defense. When there is no pretrial finding of competency to proceed and post–conviction relief is sought, the court must determine if it can make a meaningful *nunc pro tunc* inquiry. If it cannot, or it finds that it can but the defendant was not competent, a new trial is required. State v. Klessig, 211 Wis. 2d 194, 564 N.W.2d 716 (1997), 95–1938.

It was ineffective assistance of counsel to advise a defendant to go to trial and lie rather than agree to a plea agreement. Despite the defendant's participation in fraud on the court, the defendant was entitled to vacation of his sentence and a return to pretrial status, although offering the prior proposed plea agreement was not required. State v. Fritz, 212 Wis. 2d 284, 569 N.W.2d 48 (Ct. App. 1997), 96–1905.

When a defendant proves ineffective assistance of counsel occurred at the pretrial stage, the defendant must be granted a new trial. State v. Lentowski, 212 Wis. 2d 849, 569 N.W.2d 758 (Ct. App. 1997), 96–2597.

An in–court identification subsequent to a lineup in violation of an accused's right to counsel is admissible only if the state carries the burden of showing that the in–court identification was based on observations of the suspect other than the lineup. State v. McMorris, 213 Wis. 2d 156, 570 N.W.2d 384 (1997), 95–2052.

A postconviction hearing pursuant to *Machner,* 92 Wis. 2d 797, to preserve the testimony of trial counsel is required in every ineffective assistance of counsel case. State v. Curtis, 218 Wis. 2d 550, 582 N.W.2d 409 (Ct. App. 1998), 96–2884.

Having disputed relevant portions of the presentence investigation at the sentencing hearing, it was trial counsel's duty to see that the disputes were fully resolved by a proper hearing. Failure to do so constituted ineffective assistance of counsel. State v. Anderson, 222 Wis. 2d 403, 588 N.W.2d 75 (Ct. App. 1998), 97–3070.

Whether a defendant's motion for substitution of counsel, with an accompanying request for a continuation, should be granted depends on the balancing of several interests. State v. Wanta, 224 Wis. 2d 679, 592 N.W.2d 645 (Ct. App. 1999), 98–0318.

A defendant's prejudicial deprivation of appellate counsel, be it the fault of the attorney or the appellate court, is properly remedied by a petition for habeas corpus in the supreme court. State ex rel. Fuentes v. Court of Appeals, 225 Wis. 2d 446, 593 N.W.2d 48 (1999), 98–1534.

A defendant who alleges counsel was ineffective by failing to take certain steps must show with specificity what the action, if taken, would have revealed and how the action would have affected the outcome. State v. Byrge, 225 Wis. 2d 702, 594 N.W.2d 388 (Ct. App. 1999), 97–3217.

When defense counsel has appeared for and represented the state in the same case in which he or she later represents the defendant and no objection was made at trial, to prove a violation of the right to effective counsel, the defendant must show that counsel converted a potential conflict of interest into an actual conflict by knowingly failing to disclose the attorney's former prosecution of the defendant or representing the defendant in a manner that adversely affected the defendant's interests. State v. Love, 227 Wis. 2d 60, 594 N.W.2d 806 (1999), 97–2336. See also State v. Kalk, 2000 WI App 62, 234 Wis. 2d 98, 608 N.W.2d 98, 99–1164; State v. Henyard, 2020 WI App 51, 393 Wis. 2d 727, 948 N.W.2d 396, 19–0548.

There is a distinction between the consequences on appeal of a trial court error and the consequences of that same error when it is raised in an ineffective–assistance–of–counsel context. The fact that a preserved error could lead to automatic reversal does not mean the same result will be reached when the error was waived. State v. Erickson, 227 Wis. 2d 758, 596 N.W.2d 749 (1999), 98–0273.

The defendant's assertion of the 6th amendment right to counsel was evident during interrogation when he asked whether the police officer thought he should have an attorney and if he could call a person known to the officer to be a criminal defense lawyer. State v. Hornung, 229 Wis. 2d 469, 600 N.W.2d 264 (Ct. App. 1999), 99–0300.

Inherent in a defendant's choice to proceed pro se is the risk, which the defendant knowingly assumes, that a defense not known to him or her will not be presented during trial. State v. Clutter, 230 Wis. 2d 472, 602 N.W.2d 324 (Ct. App. 1999), 99–0705.

A defendant has a substantive due process right to enforce a plea agreement after the plea has been entered. Defense counsel's failure to inform defendant of that right or to pursue enforcement of the agreement constituted ineffective assistance of counsel. State v. Scott, 230 Wis. 2d 643, 602 N.W.2d 926 (Ct. App. 1999), 98–2109.

The lack of legal expertise is an impermissible basis on which to deny a request to represent oneself. State v. Oswald, 2000 WI App 3, 232 Wis. 2d 103, 606 N.W.2d 238, 97–1219.

On administrative appeal a probationer may be assisted by counsel, but there is no right to appointed counsel or effective assistance of counsel. State ex rel. Mentek v. Schwarz, 2000 WI App 96, 235 Wis. 2d 143, 612 N.W.2d 746, 99–0182. See also Mentek v. Schwarz, 2001 WI 32, 242 Wis. 2d 94, 624 N.W.2d 150, 99–0182.

A defendant's unusual conduct or beliefs do not necessarily establish incompetence for purposes of self–representation. Although a defendant may exhibit beliefs that are out of the ordinary and make references that may antagonize jurors, that does not reflect a mental defect that prevents self–representation. State v. Ruszkiewicz, 2000 WI App 125, 237 Wis. 2d 441, 613 N.W.2d 893, 99–1198.

Except when charges have been filed in a closely–related case derived from the same factual predicate, the 6th amendment right to counsel is offense specific and attaches to a particular offense only after adversary proceedings are commenced. The 6th amendment does not not prohibit the interrogation of a defendant in regard to a murder in the absence of counsel retained in a bail jumping case. State v. Badker, 2001 WI App 27, 240 Wis. 2d 460, 623 N.W.2d 142, 99–2943.

In making its separate determination of whether a defendant is indigent for purposes of court–appointed counsel, the trial court should consider federal poverty guidelines. If a defendant has no assets and an income well below the poverty level, the trial court should set forth why it determined that the defendant could afford counsel. State v. Nieves–Gonzales, 2001 WI App 90, 242 Wis. 2d 782, 625 N.W.2d 913, 00–2138.

An indigent sexually violent person is constitutionally entitled to assistance of counsel in bringing a first appeal as of right from a denial of his or her petition for supervised release. State ex rel. Seibert v. Macht, 2001 WI 67, 244 Wis. 2d 378, 627 N.W.2d 881, 99–3354.

There was ineffective assistance of counsel when the notice of appeal for the denial of a ch. 980 petition for supervised release was filed one day late in circuit court. Under the U.S. Supreme Court's decisions in *Douglas*, 372 U.S. 353, and

Anders, 386 U.S. 738, the court of appeals could not conduct an independent review for error when the individual lacked requested representation. State ex rel. Seibert v. Macht, 2001 WI 67, 244 Wis. 2d 378, 627 N.W.2d 881, 99–3354.

Absent a showing of prejudice to their defense, misdemeanants were not denied effective counsel when their attorneys failed to object to the 6–person jury statute that was found unconstitutional in *Hansford*, 219 Wis. 2d 226. State v. Franklin, 2001 WI 104, 245 Wis. 2d 582, 629 N.W.2d 289, 99–0743.

A reviewing court is not required to view defense counsel's subjective testimony as dispositive of an ineffective assistance claim. The testimony is simply evidence to be considered along with other evidence in the record that a court will examine in assessing counsel's overall performance. State v. Kimbrough, 2001 WI App 138, 246 Wis. 2d 648, 630 N.W.2d 752, 00–2133.

For a knowing and voluntary waiver of counsel on direct appeal, the defendant must be aware of: 1) the rights to an appeal, to the assistance of counsel for the appeal, and to opt for a no–merit report; 2) the dangers and disadvantages of proceeding pro se; and 3) the possibility that if appointed counsel is permitted to withdraw, successor counsel may not be appointed. The necessary colloquy may be accomplished by written communications with the defendant, initiated either by the court or by counsel seeking to withdraw. State v. Thornton, 2002 WI App 294, 259 Wis. 2d 157, 656 N.W.2d 45, 01–0726.

Opening a letter marked "Legal Papers" outside of an inmate's presence may have violated an administrative rule, but it was not a violation of the 6th amendment right to counsel. For the right to counsel to have an arguable application, there must, as a threshold matter, be some evidence that the documents in the envelope were communications with an attorney. State v. Steffes, 2003 WI App 55, 260 Wis. 2d 841, 659 N.W.2d 445, 02–1300.

When in closing argument counsel concedes guilt on a lesser count in a multiple–count case, in light of overwhelming evidence on that count and in an effort to gain credibility and win acquittal on the other charges, the concession is a reasonable tactical decision and counsel is not deemed to have been constitutionally ineffective by admitting a client's guilt contrary to the client's plea of not guilty. State v. Gordon, 2003 WI 69, 262 Wis. 2d 380, 663 N.W.2d 765, 01–1679.

When a court finds numerous deficiencies in a counsel's performance, it need not rely on the prejudicial effect of a single deficiency if, taken together, the deficiencies establish cumulative prejudice. Whether the aggregated errors by counsel will be enough to meet the *Strickland,* 466 U.S. 668, prejudice requirement depends upon the totality of the circumstances at trial, not the totality of the representation provided to the defendant. State v. Thiel, 2003 WI 111, 264 Wis. 2d 571, 665 N.W.2d 305, 01–1589.

Under *Dean* a trial court is only obligated to advise a defendant of the right to counsel. The trial court is not required to conduct a colloquy that includes specific advice to a defendant that the right to appointed counsel is broader than the right to counsel provided by the state public defender and includes the right to counsel appointed by the court and paid for by the county. State v. Drexler, 2003 WI App 169, 266 Wis. 2d 438, 669 N.W.2d 182, 02–1313.

No law requires that a motion to withdraw be filed any time an attorney appointed by the public defender terminates his or her postconviction/appellate representation of a defendant. Counsel for the defendant did not render ineffective assistance by closing his file without first obtaining court permission to withdraw or otherwise seeking a contemporaneous judicial determination that his client had knowingly waived either the right to appeal or the right to counsel. Ford v. Holm, 2004 WI App 22, 269 Wis. 2d 810, 676 N.W.2d 500, 02–1828.

An attorney may not substitute narrative questioning for the traditional question and answer format unless counsel knows that the client intends to testify falsely. Absent the most extraordinary circumstances, such knowledge must be based on the client's expressed admission of intent to testify untruthfully. While the defendant's admission need not be phrased in magic words, it must be unambiguous and directly made to the attorney. State v. McDowell, 2004 WI 70, 272 Wis. 2d 488, 681 N.W.2d 500, 02–1203.

When a defendant informs counsel of the intention to testify falsely, the attorney's first duty shall be to attempt to dissuade the client from the unlawful course of conduct. The attorney should then consider moving to withdraw from the case. If the motion to withdraw is denied and the defendant insists on committing perjury, counsel should proceed with the narrative form of questioning, advising the defendant beforehand of what that entails and informing opposing counsel and the circuit court of the change of questioning style prior to use of the narrative. State v. McDowell, 2004 WI 70, 272 Wis. 2d 488, 681 N.W.2d 500, 02–1203.

An alleged violation of the requirements of *Klessig,* 211 Wis. 2d 194, can form the basis of a collateral attack as long as the defendant makes a prima facie showing that he or she did not knowingly, intelligently, and voluntarily waive his or her constitutional right to counsel, which shifts the burden to prove that the defendant validly waived his or her right to counsel to the state. The state may elicit testimony from the defendant at an evidentiary hearing in an attempt to meet its burden and, in turn, the defendant may not raise the 5th amendment privilege against testifying. State v. Ernst, 2005 WI 107, 283 Wis. 2d 300, 699 N.W.2d 92, 03–1728.

When a defendant seeks to proceed pro se, the circuit court undertakes a 2–part inquiry, ensuring that the defendant: 1) has knowingly, intelligently, and voluntarily waived the right to counsel; and 2) is competent to proceed pro se. The record must demonstrate an identifiable problem or disability that may prevent a defendant from making a meaningful defense. The circuit court need not always make an express finding as to which specific problem or disability prevented a defendant from being able to meaningfully represent himself or herself. State v. Marquardt, 2005 WI 157, 286 Wis. 2d 204, 705 N.W.2d 878, 04–1609.

A deaf defendant who was shackled during trial and sentencing had the burden to show that he in fact was unable to communicate, not that he theoretically might have had such difficulty. State v. Russ, 2006 WI App 9, 289 Wis. 2d 65, 709 N.W.2d 483, 04–2869.

A defendant's constitutional right to effective representation for the purpose of exercising the right to directly appeal a conviction did not require postconviction counsel to offer the defendant the option of a "partial no–merit" report on any potential issues remaining after the defendant declined for strategic reasons to pursue an issue having arguable merit. The U.S. Constitution requires only that "an indigent's appeal will be resolved in a way that is related to the merit of that appeal." Ford v. Holm, 2006 WI App 176, 296 Wis. 2d 119, 722 N.W. 2d 609, 02–1828.

While courts sometimes can override a defendant's choice of counsel when deemed necessary, nothing requires them to do so. Requiring a court to disqualify an attorney because of a conflict of interest would infringe upon the defendant's right to retain counsel of his choice and could leave the accused with the impression that the legal system had conspired against him or her. State v. Demmerly, 2006 WI App 181, 296 Wis. 2d 153, 722 N.W. 2d 585, 05–0181.

Generally, a defendant who validly waives the right to conflict–free representation also waives the right to claim ineffective assistance of counsel based on the conflict, although there may be instances in which counsel's performance is deficient and unreasonably so even in light of the waived conflict of interest. State v. Demmerly, 2006 WI App 181, 296 Wis. 2d 153, 722 N.W. 2d 585, 05–0181.

It is recommended, if not required, that circuit courts take certain steps to determine whether a defendant has forfeited the right to counsel: 1) provide explicit warnings that, if the defendant persists in specific conduct, the court will find that the right to counsel has been forfeited; 2) engage in a colloquy indicating that the defendant has been made aware of the difficulties and dangers inherent in self–representation; 3) make a clear ruling when the court deems the right to counsel to have been forfeited; and 4) make factual findings to support the court's ruling. State v. McMorris, 2007 WI App 231, 306 Wis. 2d 79, 742 N.W.2d 322, 06–0772.
But see State v. Suriano, 2017 WI 42, 374 Wis. 2d 683, 893 N.W.2d 543, 15–0959.

It would be unreasonable to require a circuit court to engage in a colloquy to ensure that the defendant deliberately relinquished the right to counsel in circumstances where the defendant will verbally insist he or she did not. In cases in which the defendant's words are inconsistent with the defendant's conduct, such a colloquy would be farcical. State v. McMorris, 2007 WI App 231, 306 Wis. 2d 79, 742 N.W.2d 322, 06–0772.

Although an indigent defendant does not have the right to pick his or her trial lawyer, the indigent defendant is entitled to a lawyer with whom he or she can communicate. The ability–to–communicate assessment is left to the reasoned discretion of the trial court. The court must make sufficient inquiry to ensure that a defendant is not cemented to a lawyer with whom full and fair communication is impossible; mere conclusions, unless adequately explained, will not fly. State v. Jones, 2007 WI App 248, 306 Wis. 2d 340, 742 N.W.2d 341, 07–0226.

There is no 6th amendment effective assistance of counsel right to subpoena police reports and other non–privileged materials prior to a preliminary examination. State v. Schaefer, 2008 WI 25, 308 Wis. 2d 279, 746 N.W.2d 457, 06–1826.

A lawyer's failure to investigate is not deficient performance if he or she reasonably concludes, based on facts of record, that any investigation would be mere wheel–spinning and fruitless. When there is reason to believe that pursuing certain investigations would be fruitless or even harmful, counsel's failure to pursue those investigations may not later be challenged as unreasonable. State v. Walker, 2007 WI App 142, 302 Wis. 2d 735, 735 N.W.2d 582, 06–0562.
Reversed on other grounds. State v. Walker, 2008 WI 34, 308 Wis. 2d 666, 747 N.W.2d 673, 06–0562.

Wisconsin affords a convicted person the right to postconviction counsel. It would be absurd to suggest that a person has a right to counsel at trial and a right to counsel on appeal, but no right to the assistance of counsel at a postconviction proceeding in the circuit court, which is often the precursor to and augments the record for an appeal. State v. Peterson, 2008 WI App 140, 314 Wis. 2d 192, 757 N.W.2d 834, 07–1867.

A defendant does not have the right to be represented by: 1) an attorney he or she cannot afford; 2) an attorney who is not willing to represent the defendant; 3) an attorney with a conflict of interest; or 4) an advocate who is not a member of the bar. State v. Peterson, 2008 WI App 140, 314 Wis. 2d 192, 757 N.W.2d 834, 07–1867.

The circuit court's decision to remove counsel of choice is discretionary. The court does not have unfettered freedom to deprive a defendant of retained counsel. Whether removal for conflict was proper rests on whether the court balanced the defendant's right to be represented by retained counsel against the court's interest in the appearance of fairness and diffusing what it characterized as a potential conflict. State v. Peterson, 2008 WI App 140, 314 Wis. 2d 192, 757 N.W.2d 834, 07–1867.

When making a determination whether to allow the defendant's counsel of choice to participate, the circuit court must balance the defendant's right to select counsel against the public's interest in the prompt and efficient administration of justice. Several factors assist the court in balancing the relevant interests, for example: the length of delay requested; whether competent counsel is presently available and prepared to try the case; whether prior continuances have been requested and received by the defendant; the inconvenience to the parties, witnesses and the court; and whether the delay seems to be for legitimate reasons or whether its purpose is dilatory. State v. Prineas, 2009 WI App 28, 316 Wis. 2d 414, 766 N.W.2d 206, 07–1982.

A defendant must clearly and unequivocally make a declaration in order to invoke the right to self–representation. State v. Darby, 2009 WI App 50, 317 Wis. 2d 478, 766 N.W.2d 770, 08–0935. See also State v. Egerson, 2018 WI App 49, 383 Wis. 2d 716, 916 N.W.2d 833, 17–0797.

A trial court has no duty to advise a defendant of the right to self–representation if the defendant has not clearly and unequivocally invoked the right to self–representation. State v. Darby, 2009 WI App 50, 317 Wis. 2d 478, 766 N.W.2d 770, 08–0935.

The fact that the government might know an informant hopes to receive a benefit as a result of providing information does not translate into an implicit agreement between the government and the informant if the informant is thereafter placed into an environment where incriminating information can be obtained. If there is hope, and nothing else, then the informant cannot be construed to be a government agent eliciting a statement in violation of the 6th amendment right to counsel. State v. Lewis, 2010 WI App 52, 324 Wis. 2d 536, 781 N.W.2d 730, 09–0429.

The police do not have a duty to bar charged defendants' visits with potential informants; indeed such a requirement would be unfair to prisoners. Also, when a person offers to assist the police, the police need not try to stop the person from providing assistance. As long as the police do nothing to direct or control or involve themselves in the questioning of a person in custody by a private citizen, such questioning does not violate the 5th or 6th amendments. State v. Lewis, 2010 WI App 52, 324 Wis. 2d 536, 781 N.W.2d 730, 09–0429.

Klessig, 211 Wis. 2d 194, is the controlling authority for determining whether a defendant validly waived the right to counsel. However, when the circuit court failed to engage a defendant in the 4 lines of inquiry as prescribed in *Klessig* but determined that two of the four lines of inquiry were not satisfied, the circuit court

did not commit automatic error requiring a new trial because the defendant could not have validly waived his right to counsel. State v. Imani, 2010 WI 66, 326 Wis. 2d 179, 786 N.W.2d 40, 08–1521. But see Imani v. Pollard, 826 F.3d 939 (2016).

Nothing bars a defendant from requesting substitution of counsel, nothing bars the public defender from choosing to make substitute counsel available, and nothing bars a court from granting such a request, but a court is not required by the 6th amendment to the U.S. Constitution or by Article I, Section 7 of the Wisconsin Constitution to do so solely because a defendant requests it. State v. Jones, 2010 WI 72, 326 Wis. 2d 380, 797 N.W.2d 378, 08–2342.

A defendant's request to withdraw from self–representation and proceed with the assistance of counsel rests in the trial court's discretion. A request to reinstate the right to counsel is akin to a request for substitution of counsel. A trial court may err by denying a request to revoke pro se status when the denial is merely to punish the defendant or is based on a rigid insistence on expedition in the face of a justifiable request for delay. A trial court does not erroneously exercise its discretion by preventing a defendant from reasserting the right to counsel merely to hinder the progress of the case against him. State v. Rhodes, 2011 WI App 145, 337 Wis. 2d 594, 807 N.W.2d 1, 10–0435.

The right to select counsel of one's choice has been regarded as the root meaning of the constitutional guarantee. Deprivation of the right is complete when the defendant is erroneously prevented from being represented by the lawyer he or she wants, regardless of the quality of the representation received. To disqualify an attorney as a witness in a case, the state must show that the attorney is a necessary witness. It was an error to disqualify an attorney based solely on the fact that the attorney acted as a translator for his client. State v. Gonzalez–Villarreal, 2012 WI App 110, 344 Wis. 2d 472, 824 N.W.2d 161, 11–1259.

In order to establish a 6th amendment violation on the basis of a conflict of interest, a defendant who did not raise an objection at trial must demonstrate by clear and convincing evidence that his or her counsel had an actual conflict of interest based on the facts of the case. An actual conflict of interest exists when the defendant's attorney was actively representing a conflicting interest so that the attorney's performance was adversely affected. Counsel is considered per se ineffective once an actual conflict of interest adversely affecting counsel's performance has been shown. A defendant need not prove that some kind of specific adverse effect or harm resulted from the conflict. State v. Villarreal, 2013 WI App 33, 346 Wis. 2d 690, 828 N.W.2d 866, 11–0998.

A claim for ineffective assistance of postconviction counsel must be filed with the circuit court, either as a s. 974.06 motion or as a petition for a writ of habeas corpus. A defendant arguing ineffective assistance of appellate counsel, conversely, may not seek relief under s. 974.06 and must instead petition the court of appeals for a writ of habeas corpus. State v. Starks, 2013 WI 69, 349 Wis. 2d 274, 833 N.W.2d 146, 10–0425. But see State ex rel. Warren v. Meisner, 2020 WI 55, 392 Wis. 2d 1, 944 N.W.2d 588, 19–0567.

A defendant who argues that he or she received ineffective assistance of appellate counsel in a habeas petition because certain arguments were not raised must show why the claims he or she believes should have been raised on appeal were "clearly stronger" than the claims that were raised. State v. Starks, 2013 WI 69, 349 Wis. 2d 274, 833 N.W.2d 146, 10–0425.

Under *Padilla*, 559 U.S. 356, counsel's failure to advise a defendant concerning clear deportation consequences of a plea bargain is prejudicial if the defendant shows that "a decision to reject the plea bargain would have been rational under the circumstances." The defendant is not required to show that "there would be a different outcome" or that he or she had "real and viable challenges to the underlying veracity of the conviction." State v. Mendez, 2014 WI App 57, 354 Wis. 2d 88, 847 N.W.2d 895, 13–1862. But see the note to State v. Shata, 2015 WI 74, 364 Wis. 2d 63, 868 N.W.2d 93, 13–1437.

The court where an alleged ineffective assistance of counsel occurred is the proper forum in which to seek relief unless that forum is unable to provide the relief necessary to address the ineffectiveness claim. The remedy for an attorney's failure to file a notice of intent to pursue postconviction relief is an extension of the timeframe to file the notice. Because the circuit court is without authority to extend the deadline to file a notice of intent to pursue post conviction relief, the proper forum lies in the court of appeals. Kyles v. Pollard, 2014 WI 38, 354 Wis. 2d 626, 847 N.W.2d 805, 12–0378.

Failure to call a potential witness may constitute deficient performance. A failure to call a key witness, however, does not always necessarily constitute deficient performance. The failure to call a witness may have been a reasonable trial strategy. State v. Jenkins, 2014 WI 59, 355 Wis. 2d 180, 848 N.W.2d 786, 12–0046.

Montejo, 556 U.S. 778, effectively established that a waiver of *Miranda* rights is sufficient to waive the 6th amendment right to counsel and that such a waiver is not presumed invalid merely because the defendant is already represented by counsel. Article I, Section 7 of the Wisconsin constitution does not provide greater protections than the 6th amendment of the United States Constitution in the context of a waiver of the right to have counsel present during questioning. State v. Delebreau 2015 WI 55, 362 Wis. 2d 542, 864 N.W.2d 852, 13–1108.

Any language in *Mendez,* 2014 WI App 57, that suggests that *Padilla*, 559 U.S. 356, requires an attorney to advise an alien client that a conviction for a deportable offense will necessarily result in deportation is withdrawn. An attorney is required to "give correct advice" about the possible immigration consequences of a conviction. The attorney in this case satisfied that requirement by correctly advising the client that his guilty plea carried a "strong chance" of deportation. Executive action, including the United States Department of Homeland Security's exercise of prosecutorial discretion, can block the deportation of deportable aliens. State v. Shata, 2015 WI 74, 364 Wis. 2d 63, 868 N.W.2d 93, 13–1437.

Trial counsel did not perform deficiently by failing to inform the defendant that his no–contest plea to substantial battery was certain to result in his deportation and permanent exclusion from the United States. Because federal immigration law is not "succinct, clear, and explicit" in providing that the defendant's substantial battery constituted a crime involving moral turpitude, the defendant's attorney needed to do no more than advise him that pending criminal charges may carry a risk of adverse immigration consequences. State v. Fernando Ortiz–Mondragon, 2015 WI 73, 364 Wis. 2d 1, 866 N.W.2d 717, 13–2435.

The Supreme Court in *Edwards*, 554 U.S. 164, declined to adopt a federal constitutional competency standard and specifically recognized an individual trial court's authority to make competency determinations. Nothing in *Edwards* establishes severe mental illness as the only circumstance in which a trial judge may deny the right of self–representation. The Wisconsin standards established by *Klessig*, 211 Wis. 2d 194, are not contrary to *Edwards.* Whether a defendant is competent to proceed pro se is uniquely a question for the trial court to determine. State v. Jackson, 2015 WI App 45, 363 Wis. 2d 484, 867 N.W.2d 814, 13–2859.

Counsel's trial strategy decisions, even those appearing unwise in hindsight, will not constitute ineffective assistance of counsel so long as they are reasonably founded on the facts and law under the circumstances existing at the time the decision was made. It was not unreasonable for defendant's counsel to allow an investigator to testify that the victim was telling the truth when counsel's goal was to demonstrate that the investigator's investigation was limited due to the investgator's bias. State v. Smith, 2016 WI App 8, 366 Wis. 2d 613, 874 N.W.2d 610, 14–2653.

Under *Felton*, 110 Wis. 2d 485, trial counsel's decisions must be based upon facts and law upon which an ordinarily prudent lawyer would have then relied. This standard implies deliberateness, caution, and circumspection and counsel's decision must evince reasonableness under the circumstances. When counsel articulated no tactical reason implying deliberateness, caution, and circumspection for failing to call a witness and the record was devoid of any factual basis for a strategy that supported that failure, defense counsel's performance was deficient. State v. Honig, 2016 WI App 10, 366 Wis. 2d 681, 874 N.W.2d 589, 14–2968.

The 6th amendment's guarantee of effective assistance of counsel does not require defense counsel to inform a defendant about the possibility of civil commitment under ch. 980 when the defendant enters a plea to a sexually violent offense. State v. LeMere, 2016 WI 41, 368 Wis. 2d 624, 879 N.W.2d 580, 13–2433.

Counsel does not perform deficiently in failing to object and argue a point of law that is unclear. State v. Morales–Pedrosa, 2016 WI App 38, 369 Wis. 2d 75, 879 N.W.2d 772, 15–1072.

Failure to raise arguments that require the resolution of unsettled legal questions generally does not render a lawyer's services "outside the wide range of professionally competent assistance" sufficient to satisfy the 6th amendment. State v. Lemberger, 2017 WI 39, 374 Wis. 2d 617, 893 N.W.2d 232, 15–1452.

Physical separation between a defendant and his or her attorney during a plea hearing, absent more, will not be analyzed as a complete denial of the right to counsel under *Cronic*, 466 U.S. 648. Such a claim may instead be analyzed under the framework set forth in *Strickland,* 466 U.S. 668. State v. Anderson, 2017 WI App 17, 374 Wis. 2d 372, 896 N.W.2d 364, 15–2611.

The standard to use in forfeiture of trial counsel cases established under *Cummings*, 199 Wis. 2d 721, is upheld. There are two situations when a defendant loses the right to counsel: 1) a defendant may knowingly, intelligently, and voluntarily waive the right to counsel; and 2) a defendant may forfeit the right to counsel. The triggering event for forfeiture is when the court becomes convinced that the orderly and efficient progression of the case is being frustrated. State v. Suriano, 2017 WI 42, 374 Wis. 2d 683, 893 N.W.2d 543, 15–0959.

Scenarios triggering forfeiture of the right to trial counsel include: 1) a defendant's manipulative and disruptive behavior; 2) withdrawal of multiple attorneys based on a defendant's consistent refusal to cooperate with any of them and constant complaints about the attorneys' performance; 3) a defendant whose attitude is defiant and whose choices repeatedly result in delay, interfering with the process of justice; and 4) physical or verbal abuse directed at counsel or the court. State v. Suriano, 2017 WI 42, 374 Wis. 2d 683, 893 N.W.2d 543, 15–0959.

The contention that a defendant cannot forfeit the right to counsel unless the defendant's actions were done with an intent or purpose to delay is rejected. Contrary language in *Coleman*, 2002 WI App 100, and any other case requiring proof of intentional, purposeful delay is overruled. State v. Suriano, 2017 WI 42, 374 Wis. 2d 683, 893 N.W.2d 543, 15–0959.

Shata, 2015 WI 74, and *Ortiz–Mondragon,* 2015 WI 73, stand for the proposition that, where the law is not "succinct, clear, and explicit," counsel is not deficient by accurately warning a client of the "risk of adverse immigration consequences." Defendant's counsel had no constitutional duty to give specific, direct advice on how pleading guilty would affect the defendant's possibilities for readmission beyond the accurate, generalized warnings that were given. State v. Villegas, 2018 WI App 9, 380 Wis. 2d 246, 908 N.W.2d 198, 15–2162.

Circuit courts reviewing claims of ineffective assistance of counsel following multiple–count trials may conclude that deficient performance prejudiced only one of the multiple convictions. *Strickland*, 466 U.S. 668, clearly contemplates such a result and does not require reversal on all counts when the prejudice proven affected only a single count. State v. Sholar, 2018 WI 53, 381 Wis. 2d 560, 912 N.W.2d 89, 16–0897.

The *Strickland*, 466 U.S. 668, prejudice test is distinct from a sufficiency of the evidence test. A defendant need not prove the outcome would more likely than not be different in order to establish prejudice in ineffective assistance cases. The defendant must prove there is a reasonable probability the jury would have acquitted him or her absent the error. State v. Sholar, 2018 WI 53, 381 Wis. 2d 560, 912 N.W.2d 89, 16–0897.

Counsel must either reasonably investigate the law and facts or make a reasonable strategic decision that makes any further investigation unnecessary. The court reviews the reasonableness of trial counsel's decisions not with the benefit of hindsight, but in the context of the circumstances as they existed at the time counsel made the decisions. The court must consider the law and the facts as they existed when trial counsel's conduct occurred. State v. Pico, 2018 WI 66, 382 Wis. 2d 273, 914 N.W.2d 95, 15–1799.

To prove prejudice in a case alleging ineffective assistance of counsel, a defendant must establish that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. In the context of a plea withdrawal, a defendant must establish, through objective factual assertions, a reasonable probability that the defendant would not have pled and would have gone to trial but for counsel's ineffective performance. State v. Jeninga, 2019 WI App 14, 386 Wis. 2d 336, 925 N.W.2d 574, 18–0826.

A court's conclusion that counsel violated the rules of professional conduct because he failed to meet the demands of SCR 20:1.4 (a) (2) cannot mean, ipso facto, that he performed deficiently within the meaning of *Strickland*, 466 U.S. 668 (1984). State v. Cooper, 2019 WI 73, 387 Wis. 2d 439, 929 N.W.2d 192, 16–0375.

When an alleged deficiency in counsel concerns the plea process, *Hill*, 474 U.S. 52 (1985), says the prejudice component specifically requires that the defendant must show that there is a reasonable probability that, but for the counsel's errors,

the defendant would not have pleaded guilty and would have insisted on going to trial. A probability sufficient to undermine confidence exists when there is a "substantial," not just "conceivable," likelihood of a different result. When defendant's counsel stated that, if the court were to allow the defendant to withdraw his plea, he still might decide to enter a plea, there is not a substantial likelihood of a different result, and, therefore, there is no prejudice shown. State v. Cooper, 2019 WI 73, 387 Wis. 2d 439, 929 N.W.2d 192, 16–0375.

The *Knight*, 168 Wis. 2d 509 (1992)/*Rothering*, 205 Wis. 2d 675 (Ct. App. 1996), framework remains the correct methodology for determining the appropriate forum for a criminal defendant to file a claim relating to the alleged ineffectiveness of counsel after conviction. Both *Knight* and *Rothering* premise their decisions on the forum in which the alleged ineffectiveness took place. Applying this framework, the circuit court is the appropriate forum for a claim that postconviction counsel is ineffective for failing to assert an ineffective trial counsel claim. State ex rel. Warren v. Meisner, 2020 WI 55, 392 Wis. 2d 1, 944 N.W.2d 588, 19–0567.

To satisfy the first prong of an ineffective assistance of counsel claim, a defendant must establish, based on the totality of the circumstances, that counsel's performance fell below an objective standard of reasonableness. Courts afford great deference to trial counsel's conduct, presuming that it falls within the wide range of reasonable professional assistance. In this case, counsel did not provide ineffective assistance in failing to inform the defendant about legal precedent that does not provide the defendant with a defense. State v. Savage, 2020 WI 93, 395 Wis. 2d 1, 951 N.W.2d 838, 19–0090.

An intentional, surreptitious creation of an opportunity to confront the defendant without counsel present occurred when detectives equipped an informant with a recording device and expressly authorized the informant to record his conversations with the defendant. Those actions clearly showed that an agency relationship was created. Further, the detectives' actions violated the 6th amendment because they created a situation likely to induce the defendant to make incriminating statements without his counsel's assistance. Additionally, the defendant's attorney's decision not to seek suppression or otherwise object to the admission of the statements deprived the defendant of his constitutional right to the effective assistance of counsel. State v. Arrington, 2021 WI App 32, 398 Wis. 2d 198, 960 N.W.2d 459, 19–2065.

A preliminary hearing to determine probable cause for detention pending further proceedings is not a "critical stage" in a prosecution requiring appointed counsel. Gerstein v. Pugh, 420 U.S. 103, 95 S. Ct. 854, 43 L. Ed. 2d 54 (1975).

The state may not force a lawyer upon a defendant who intelligently insists upon conducting his or her own defense. Faretta v. California, 422 U.S. 806, 95 S. Ct. 2525, 43 L. Ed. 2d 562 (1975).

The right to counsel includes the right to make a closing summary of evidence to the trier of fact. Herring v. New York, 422 U.S. 853, 95 S. Ct. 2550, 45 L. Ed. 2d 593 (1975).

The right to counsel includes the right to consult with an attorney during a trial recess. Geders v. United States, 425 U.S. 80, 96 S. Ct. 1330, 47 L. Ed. 2d 592 (1976).

Prisoners facing disciplinary charges that also constitute crimes have no right to counsel at the disciplinary hearing. Baxter v. Palmigiano, 425 U.S. 308, 96 S. Ct. 1551, 47 L. Ed. 2d 810 (1976).

When the defendant's right to counsel was violated by a corporeal identification conducted in court without counsel, the prosecution could not introduce identification evidence even though the identification had an independent source. Moore v. Illinois, 434 U.S. 220, 98 S. Ct. 458, 54 L. Ed. 2d 424 (1977).

The right to counsel was not violated when a permissible jury instruction, intended for the defendant's benefit, was given over defense counsel's objections. Lakeside v. Oregon, 435 U.S. 333, 98 S. Ct. 1091, 55 L. Ed. 2d 319 (1978).

Whenever the trial court improperly requires joint representation over a timely objection, reversal is automatic. Holloway v. Arkansas, 435 U.S. 475, 98 S. Ct. 1173, 55 L. Ed. 2d 426 (1978).

An indigent defendant is not entitled to appointed counsel when charged with an offense for which imprisonment is authorized but not imposed. Scott v. Illinois, 440 U.S. 367, 99 S. Ct. 1158, 59 L. Ed. 2d 383 (1979).

In order to demonstrate a violation of the right to counsel, the defendant must establish that an actual conflict of interest adversely affected the counsel's performance. Cuyler v. Sullivan, 446 U.S. 335, 100 S. Ct. 1708, 64 L. Ed. 2d 333 (1980).

The government violated the defendant's right to counsel by placing a paid informant in the same cell who deliberately elicited incriminating statements. United States v. Henry, 447 U.S. 264, 100 S. Ct. 2183, 65 L. Ed. 2d 115 (1980).

When the right to counsel was infringed but no prejudice to the defendant was shown, the court erred in dismissing indictment. United States v. Morrison, 449 U.S. 361, 101 S. Ct. 665, 66 L. Ed. 2d 564 (1981).

Since a criminal defendant has no constitutional right to counsel to pursue a discretionary state appeal, the defendant could not be deprived of effective counsel by counsel's failure to timely file an application for certiorari. Wainwright v. Torna, 455 U.S. 586, 102 S. Ct. 1300, 71 L. Ed. 2d 475 (1982).

The right to counsel does not guarantee a "meaningful attorney–client relationship." Morris v. Slappy, 461 U.S. 1, 103 S. Ct. 1610, 75 L. Ed. 2d 610 (1983).

Counsel appealing a conviction need not present every nonfrivolous issue requested by the defendant. Jones v. Barnes, 463 U.S. 745, 103 S. Ct. 3308, 77 L. Ed. 2d 987 (1983).

Without surrounding circumstances making it unlikely that the defendant received effective assistance of counsel, a claim of ineffective assistance must be supported by demonstrating specific errors made by trial counsel. U.S. v. Cronic, 466 U.S. 648, 104 S. Ct. 2039, 80 L. Ed. 2d 657 (1984).

To support a claim of ineffective assistance of counsel, the defendant must show a probability, sufficient to undermine confidence in the outcome, that but for counsel's unprofessional errors, the result of the proceeding would have been different. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).

Indigent inmates held in administrative segregation during the investigation of a prison murder were not entitled to counsel prior to the initiation of adversary judicial proceedings against them. U.S. v. Gouveia, 467 U.S. 180, 104 S. Ct. 2292, 81 L. Ed. 2d 146 (1984).

An accused's postrequest responses to further interrogation may not be used to cast retrospective doubt on the clarity of an initial request for counsel. Smith v. Illinois, 469 U.S. 91, 105 S. Ct. 490, 83 L. Ed. 2d 488 (1984).

Due process guarantees a criminal defendant the effective assistance of counsel on a first appeal as of right. Evitts v. Lucey, 469 U.S. 387, 105 S. Ct. 830, 83 L. Ed. 2d 821 (1985).

The right to assistance of counsel wasn't violated when an attorney refused to cooperate with the defendant in presenting perjured testimony at trial. Nix v. Whiteside, 475 U.S. 157 (1986).

Because an individual has no underlying constitutional right to appointed counsel in state collateral postconviction proceedings, the individual may not insist upon implementation of *Anders*, 386 U.S. 738, procedures. Pennsylvania v. Finley, 481 U.S. 551, 107 S. Ct. 1990, 95 L. Ed. 2d 539 (1987).

Though the trial court must recognize the presumption that a defendant is entitled to his or her counsel of choice, the presumption is overcome by actual conflict and a serious potential for actual conflict. Wheat v. United States, 486 U.S. 153, 108 S. Ct. 1692, 100 L. Ed. 2d 140 (1988).

The right to counsel was not violated by the court's instruction to the defendant that he not confer with his attorney during a 15 minute recess between the defendant's direct and cross–examination. Perry v. Leeke, 488 U.S. 272, 109 S. Ct. 594, 102 L. Ed. 2d 624 (1989).

The 6th amendment right to counsel is offense specific. An accused's invocation of this right during a judicial proceeding did not constitute an invocation of the right to counsel under *Miranda* arising from the 5th amendment guarantees against self incrimination in regard to police questioning concerning a separate offense. McNeil v. Wisconsin, 501 U.S. 171, 111 S. Ct. 2204, 115 L. Ed. 2d 158 (1991).

An uncounseled misdemeanor conviction, valid because no prison term was imposed, is also valid when used to enhance punishment upon a subsequent conviction. Nichols v. U.S., 511 U.S. 738, 114 S. Ct. 1921, 128 L. Ed. 2d 745 (1994).

To void a conviction due to a 6th amendment violation when a trial court has failed to inquire into a potential conflict of interest that the court knew or should have known of, the defendant must establish that the conflict adversely affected counsel's performance. Failure of the trial court to inquire into the conflict did not reduce the defendant's burden of proof. Mickens v. Taylor, 535 U.S. 162, 152 L. Ed. 2d 291 (2002).

The 6th amendment right to counsel of choice commands, not that a trial be fair, but that a particular guarantee of fairness be provided, to wit, that the accused be defended by the counsel he or she believes to be best. When that right is violated because the deprivation of counsel is erroneous, no additional showing of prejudice is required to make the violation complete, and the violation is not subject to harmless–error analysis. United States v. Gonzalez–Lopez, 548 U.S. 140, 122 S. Ct. 1237, 165 L. Ed. 2d 409, 126 S. Ct. 2557 (2006).

The U.S. Constitution does not forbid a state to insist that the defendant proceed to trial with counsel when the state court found the defendant mentally competent to stand trial if represented by counsel but not mentally competent to conduct that trial himself. Indiana v. Edwards, 554 U.S. 164, 128 S. Ct. 2379, 171 L. Ed. 2d 345 (2008).

The right to counsel applies at the first appearance before a judicial officer at which a defendant is told of the formal accusation against him or her and restrictions are imposed on his or her liberty. Attachment of the right does not require that a public prosecutor as distinct from a police officer be aware of that initial proceeding or involved in its conduct. Rothgery v. Gillespie County, 554 U.S. 191, 128 S. Ct. 2578, 171 L. Ed. 2d 366 (2008).

Michigan v. Jackson, 475 U.S. 625, which provided that if police initiate interrogation after the defendant's assertion of the right to counsel, any waiver of the defendant's right to counsel for that police–initiated interrogation is invalid, is overruled. Courts are not required to presume that such a waiver is invalid under those circumstances. Montejo v. Louisiana, 556 U.S. 778, 129 S. Ct. 2079, 173 L. Ed. 2d 955 (2009).

A defendant's incriminating statement to a jailhouse informant, concededly elicited in violation of the 6th amendment right to counsel, was admissible at trial to impeach the defendant's conflicting statement. Kansas v. Ventris 556 U.S. 586, 129 S. Ct. 1841, 172 L. Ed. 2d 454 (2009).

Counsel has an obligation to advise a defendant that a guilty plea will result in the defendant's deportation from this country. Advice regarding deportation is not categorically removed from the ambit of the 6th amendment right to counsel. When the deportation consequence is truly clear, the duty to give correct advice is equally clear. Padilla v. Kentucky, 559 U.S. 356, 130 S. Ct. 1473, 176 L. Ed. 2d 284 (2010).

As a general rule, defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused. When defense counsel allowed an offer to expire without advising the defendant or allowing him to consider it, defense counsel did not render the effective assistance the constitution requires. Missouri v. Frye, 566 U.S. 134, 132 S. Ct. 1399, 182 L. Ed. 2d 379 (2012).

When ineffective advice led to rejection ofa plea offer and caused the defendant to stand trial, rather than to waive the right to trial, a defendant must show that but for the ineffective advice of counsel there is a reasonable probability that the plea offer would have been presented to the court, that the court would have accepted its terms, and that the conviction or sentence, or both, under the offer's terms would have been less severe than under the judgment and sentence that were imposed. Lafler v. Cooper, 566 U.S. 156, 132 S. Ct. 1376, 182 L. Ed. 2d 398 (2012).

When a defendant claims that his or her counsel's deficient performance deprived him or her of a trial by causing him or her to accept a plea, the defendant can show prejudice by demonstrating a reasonable probability that, but for counsel's errors, he or she would not have pleaded guilty and would have insisted on going to trial. The court rejected a per se rule that a defendant with no viable defense cannot show prejudice from the denial of the right to trial. The decision whether to plead guilty involves assessing the respective consequences of a conviction after trial and by plea. But for his attorney's incompetence, the defendant would have known that accepting the plea agreement in this case would certainly have led to deportation while going to trial would "*almost* certainly" have done so. If deportation were the determinative issue for an individual in plea discussions, and if the consequences of taking a chance at trial were not markedly harsher than

pleading, that "almost" could make all the difference. Jae Lee v. United States, 582 U.S. ___, 137 S. Ct. 1958, 198 L. Ed. 2d 476 (2017).

A violation of the right to a public trial is a structural error. In the case of a structural error when there is an objection at trial and the issue is raised on direct appeal, the defendant generally is entitled to automatic reversal regardless of the error's actual effect on the outcome. When a defendant raises a public−trial violation via an ineffective−assistance−of−counsel claim, *Strickland,* 466 U.S. 668, prejudice is not shown automatically. Instead, the burden is on the defendant to show either a reasonable probability of a different outcome in his or her case or to show that the particular public−trial violation was so serious as to render the trial fundamentally unfair. Weaver v. Massachusetts, 582 U.S. ___, 137 S. Ct. 1899, 198 L. Ed. 2d 42 (2017).

Counsel may not admit a client's guilt of a charged crime over the client's intransigent objection to that admission. To do so violates a defendant's right to autonomy and constitutes a structural error that requires automatic reversal. McCoy v. Louisiana, 584 U.S. ___, 138 S. Ct. 1500, 200 L. Ed. 2d 821 (2018).

Under *Flores−Ortega*, 528 U.S. 470 (2000), when an attorney's deficient performance costs a defendant an appeal that the defendant would have otherwise pursued, prejudice to the defendant should be presumed with no further showing from the defendant of the merits of the defendant's underlying claims. That presumption of prejudice applies regardless of whether the defendant has signed an appeal waiver. Garza v. Idaho, 586 U.S. ____, 139 S. Ct. 738, 203 L. Ed. 2d 77 (2019).

When postconviction counsel failed to assert a claim of ineffective assistance of trial counsel in a postconviction motion under s. 974.02, the defendant's opportunity to argue that claim on direct appeal was foreclosed. The appropriate forum for asserting ineffective assistance of postconviction counsel for failure to raise ineffective assistance of trial counsel was in a collateral motion under s. 974.06. Page v. Frank, 343 F.3d 901 (2003).

In *Imani*, 826 F.3d 939 (2016), and *Tatum*, 847 F.3d 459 (2017), the 7th Circuit Court of Appeals held that the Wisconsin courts violated the clearly established rule of *Faretta*, 422 U.S. 806 (1975), that a court may not force a lawyer upon a defendant based on a perceived lack of education, experience, or legal knowhow. While a defendant seeking to waive his 6th amendment right to counsel must do so knowingly and intelligently and so must be mentally competent to make that decision, the defendant's technical legal knowledge is irrelevant to a court's assessment of the defendant's competency. The focus of the inquiry is on a defendant's mental competency. Washington v. Boughton, 884 F.3d 692 (2018).

Right to Counsel: Repayment of Cost of Court−Appointed Counsel as a Condition of Probation. Strattner. 56 MLR 551 (1973).

How Do You Get a Lawyer Around Here? The Ambiguous Invocation of a Defendant's Right to Counsel Under *Miranda v. Arizona*. Finger. 79 MLR 1041 (1996).

The Interrogations of Brendan Dassey. Gallini. 102 MLR 777 (2019).

How Courts in Criminal Cases Respond to Childhood Trauma. Denno. 103 MLR 301 (2019).

McNeil v. Wisconsin: Blurring a Bright Line on Custodial Interrogation. Johnson. 1992 WLR 1643.

JURY TRIAL AND JUROR QUALIFICATIONS

NOTE: See also the notes to s. 906.06 for decisions relating to overturning verdicts due to juror misconduct.

Contradictory testimony of different state witnesses does not necessarily cancel the testimony and render it unfit as a basis for a conviction. The determination of credibility and the weight to be accorded the testimony is a jury function, and the jury may accept or reject the inconsistent testimony, even under the beyond a reasonable doubt burden of proof. Embry v. State, 46 Wis. 2d 151, 174 N.W.2d 521.

A resident of Menominee county may properly be tried by a jury drawn from the Shawano−Menominee district. Article IV, sec. 23, is not violated by using district−based jury lists. Pamanet v. State, 49 Wis. 2d 501, 182 N.W.2d 459.

When 2 alternate jurors in a murder trial made remarks critical of court procedures and the defense attorney, but were removed prior to the time the case was submitted to the jury, a showing of probable prejudice was required for a mistrial to be ordered. Shelton v. State, 50 Wis. 2d 43, 183 N.W.2d 87.

Asking an improper question that is not answered is not grounds for reversal, especially when the trial court instructs the jury to disregard the question and to draw no inferences therefrom. The instruction is presumed to efface any possible prejudice resulting from asking the question. Taylor v. State, 52 Wis. 2d 453, 190 N.W.2d 208.

The trial court did not err in failing to declare a mistrial because of a statement made by the prosecutor in closing argument, challenged as improper because the prosecutor expressed his opinion as to defendant's guilt, where it neither could be said that the statement was based on sources of information outside the record, nor expressed the prosecutor's conviction as to what the evidence established. State v. McGee, 52 Wis. 2d 736, 190 N.W.2d 893.

When the prosecutor stated in opening remarks that the defendant refused to be fingerprinted but failed to introduce testimony to this effect, the error was cured by proper instructions. State v. Tew, 54 Wis. 2d 361, 195 N.W.2d 615.

The exclusion of young persons, students, and teachers from a jury list is discussed. If a challenge establishes discrimination, the jury list is invalid and the defendant need not show prejudice. Brown v. State, 58 Wis. 2d 158, 205 N.W.2d 566.

Rules for proving discrimination in compiling a jury list and the burden of proof are discussed. Wilson v. State, 59 Wis. 2d 269, 208 N.W.2d 134.

Jurors are not necessarily prejudiced by reason of having sat as jurors at the same term on similar cases when the state's witnesses were the same, but it is better not to use the same jurors. State v. Boutch, 60 Wis. 2d 397, 210 N.W.2d 751.

The absence of persons of the defendant's race on the jury panel is not ipso facto evidence of prejudice. Jones v. State, 66 Wis. 2d 105, 223 N.W.2d 889.

A defendant, having been found competent to stand trial, must necessarily have possessed the intellectual capacity to waive the right to a jury trial. Norwood v. State, 74 Wis. 2d 343, 246 N.W.2d 801.

A jury must unanimously find participation in a crime, but the jury need not unanimously agree whether defendant: 1) directly committed crime; 2) aided and abetted its commission; or 3) conspired with another to commit it. Holland v. State, 91 Wis. 2d 134, 280 N.W.2d 288 (1979).

Unanimity of criminal verdicts is discussed. Jackson v. State, 92 Wis. 2d 1, 284 N.W.2d 685 (Ct. App. 1979).

Excusing Native Americans from a jury without individual examination denied the Native American defendant a trial by an impartial jury. State v. Chosa, 108 Wis. 2d 392, 321 N.W.2d 280 (1982).

The verdict was unanimous in a battery case even though the jury was not required to specify whether the battery occurred when the defendant threw an object at the victim or during an ensuing fistfight. State v. Giwosky, 109 Wis. 2d 446, 326 N.W.2d 232 (1982).

The verdict was unanimous in a rape case even though the jury was not required to specify whether the sexual assault was vaginal or oral. State v. Lomagro, 113 Wis. 2d 582, 335 N.W.2d 583 (1983).

When the accused refused to participate in the trial, the court erred by failing to inform the accused of the right to be present at trial, to waive that right, and to reclaim it at any time. State v. Haynes, 118 Wis. 2d 21, 345 N.W.2d 892 (Ct. App. 1984).

A waiver of the right to a jury trial is effective if the defendant understands the basic purpose and function of a jury trial. Trial courts are prospectively ordered to advise defendants of the unanimity requirement before accepting a waiver. State v. Resio, 148 Wis. 2d 687, 436 N.W.2d 603 (1989).

A defendant has the right to a jury determination on each element of a charged offense. The right can be waived only by the defendant personally on the record. State v. Villarreal, 153 Wis. 2d 323, 450 N.W.2d 519 (Ct. App. 1989).

Once the defendant makes a prima facie showing that the prosecutor used peremptory challenges in a purposefully discriminatory manner, the burden shifts to the prosecution to provide a neutral explanation for challenging the jurors. *Batson v. Kentucky*, 476 U.S. 79 (1986) is discussed. State v. Walker, 154 Wis. 2d 158, 453 N.W.2d 127 (1990).

Law enforcement officers should not be automatically excused for cause from a jury pool on the grounds of implied bias. State v. Louis, 156 Wis. 2d 470, 457 N.W.2d 484 (1990). But for a review of this case to apply new terminology regarding juror bias, see *State v. Faucher,* 227 Wis. 2d 700, 596 N.W.2d 770 (1999), 97−2702.

Waiver of a jury trial must be made by affirmative action of the defendant. Neither counsel nor the court may waive it on the defendant's behalf. If the defendant has not personally waived the right, the proper remedy is a new trial, not a postconviction hearing. State v. Livingston, 159 Wis. 2d 561, 464 N.W.2d 839 (1991).

A juvenile's right to a jury trial is purely statutory. In Interest of R.H.L., 159 Wis. 2d 653, 464 N.W.2d 848 (Ct. App. 1990).

Under rare circumstances, a jury instruction creating a conclusive presumption regarding an element of a crime may be harmless error. State v. Kuntz, 160 Wis. 2d 722, 467 N.W.2d 531 (1991).

Kinship to a person who has been criminally charged or convicted may constitute a legitimate racially−neutral reason for striking a member of the jury panel. State v. Davidson, 166 Wis. 2d 35, 479 N.W.2d 181 (Ct. App. 1991).

Unanimity requirements where multiple occurrences of multiple acts are charged are discussed. State v. Marcum, 166 Wis. 2d 908, 480 N.W.2d 545 (Ct. App. 1992).

Prospective jurors related to a state witness by blood or marriage to the third degree must be struck from the jury panel. State v. Gesch, 167 Wis. 2d 660, 482 N.W.2d 99 (1992). But for a review of this case to apply new terminology regarding juror bias see *State v. Faucher*, 227 Wis. 2d 700, 596 N.W.2d 770 (1999), 97−2702.

A defendant cannot show jury prejudice unless the exhaustion of peremptory challenges left a jury that included an objectionable or incompetent member. State v. Traylor, 170 Wis. 2d 393, 489 N.W.2d 626 (Ct. App. 1992).

When the jury is sworn during the trial but prior to deliberations, a mistrial is not warranted in the absence of prejudice. State v. Block, 170 Wis. 2d 676, 489 N.W.2d 715 (Ct. App. 1992).

A defendant has the right to have jurors individually polled on their verdict. Reassembling and polling the jury 51 days after the verdict was rendered was harmless error. State v. Coulthard, 171 Wis. 2d 573, 492 N.W.2d 329 (Ct. App. 1992).

When the jury is presented with evidence of more than one crime, the verdict must be unanimous as to each crime. To sustain a conviction when alternative methods of proof resting upon different evidentiary facts are presented to the jury, the evidence must be sufficient to convict beyond a reasonable doubt upon both of the alternative modes of proof. State v. Chambers, 173 Wis. 2d 237, 496 N.W.2d 191 (Ct. App. 1992).

The "clearly erroneous" standard applies to all steps under the *Batson,* 476 U.S. 79, analysis made by a trial court in determining whether a peremptory challenge was discriminatory. State v. Lopez, 173 Wis. 2d 724, 496 N.W.2d 617 (Ct. App. 1992).

The verdict of a 13 member jury panel agreed to by the defense and prosecution was not invalid. State v. Ledger, 175 Wis. 2d 116, 499 N.W.2d 199 (Ct. App. 1993).

A trial court's comments to a deliberating jury without the presence of the defendant and his or her counsel violated the constitutional right to be present at trial. The trial court should not inquire of a deliberating jury the numerical division of the jury. State v. McMahon, 186 Wis. 2d 68, 519 N.W.2d 621 (Ct. App. 1994).

A criminal defendant may not be tried by a juror who cannot comprehend testimony. Once it is determined that a juror has missed testimony that bears on guilt or innocence prejudice must be assumed. State v. Turner, 186 Wis. 2d 277, 521 N.W.2d 148 (Ct. App. 1994).

When polling the jury showed a unanimous verdict, no constitutional error occurred due to a failure to instruct the jury that a unanimous verdict was required. State v. Kircherz, 189 Wis. 2d 392, 525 N.W.2d 788 (Ct. App. 1994).

Whether a defendant is required to be shackled at trial should be determined based on the particular risk of violence or escape. Where the shackles cannot be viewed by the jury no prejudicial harm may occur. State v. Grinder, 190 Wis. 2d 541, 527 N.W.2d 326 (1995).

A defendant's presence is required during all proceedings when the jury is being selected, including in camera *voir dire*. However, failure to allow the defendant's

presence may be harmless error. State v. David J.K., 190 Wis. 2d 726, 528 N.W.2d 434 (Ct. App. 1994).

When it was conceded that a juror was sleeping, summarily foreclosing inquiry into the juror's inattentiveness was an erroneous exercise of discretion. The court must examine the length of the inattentiveness, the importance of the testimony missed and whether the inattention prejudiced the defendant to the point that there was not a fair trial. State v. Hampton, 201 Wis. 2d 662, 549 N.W.2d 756 (Ct. App. 1996), 95–0152.

The prosecutor's motive of protecting the defendant cannot justify a peremptory challenge based solely on a juror's race. Excluding a prospective juror because of race can never be "neutral" regardless of the prosecutor's good faith. State v. Guerra–Reyna, 201 Wis. 2d 751, 549 N.W.2d 779 (Ct. App. 1996), 93–3464.

When there are grounds to believe the jury in a criminal case needs protection, a trial court may take reasonable steps to protect the identity of potential jurors. Preventing references on the record to juror's names, employment, and addresses while providing the defense with copies of the juror questionnaires during *voir dire* was within the court's discretion. State v. Britt, 203 Wis. 2d 25, 553 N.W.2d 528 (Ct. App. 1995), 95–0891.

Whether the interplay of legally correct instructions impermissibly misled a jury is to be determined based on whether there is a reasonable likelihood that a juror was misled. State v. Lohmeier, 205 Wis. 2d 183, 556 N.W.2d 90 (1996), 94–2187.

A party defending against an allegation that peremptory strikes were used for discriminatory reasons must offer something more than a statement that nonprohibited factors were considered. There must be a showing of a nexus between legitimate factors and the juror who was struck. State v. Jagodinsky, 209 Wis. 2d 577, 563 N.W.2d 188 (Ct. App. 1997), 95–1946.

A potential juror who stated he doubted the innocence of someone who would not testify and then said he could probably set that feeling aside should have been removed for cause under s. 805.08 (1). Failure to remove the juror forced the defendant to strike the potential juror, which violated the defendant's right to due process. State v. Ferron, 214 Wis. 2d 268, 570 N.W.2d 883 (Ct. App. 1997), 96–3425. But for a review of this case to apply new terminology regarding juror bias see *State v. Faucher*, 227 Wis. 2d 700, 596 N.W.2d 770 (1999), 97–2702.

A party is prohibited from striking a potential juror based on a prohibited characteristic, even if other non–prohibited characteristics were also considered. State v. King, 215 Wis. 2d 295, 572 N.W.2d 530 (Ct. App. 1997), 97–1509.

An objection that peremptory challenges were racially motivated in violation of *Basten* must be made prior to the time the jury is sworn. State v. Jones, 218 Wis. 2d 599, 581 N.W.2d 561 (Ct. App. 1998), 97–1002.

The use of and procedure for juror questioning of witnesses is discussed. State v. Darcy N.K. 218 Wis. 2d 640, 581 N.W.2d 567 (Ct. App. 1998), 97–0458.

Art. I, s. 7 guarantees the right to a jury of 12 in all criminal cases whether felony or misdemeanor. State v. Hansford, 219 Wis. 2d 226, 580 N.W.2d 171 (1998), 97–0885.

A defendant waives an objection to juror bias if no motion is made to the trial court for removal for cause. The ultimate decision whether to make the motion is for counsel and not the defendant to make. State v. Brunette, 220 Wis. 2d 431, 583 N.W.2d 174 (Ct. App. 1998), 97–2111.

Failure to bring the incompleteness of an individual polling of the jury to the attention of the trial court constitutes waiver of any claim based on the deficiency. State v. Brunette, 220 Wis. 2d 431, 583 N.W.2d 174 (Ct. App. 1998), 97–2111.

Failure to respond truthfully to *voir dire* questions is sufficient grounds to discharge a juror during trial. Specific proof of bias is not required. State v. Williams, 220 Wis. 2d 458, 583 N.W.2d 845 (Ct. App. 1998), 97–1276.

A juror who unequivocally announced his belief that a witness would not lie, but also said he could remain impartial showed manifest bias that could not be obviated. Following denial of a motion for mistrial, the defendant's agreement to proceed with 11 jurors did not waive the right to further address the mistrial issue. State v. Faucher, 220 Wis. 2d 689, 584 N.W.2d 157 (Ct. App. 1998), 97–2702.
Affirmed, 227 Wis. 2d 700, 596 N.W.2d 770 (1999), 97–2702.

Juror bias may be actual, implied, or inferred. Inferred bias is a factual finding requiring evaluation of the facts and circumstances including those surrounding the juror's incomplete or incorrect responses to questions during *voir dire*. Truthful responses do not prevent finding inferred bias. State v. Delgado, 223 Wis. 2d 270, 588 N.W.2d 1 (1999), 96–2194. But for a review of this case to apply new terminology regarding juror bias see *State v. Faucher*, 227 Wis. 2d 700, 596 N.W.2d 770 (1999), 97–2702.

The terms "statutory bias," subjective bias," and "objective bias" are adopted as the proper terms for referring to types of jury bias, replacing the terms "implied bias," "subjective bias," and "objective bias." State v. Faucher, 227 Wis. 2d 700, 596 N.W.2d 770 (1999), 97–2702.

Statutory bias refers to those situations described in s. 805.08 (1); a person falling within one of the descriptions there may not serve regardless of the ability to be impartial. Although s. 805.08 (1) refers to jurors who have expressed or formed an opinion, that situation more properly qualifies as subjective bias. State v. Faucher, 227 Wis. 2d 700, 596 N.W.2d 770 (1999), 97–2702.

Subjective bias is revealed through the words and demeanor of the prospective juror as revealed on *voir dire*; it refers to the juror's state of mind. State v. Faucher, 227 Wis. 2d 700, 596 N.W.2d 770 (1999), 97–2702.

Objective bias focuses on whether a reasonable person in the individual prospective juror's position could be impartial; the circuit court is particularly well positioned to determine objective bias. State v. Faucher, 227 Wis. 2d 700, 596 N.W.2d 770 (1999), 97–2702.

State v. Wyss, 124 Wis. 2d 470, *Louis, Gescch*, *State v. Messelt,* 185 Wis. 2d 254, *Ferron, Delgado,* and *State v. Broomfield,* 223 Wis. 2d 465, are cases through which jury bias jurisprudence has evolved; where each would fall given the new bias terminology adopted in this case is considered. State v. Faucher, 227 Wis. 2d 700, 596 N.W.2d 770 (1999), 97–2702.

Veteran jurors cannot be removed solely on the basis of having served as jurors in a similar case, but must be shown to have exhibited bias in the case they are called to hear. It was error for the trial court not to strike 5 potential jurors who had served on a prior case in which the same defense was used when the jurors expressed that they would not give serious consideration to the defense. State v. Kiernan, 227 Wis. 2d 736, 596 N.W.2d 760 (1999), 97–2449.

A defendant is not entitled to a new trial when both the prosecution and defense are given an equal number of peremptory strikes, even if the number is less than provided for by statute. State v. Erickson, 227 Wis. 2d 758, 596 N.W.2d 749 (1999), 98–0273.

There is no automatic disqualification of potential jurors who have been convicted of crimes. The erroneous dismissal of a prospective juror for cause does not constitute an additional peremptory challenge for the moving party; it is an error subject to harmless error analysis. State v. Mendoza, 227 Wis. 2d 838, 596 N.W.2d 736 (Ct. App. 1998), 97–0952.

Hansford applies retroactively only to those cases in which the issue of a six–person jury was raised before trial. State v. Zivcic, 229 Wis. 2d 119, 598 N.W.2d 565 (Ct. App. 1999), 98–0909.

Stipulating to an element of a crime did not deny the constitutional right to a jury trial when the jury was instructed on the element and the court did not resolve the issue on its own. State v. Benoit, 229 Wis. 2d 630, 600 N.W.2d 193 (Ct. App. 1999), 98–1531. See also Walworth County DH&HS v. Andrea L.O., 2008 WI 46, 309 Wis. 2d 161, 749 N.W.2d 168, 07–0008.

Deprivation of the right to be present and to have counsel present at jury selection is subject to a harmless error analysis; there is a thin line between when reversal is warranted and when it is not. That a juror's subjective bias is generally ascertained by that person's responses at voir dire and that the interplay between potential jurors and a defendant is both immediate and continuous are factors that weigh against finding harmless error. State v. Harris, 229 Wis. 2d 832, 601 N.W.2d 682 (Ct. App. 1999), 98–1091.

The defendant was not automatically entitled to a new trial when, in waiving the right to a jury trial, the trial court did not advise that a jury verdict must be unanimous. The appropriate remedy is through a postconviction motion that, as a threshold requirement, must contain an allegation that the defendant did not know or understand the rights at issue. State v. Grant, 230 Wis. 2d 90, 601 N.W.2d 8 (Ct. App. 1999), 98–2206.

A prospective juror who is the brother–in–law of a state witness is a relative by marriage to the third degree under *Gesch* who be struck for cause as the relationship constitutes statutory bias. Failure to do so is grounds for reversal and a new trial. State v. Czarnecki, 231 Wis. 2d 1, 604 N.W.2d 891 (Ct. App. 1999), 98–2406.

The right to a jury trial guaranteed by art. I, ss. 5 and 7, includes the right to a unanimous verdict with respect to the ultimate issue of guilt or innocence. State v. Derango, 2000 WI 89, 236 Wis. 2d 721, 613 N.W.2d 833, 98–0642.

Peremptory challenges may not be exercised, and therefore not changed, after the parties have accepted the jury, even if the jury has not yet been sworn. State v. Nantelle, 2000 WI App 110, 235 Wis. 2d 91, 612 N.W.2d 356, 99–2159.

A party who during voir dire neither requests further questioning nor objects to the seating of a juror may not later allege error in the trial court's failure to act *sua sponte* in regard to a juror who may not be impartial. State v. Williams, 2000 WI App. 123, 237 Wis. 2d 591, 614 N.W.2d 11, 99–0812.

Inconvenience and inability to work during regular working hours cannot result in bias sufficient to strike a juror for cause. State v. Guzman, 2001 WI App 54, 241 Wis. 2d 310, 624 N.W.2d 717, 99–2249.

A challenge under *Batson* that a peremptory strike was solely because of race does not require a post–verdict evidentiary hearing and must be decided based on what the prosecutor believed at the time the strike was made. A defendant must show that the prosecutor intentionally misrepresented the facts that were relied on or that the prosecutor had been told those facts but knew they were erroneous. State v. Gregory, 2001 WI App 107, 244 Wis. 2d 65, 630 N.W.2d 711, 00–0961.

The trial court's failure to remove a potential juror who was objectively biased, forcing the defendant to strike the potential juror with one of the peremptory strikes guaranteed under s. 972.03, did not require a new trial when the defendant received a fair trial. The harmless error test is applicable. Overturns *State v. Ramos*, 211 Wis. 2d 12, 564 N.W.2d 328 (1997), 94–3036. State v. Lindell, 2001 WI 108, 245 Wis. 2d 689, 629 N.W.2d 223, 99–2704.

When a jury returned a verdict finding the defendant guilty of both a greater and a lesser included offense, although the jury had been instructed that it could only find one or the other, it was not error for the court to enter judgment on the greater offense after polling the jury to confirm the result. State v. Hughes, 2001 WI App 239, 248 Wis. 2d 133, 635 N.W.2d 661, 00–3176.

Excusing and deferring prospective jurors under s. 756.03 is one component of a circuit judge's obligation to administer the jury system. The judge may delegate the authority to the clerk of circuit court under s. 756.03 (3). The task need not be performed by a judge in court or with the prospective juror present in person, and may take place in advance of a particular trial. A defendant's presence cannot be required when the judge or clerk is acting in an administrative capacity under s. 756.03. State v. Gribble, 2001 WI App 227, 248 Wis. 2d 409, 636 N.W.2d 488, 00–1821.

Although it was error for the court to interview potential jurors outside of the presence of the prosecution, defendant, and defense counsel, the error was harmless when there was no showing that it contributed to the defendant's conviction. State v. Tulley, 2001 WI App 236, 248 Wis. 2d 505, 635 N.W.2d 807, 00–3084.

Absent waiver, a trial court's communication with a deliberating jury in the absence of the defendant and defense counsel violates the right to be present at trial and to have counsel at every stage that the defendant may need aid with legal problems. A violation is subject to harmless error analysis. State v. Koller, 2001 WI App 253, 248 Wis. 2d 259, 635 N.W.2d 838, 99–3084.

To prove a valid jury trial waiver, the circuit court must conduct a colloquy designed to ensure that the defendant: 1) made a deliberate choice, absent threats or promises, to proceed without a jury trial; 2) was aware of the nature of a jury trial, such that it consists of a panel of 12 people who must agree on all elements of the crime charged; 3) was aware of the nature of a court trial, such that the judge will decide his or her guilt; and 4) had enough time to discuss the decision with counsel. State v. Anderson, 2002 WI 7, 249 Wis. 2d 586, 638 N.W.2d 301, 00–1563.

If the trial court fails to conduct a colloquy with the defendant regarding the waiver of the right to a jury trial, a reviewing court may not find, based on the record, that there was a valid waiver. As a remedy, the circuit court must hold an evidentiary hearing on whether the waiver was knowing, intelligent, and voluntary. If the state is unable to show by clear and convincing evidence that the defendant knowingly, intelligently, and voluntarily waived the right, the defendant is entitled

to a new trial. State v. Anderson, 2002 WI 7, 249 Wis. 2d 586, 638 N.W.2d 301, 00–1563.

A prospective juror who openly admits bias and is never questioned about his or her partiality is subjectively biased as a matter of law. State v. Carter, 2002 WI App 55, 250 Wis. 2d 851, 641 N.W.2d 517, 01–2303.

A jury instruction directing the jury to accept a judicially–noticed fact as true when applied to an element of a criminal offense eliminates the jury's opportunity to reach an independent, beyond–a–reasonable–doubt decision on that element and is constitutional error, although it is subject to harmless error analysis. State v. Harvey, 2002 WI 93, 254 Wis. 2d 442, 647 N.W.2d 189, 00–0541.

Whether a defendant waived the right to have the jury determine all the elements of the crime or only some of them and whether the defendant gave up a jury trial in lieu of a determination by the circuit court or stipulated to the elements, the waiver analysis is the same. Any waiver must be made personally on the record by the defendant. State v. Hauk, 2002 WI App 226, 257 Wis. 2d 579, 652 N.W.2d 393, 01–1668.

If a court withholds any juror information in open court, it must both: 1) find that the jury needs protection; and 2) take reasonable precautions to avoid prejudicing the defendant. When jurors' names are withheld, the court, at a minimum, must make a precautionary statement to the jury that the use of numbers instead of names should in no way be interpreted as a reflection of the defendant's guilt or innocence. State v. Tucker, 2003 WI 12, 259 Wis. 2d 484, 657 N.W.2d 374, 00–3354.

An ability to understand the English language is necessary in order to satisfy the statutory requirements of ss. 756.02 and 756.04. If a juror cannot meet the statutory requirements the entire trial process may be nothing more than an "exercise in futility." A defendant was prejudiced when a juror was was allowed to serve as a juror who was not qualified under the statutes and did not have a sufficient understanding of English so that he could meaningfully participate in the trial process. State v. Carlson, 2003 WI 40, 261 Wis. 2d 97, 661 N.W.2d 51, 01–1136.

While a limited class of errors is deemed structural, requiring automatic reversal regardless of any effect on the outcome, most errors, including constitutional ones, are reviewed for harmlessness. Harmless error analysis applies to an erroneous jury instruction that operated as a mandatory conclusive presumption on an element of a penalty enhancer. State v. Gordon, 2003 WI 69, 262 Wis. 2d 380, 663 N.W.2d 765, 01–1679.

An accused's right to a unanimous verdict is not violated every time a judge instructs a jury on a statute that presents multiple modes of commission and does not select one among the many modes of commission. An argument that an instruction leads to a constitutionally infirm verdict must address the legislature's intent in enacting the statute and, if multiple modes of commission are found, whether the choice provided is constitutionally unacceptable. State v. Norman, 2003 WI 72, 262 Wis. 2d 506, 664 N.W.2d 97, 01–3303.

A prosecutor's knowledge that a challenged juror possessed the same name as known criminals in the area, the location of a venire person's residence when a residential location has some relationship to the facts of the case, failure to disclose during voir dire any police contacts at his or her residence when research revealed such contacts, and employment, or unemployment status, all may be race–neutral explanations for a peremptory strike. Individual follow–up questions on voir dire are not required in order to strike a potential juror. State v. Lamon, 2003 WI 78, 262 Wis. 2d 747, 664 N.W.2d 607, 00–3403.

Whether a prosecutor's conduct during closing argument affects the fairness of a trial is determined by viewing the statements in the context of the total trial. A line of demarcation is drawn where the prosecutor goes beyond reasoning from the evidence to a conclusion of guilt and suggests the jury arrive at a verdict by considering factors other than the evidence. Argument on matters not in evidence is improper. State v. Smith, 2003 WI App 234, 268 Wis. 2d 138, 671 N.W.2d 854, 02–3404.

There is no constitutional right to waive a jury and be tried by a judge. A prosecutor's decision to withhold consent to a defendant's requested waiver of his or her right to a jury trial, as required by statute, is not reviewable. A trial court need not justify its refusal to approve the waiver. State v. Burks, 2004 WI App 14, 268 Wis. 2d 747, 674 N.W.2d 640, 03–0472.

Reinstruction that presents for the first time choices for lesser included offenses not presented in the initial instructions, if proper at all, would be a rare event, only done in exceptional circumstances. State v. Thurmond, 2004 WI App 49, 270 Wis. 2d 477, 677 N.W.2d 655, 03–0191.

When counsel fails to object under *Batson* to peremptory strikes on the grounds they were improperly based on race or gender, the defendant claiming harm must establish that had trial counsel made the *Batson* objection there is a reasonable probability that it would have been sustained and the trial court would have taken the appropriate curative action. Discriminatory intent is a question of historical fact. The essential inquiry is whether the prosecutor had viable neutral explanations for the peremptory challenges. State v. Taylor, 2004 WI App 81, 272 Wis. 2d 642, 679 N.W.2d 893, 03–1509.

The verdict of a jury must be arrived at freely and fairly. The validity of a unanimous verdict is not dependent on what the jurors agree to in the jury room, but rather upon what is unanimously reported in open court. The right to poll the jury is an absolute right, if not waived, and its denial requires reversal. Defendants may waive the right by failing to ask for a poll in the first instance, or by failing to ask for additional polling when given the opportunity to request it. State v. Raye, 2005 WI 68, 281 Wis. 2d 339, 697 N.W.2d 407, 04–0770.

A court has two options if a juror dissents during jury polling or assents merely an accommodation against the juror's conscience: return the jury for continued deliberations or determine that further deliberations would be fruitless and grant a mistrial. If a juror gives an ambiguous or ambivalent assent the court may question the juror further. When initially asked by the court, "Is this your verdict?" and the juror first replied, "Can I ask a question?" and then with an unambiguous "no," the court could only have granted a mistrial or returned the jury for further deliberations. State v. Raye, 2005 WI 68, 281 Wis. 2d 339, 697 N.W.2d 407, 04–0770.

An administrative assistant employed by a county district attorney's office was not objectively biased because she worked for the same entity as the prosecuting attorney. The court declines to create a per se rule that excludes potential jurors for the sole reason that they are employed by a district attorney's Office. State v. Smith, 2006 WI 74, 291 Wis. 2d 569, 716 N.W.2d 482, 04–2035.

A judge's interruptions of a juror's answers to questions regarding her agreement with the verdict and the judge's insistence that the form showed a unanimous verdict strongly suggested that the juror may have felt pressure and intimidation, and that she may have misunderstood the verdict reached in the jury room. Although the juror expressed agreement with subsequent statements, because the juror was cut off when attempting to answer whether she found the defendant guilty or not guilty, and never actually gave an answer, the juror could not be said to have found the defendant guilty on count one. Consequently, the verdict was not unanimous. State v. Dukes, 2007 WI App 175, 303 Wis. 2d 208, 736 N.W.2d 215, 06–2127.

The trial court has an affirmative, *sua sponte* duty to inquire into the necessity for a defendant to wear a visible electronic security device during trial once the court becomes aware of the situation. A trial court maintains the discretion to decide whether a defendant should be restrained during a trial as long as the reasons justifying the restraints have been set forth in the record. It is an erroneous exercise of discretion to rely primarily upon law enforcement department procedures instead of considering the risk a particular defendant poses for violence or escape. State v. Champlain, 2008 WI App 5, 307 Wis. 2d 232, 744 N.W.2d 889, 06–2435.

Whenever a defendant wears a restraint in the presence of jurors trying the case, the court should instruct that the restraint is not to be considered in assessing the proof and determining guilt. Counsel's failure to object to the device constituted ineffective assistance of counsel. State v. Champlain, 2008 WI App 5, 307 Wis. 2d 232, 744 N.W.2d 889, 06–2435.

While the prosecutor may strike hard blows during closing argument, the prosecutor's duty is to refrain from using improper methods. Prosecutors may not ask jurors to draw inferences that they know or should know are not true. State v. Weiss, 2008 WI App 72, 312 Wis. 2d 382, 752 N.W.2d 372, 07–0778.

A demonstration of the specific bias of a juror is not needed to remove a juror from deliberations when there are 12 other jurors whose impartiality the trial court does not have a concern about. The trial court properly exercised its discretion when it designated a juror as an alternate based on its concern regarding potential impartiality. The trial court has a duty to ensure that the impaneled jury is an impartial one; one that is free of bias or prejudice. State v. Gonzalez, 2008 WI App 142, 314 Wis. 2d 129, 758 N.W.2d 153, 07–2160.

A trial court judge, rather than a jury, is allowed to determine the applicability of a defendant's prior conviction for sentence enhancement purposes when the necessary information concerning the prior conviction can be readily determined from an existing judicial record. State v. LaCount, 2008 WI 59, 310 Wis. 2d 85, 750 N.W.2d 780.

As a matter of law, a reasonable presiding judge could not reach any other conclusion than to excuse his mother from sitting on the jury. State v. Tody, 2009 WI 31, 316 Wis. 2d 689, 764 N.W.2d 737, 07–0400.

A circuit court need not consider the necessity of a restraint that is not visible to the jury and has no sua sponte duty to inquire into the necessity of hidden restraints. Limiting a court's sua sponte duty to visible restraints is consistent with the rationale for the general rule against restraining defendants at trial. The no–restraint rule is designed to prevent the jury from forming an opinion about the defendant's guilt based solely on the fact that the defendant is restrained. There is little risk of prejudice if the jury cannot see the restraint. State v. Miller, 2011 WI App 34, 331 Wis. 2d 732, 797 N.W.2d 528, 09–3175.

Jurors are presumed impartial, and the defendant has the burden of rebutting this presumption and proving bias. That a juror has been a victim of sexual assault does not make him or her per se biased against the defendant in a sexual assault case. State v. Funk, 2011 WI 62, 335 Wis. 2d 369, 799 N.W.2d 421, 08–2765.

When the court properly instructed the jury, the failure to provide the jury with a not guilty form for one of the five charged offenses did not constitute structural error, but rather was trial error subject to a harmless error analysis. State v. Andre D. Hansbrough, 2011 WI App 79, 334 Wis. 2d 237, 799 N.W.2d 887, 10–0369.

The fundamental inquiry is the same regarding a sleeping juror and a hearing–impaired juror: are the defendant's constitutional rights to an impartial jury and due process violated when the juror does not hear particular testimony? When it is feasible to determine what testimony the juror did not hear, the proper inquiry is whether, given the length of time the juror did not hear testimony and the significance of the testimony not heard in the context of the trial as a whole, the defendant was prejudiced to the extent he or she did not receive a fair trial — that is, a trial comporting with the constitutional guarantees of an impartial jury and due process. State v. Kettner, 2011 WI App 142, 337 Wis. 2d 461, 805 N.W.2d 132, 11–0085

The defendant was not entitled to a new trial even though she used a peremptory challenge to remove the judge's daughter–in–law from the jury. Because the defendant did not claim the jury was unfair or partial, a new trial was not required under the circumstances of the case. The defendant did not show that the presence of the challenged juror in the pool of potential jurors affected the defendant's substantial rights. State v. Sellhausen 2012 WI 5, 338 Wis. 2d 286, 809N.W.2d 14, 10–0445.

Any party or counsel who notices that a juror has fallen asleep at trial must bring the issue to the trial court's attention during trial as soon as practicable after the person notices the sleeping juror so that the problem can immediately be resolved. Because the defendant waited until after trial to bring the issue to the trial court's attention, it was impossible for the trial court to determine the extent of the problem, if any; thus, the defendant forfeited his right to appeal the trial court's refusal to conduct a post–trial hearing on that issue. State v. Saunders, 2011 WI App 156, 338 Wis. 2d 160, 807 N.W.2d 679, 10–2393.

A stipulation is a matter of convenience and litigation strategy entered into to avoid the time, expense, and potential prejudice of introducing unnecessary and possibly prejudicial evidence. It is a far different thing for a defendant to stipulate to a fact than it is to waive the constitutional right to a jury determination of that fact. However, harmless error analysis applies when a court erroneously takes judicial notice of a fact that should have been submitted to the jury. State v. Smith, 2012 WI 91, 342 Wis. 2d 710, 817 N.W.2d 410, 10–1192.

That a father and son had the same first and last names, and the same middle initial, phone number, and address, the jury summons did not include any specific identifying information, and the son appeared and served on the jury when the summons was intended for the father, did not make the son an improper juror. State v. Turner, 2013 WI App 23, 346 Wis. 2d 229, 827 N.W.2d 654, 12–0297.

A jury instruction that does not accurately state the statutory requirements for the crime charged constitutes an erroneous statement of the law. Harmless error analysis is appropriate when jury instructions include a requirement in addition to that set forth in a statute. The jury instructions cannot provide the proper standard for

analysis. A challenge must be reviewed in the context of the statutory requirements. State v. Beamon, 2013 WI 47, 347 Wis. 2d 559, 830 N.W.2d 681, 10–2003.

The circuit court's decision to exclude the defendant from in–chambers meetings with jurors during the trial regarding possible bias did not deprive the defendant of a fair and just hearing. The factors a trial court should consider in determining whether a defendant's presence is required to ensure a fair and just hearing include whether the defendant could meaningfully participate, whether the defendant would gain anything by attending, and whether the presence of the defendant would be counterproductive. State v. Alexander, 2013 WI 70, 349 Wis. 2d 327, 833 N.W.2d 126, 11–0394.

Absent an unambiguous declaration that a party intends to bind itself for future fact–finding hearings or trials, a jury waiver applies only to the fact–finding hearing or trial pending at the time it is made. Walworth County Department of Health and Human Services v. Roberta J. W., 2013 WI App 102, 349 Wis. 2d 691, 836 N.W.2d 860, 12–2387.

Unanimity is required only with respect to the ultimate issue of the defendant's guilt or innocence of the crime charged; it is not required with respect to the alternative means or ways in which the crime can be committed. It is ultimately the elements of the crime charged that must be accepted by a unanimous jury and not the peripheral details. State v. Badzinski, 2014 WI 6, 352 Wis. 2d 329, 843 N.W.2d 29, 11–2905.

The 6th amendment right to a public trial extends to voir dire. A judge's decision to close or limit public access to a courtroom in a criminal case requires the court to go through an analysis on the record in which the court considers overriding interests and reasonable alternatives. The court must make specific findings on the record to support the exclusion of the public and must narrowly tailor the closure. State v. Pinno, 2014 WI 74, 2014 WI 74, 850 N.W.2d 207, 11–2424.

The right to a public trial may be asserted by the defendant at any time during a trial. A defendant who fails to object to a judicial decision to close the courtroom forfeits the right to a public trial, so long as the defendant is aware that the judge has excluded the public from the courtroom. Although the Supreme Court has categorized a violation of the right to a public trial as a structural error, that categorization does not mandate a waiver analysis, and a defendant need not affirmatively relinquish his right to a public trial in order to lose it. Defendants must demonstrate prejudice to prove ineffective assistance of counsel when counsel fails to object to the closure of the courtroom. State v. Pinno, 2014 WI 74, 2014 WI 74, 850 N.W.2d 207, 11–2424.

A jury has no right to exercise its nullification power, and no party has a right to have a jury decide a case contrary to law or fact, much less a right to an instruction telling jurors they may do so or to an argument urging them to nullify applicable laws. Voir dire questions that assume proof of, or demand consideration of, only what the law requires are proper because they ask that the jurors do no more than promise to fulfill their duty to follow the law, and do not limit the jurors' consideration of any pertinent factors or invite them to prejudge any particular fact. State v. Zdzieblowski, 2014 WI App 130, 359 Wis. 2d 102, 857 N.W.2d 622, 14–0619.

Errant jury instructions are subject to harmless error analysis. This includes errors that omit an element, as well as errors that create requirements beyond the statute. Jury instructions can be considered erroneous if they instruct the jury on a theory of the crime that was not presented to the jury or if they fail to instruct the jury on the theory of the crime that was presented to the jury during trial. To affirm a conviction based on an erroneous instruction, a court must be convinced beyond a reasonable doubt that the jury still would have convicted the defendant of the charge had the correct jury instruction been provided. State v. Williams, 2015 WI 75, 364 Wis. 2d 126, 867 N.W.2d 736, 14–1099.

Jurors are not required to unanimously agree as to which act or acts the defendant committed in order to find the defendant guilty when the prosecutor has issued only one charge but introduced evidence of multiple acts that separately constitute the criminal offense charged. If there is only one crime, jury unanimity on the particular alternative means of committing the crime is required only if the acts are conceptually distinct. Unanimity is not required if the acts are conceptually similar. State v. Elverman, 2015 WI App 91, 366 Wis. 2d 169, 873 N.W.2d 528, 14–0354.

An appellate court should not give deference to a postconviction court's finding of subjective bias because the postconviction court did not preside over the trial, and thus could not have observed the demeanor and disposition of a juror as the trial court did. Findings of fact regarding a trial, made at a hearing by a postconviction court that did not preside over trial, are reviewed de novo. State v. Tobatto, 2016 WI App 28, 368 Wis. 2d 300, 878 N.W.2d 701, 15–0254.

Jury instructions must fully and fairly inform the jury of the legal rules applicable to the case. A jury instruction that was modified based upon a statute that went into effect after the defendant committed key acts underlying the offense failed to fully and fairly inform the jury of the law applicable to the defendant's alleged criminal acts. State v. Bryzek, 2016 WI App 48, 370 Wis. 2d 237, 882 N.W.2d 483, 15–1501.

A defendant may intentionally and voluntarily relinquish his or her statutory and constitutional rights to be present at trial. The defendant in this case did not dispute that he waived his constitutional right to be present at trial, but argued that he could not waive his statutory right. The defendant made an express, affirmative, intentional choice not to be present, waiving, rather than forfeiting, his constitutional and statutory rights. The defendant knew of his rights and waived them on multiple occasions throughout the course of the trial. The trial court properly handled the defendant's waiver of his right to be present by allowing the defendant's counsel to communicate with him and repeatedly inquiring whether the defendant would like to be present. State v. Washington, 2017 WI App 6, 373 Wis. 2d 214, 890 N.W.2d 592, 16–0238.
Affirmed. 2018 WI 3, 379 Wis. 2d 58, 905 N.W.2d 380, 16–0238.

A prospective juror must be able to set aside any opinion he or she might hold and decide the case on the evidence, but, as a general matter, a circuit court need not use or obtain any magic words in determining whether this requirement has been met. State v. Lepsch, 2017 WI 27, 374 Wis. 2d 98, 892 N.W.2d 682, 14–2813.

A defendant's right to be present at a critical stage of his or her proceedings, right to a public trial, and right to a jury properly sworn to be impartial were not violated because the clerk of circuit courts administered the oath to the prospective jurors outside of the defendant's presence. State v. Lepsch, 2017 WI 27, 374 Wis. 2d 98, 892 N.W.2d 682, 14–2813.

It was not improper to strike the only two African–American members of the jury panel because the prosecutor had a legitimate, race–neutral reason for striking the potential jurors and did not act with discriminatory intent. That the two jurors alleged that their prior experiences with law enforcement may have involved discriminatory intent does not detract from the prosecutor's legitimate, nondiscriminatory concern about potential bias against the state's case in a wholly unrelated proceeding. State v. Sanders, 2019 WI App 52, 388 Wis. 2d 502, 933 N.W.2d 670, 18–1310.

In nonsummary criminal contempt proceedings, the alleged contemnor has a right to a jury trial if the sentences imposed aggregate more than 6 months. Codispoti v. Pennsylvania, 418 U.S. 506.

The court erred by communicating with the jury and agreeing to accept a guilty verdict "with extreme mercy" without notifying defense counsel. Rogers v. United States, 422 U.S. 35.

The 6th amendment secures to criminal defendants the right to be tried by an impartial jury drawn from sources reflecting a fair cross section of the community. A law exempting women an exemption from jury duty on request, resulting in their low representation on panels, violated the requirement. To establish a prima facie violation a defendant must show: 1) the group alleged to be excluded is a 'distinctive' group in the community; 2) the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and 3) this underrepresentation is due to systematic exclusion of the group in the jury–selection process. Duren v. Missouri, 439 U.S. 357 (1979). See also Berghuis v. Smith, 559 U.S. 314, 130 S. Ct. 1382, 176 L. Ed. 2d 249 (2010).

When community sentiment against the accused had softened by the time of trial 4 years after a heinous crime, the trial court did not commit "manifest error" in finding the jury as a whole was impartial. Patton v. Yount, 467 U.S. 1025 (1984).

A black defendant was denied equal protection through the state's use of peremptory challenges to exclude all blacks from the jury. Batson v. Kentucky, 476 U.S. 79 (1986). See also Purkett v. Elem, 515 U.S. 1170, 132 Ed 2d 874 (1995); Foster v. Chatman, 578 U.S. 488, 136 S. Ct. 1737,195 L. Ed. 2d 1 (2016).

The "fair cross section" element to the right to trial by jury does not provide a constitutional basis for a challenge to the prosecution's peremptory striking of jurors on the basis of race. Holland v. Illinois, 493 U.S. 474, 107 L. Ed. 2d 905 (1990).

Equal protection precludes prosecutor's use of peremptory challenge to exclude potential jurors solely by reason of race. A criminal defendant may raise the equal protection claim that jurors were excluded because of their race whether or not there is racial identity between the defendant and the excluded jurors. Powers v. Ohio, 499 U.S. 400, 113 L. Ed. 2d 411 (1991).

When potential jurors had seen news reports about the defendant's alleged crime, the judge's refusal to question those prospective jurors about the specific content of those reports did not violate right to an impartial jury. Mu'Min v. Virginia, 500 U.S. 415, 114 L. Ed. 2d 493 (1991).

A criminal defendant is prohibited from engaging in purposeful discrimination on the basis of race in the exercise of peremptory challenges of potential jurors. Georgia V. McCollum, 505 U.S. 42, 120 L. Ed. 33 (1992).

A constitutionally deficient instruction regarding proof beyond a reasonable doubt can never be harmless error. Sullivan v. Louisiana, 508 U.S. 275, 124 L. Ed. 2d 182 (1993).

Gender–based peremptory strikes are barred by the equal protection clause. J.E.B. v. Alabama ex rel. T.B., 511 U.S. 127, 128 L. Ed. 2d 89 (1994).

Batson established a three–step process for the constitutional review of allegedly race–based peremptory strikes: 1) the defendant must make out a prima facie case by showing that the totality of the relevant facts gives rise to an inference of discriminatory purpose: 2) once the defendant has made out a prima facie case, the burden shifts to the state to explain adequately the racial exclusion by offering permissible race–neutral justifications for the strikes; and 3) if a race–neutral explanation is tendered, the trial court must then decide whether the opponent of the strike has proved purposeful racial discrimination. Johnson v. California, 545 U.S. 162, 125 S. Ct. 2410, 162 L. Ed. 2d 129 (2005). See also Miller–El v. Dretke, 545 U.S. 231, 162 L. Ed. 2d 196, 125 S. Ct. 2317 (2005).

It was not intended that the first *Batson* step be so onerous that a defendant would have to persuade the judge on the basis of all the facts, some of which are impossible for the defendant to know with certainty, that the challenge was more likely than not the product of purposeful discrimination. Instead, a defendant satisfies the requirements of *Batson's* first step by producing evidence sufficient to permit the trial judge to draw an inference that discrimination has occurred. Johnson v. California, 545 U.S. 162, 162 L. Ed. 2d 129, 125 S. Ct. 2410 (2005).

The right to exercise peremptory challenges in state court is determined by state law. The U.S. Supreme Court has long recognized that peremptory challenges are not of federal constitutional dimension. States may withhold peremptory challenges altogether without impairing the constitutional guarantee of an impartial jury and a fair trial. If a defendant is tried before a qualified jury composed of individuals not challengeable for cause, the loss of a peremptory challenge due to a state court's good–faith error is not a matter of federal constitutional concern. Just as state law controls the existence and exercise of peremptory challenges, so state law determines the consequences of an erroneous denial of such a challenge. Rivera v. Illinois, 556 U.S. 148, 129 S. Ct. 1446; 173 L. Ed. 2d 483 (2009).

When a juror makes a clear statement that indicates he or she relied on racial stereotypes or animus to convict a criminal defendant, the 6th amendment requires that the no–impeachment rule give way in order to permit the trial court to consider the evidence of the juror's statement and any resulting denial of the jury trial guarantee. For the inquiry to proceed, there must be a showing that one or more jurors made statements exhibiting overt racial bias that cast serious doubt on the fairness and impartiality of the jury's deliberations and resulting verdict. To qualify, the statement must tend to show that racial animus was a significant motivating factor in the juror's vote to convict. Pena–Rodriguez v. Colorado, 580 U.S. 206, 137 S. Ct. 855, 197 L. Ed. 2d 107 (2017).

The constitution forbids striking even a single prospective juror for a discriminatory purpose. When all of the relevant facts and circumstances taken together

establish that a peremptory strike of a prospective juror was motivated in substantial part by discriminatory intent, a *Batson*, 476 U.S. 79 (1986), violation has occurred. Flowers v. Mississippi, 588 U.S.___, 139 S. Ct. 2228, 204 L. Ed. 2d 638 (2019).

If the issue of jury bias surfaces during or before trial, it is the trial judge's responsibility to conduct an adequate investigation, given the unsatisfactory character of an inquiry into jury bias after the trial is over and the defendant convicted. The question is whether, given the indications of jury bias, the judge's inquiry was adequate. Adequacy is a function of the probability of bias; the greater that probability, the more searching the inquiry needed to make reasonably sure that an unbiased jury is impaneled. Oswald v. Bertrand, 374 F.3d 475 (2004).

Criminal Law—Jury—Unanimous Jury Verdict Is Not Constitutionally Required in State Criminal Cases. Johnson. 1973 WLR 926.

State v. Louis: A Missed Opportunity to Clarify when Law Enforcement Officials May Serve as Petit Jurors in Criminal Trials. Anderson. 1992 WLR 751.

SPEEDY AND PUBLIC TRIAL

A defendant must demand a trial before requesting dismissal for lack of a speedy trial. When delay is caused by numerous proceedings in federal court, dismissal will be denied in the absence of any showing of prejudice. State v. Kwitek, 53 Wis. 2d 563, 193 N.W.2d 682.

A delay of 5 weeks because witnesses were hospitalized, when the defendant was out on bail, did not amount to a failure to receive speedy trial. Taylor v. State, 55 Wis. 2d 168, 197 N.W.2d 805.

Failure to demand a speedy trial is weighs less heavily against a defendant unrepresented by counsel. Because the defendant believed the charge had been dropped, it could not be said that a speedier trial would have prevented anxiety and concern about the pending charges. Hipp v. State, 75 Wis. 2d 621, 250 N.W.2d 299.

The speedy trial provisions of the constitution were designed to prevent oppressive pretrial incarceration, anxiety and concern by the accused, impairment of defenses, and the elimination of the possibility that concurrent sentences will be imposed. Green v. State, 75 Wis. 2d 631, 250 N.W.2d 305.

The controlling case concerning the right to a speedy trial is *Barker v. Wingo*, 407 U.S. 514 (1972). A 15 month delay was not prejudicial under the facts of the case. Scarbrough v. State, 76 Wis. 2d 87, 250 N.W.2d 354.

A delay of 84 days between the defendant's first court appearance and trial on misdemeanor traffic charges was not so inordinate as to raise a presumption of prejudice. State v. Mullis, 81 Wis. 2d 454, 260 N.W.2d 696.

Mandatory closure of a hearing solely at the request of the complaining witness over the objection of the defendant violates the right to a public trial. Stevens v. Manitowoc Circuit Court, 141 Wis. 2d 239, 414 N.W.2d 832 (1987).

The speedy trial right attaches when the complaint and warrant are issued. A pretrial determination that the right has been violated may be made only when evidence shows extraordinary circumstances justifying dismissal with prejudice. State v. Lemay, 155 Wis. 2d 202, 455 N.W.2d 233 (1990).

The right to a speedy trial extends from the time of arrest or criminal charging up through the sentencing phase of prosecution. A defendant must show substantial and demonstrable prejudice for a postconviction violation of this right to be found. State v. Allen, 179 Wis. 2d 67, 505 N.W.2d 801 (Ct. App. 1993).

Whether there has been a violation of the right to a speedy trial depends on a balancing test considering: 1) the length of delay; 2) the reason for the delay; 3) the defendant's assertion of the right; and 4) prejudice to the defendant. State v. Borhegyi, 222 Wis. 2d 506, 588 N.W.2d 89 (Ct. App. 1998), 98–0567.

The speedy trial clause does not apply to the period before a defendant is indicted, arrested, or otherwise officially accused. The statute of limitations is the primary protection against stale charges. A delay between the commission of a crime and the subsequent arrest of a defendant may violate due process if actual prejudice has been suffered as a result of the delay and the government caused the delay for an improper purpose. State v. Blanck, 2001 WI App 288, 249 Wis. 2d 364, 638 N.W.2d 910, 01–0282.

The length of delay is to some extent a triggering mechanism to a speedy trial determination. Until there is some delay that is presumptively prejudicial, there is no necessity for inquiry. In determining the reasons for a delay, the initial inquiry is who caused the delay. Delay reasonably attributed to the ordinary demands of the judicial system is neither chargeable to the state or defendant. A missing witness presents a valid reason for delay. The state is charged with institutional delay such as when the trial court took responsibility for a delay because it had taken a motion for access to the records off its calendar. State v. Williams, 2004 WI App 56, 270 Wis. 2d 761, 677 N.W.2d 691, 03–0603.

When filed charges are dismissed without prejudice and a second complaint subsequently filed, the time period between the dismissal and the filing of the second complaint is not included in determining whether the constitutional right to a speedy trial was violated. The right to a speedy trial is not primarily intended to prevent prejudice to the defense caused by passage of time. That interest is protected primarily by the due process clause and by statutes of limitation. The right is to minimize the possibility of lengthy incarceration prior to trial, to reduce the impairment of liberty imposed on an accused while released on bail, and to shorten the disruption of life caused by arrest and the presence of unresolved criminal charges. Once charges are dismissed, the speedy trial guarantee is no longer applicable. State v. Urdahl, 2005 WI App 191, 286 Wis. 2d 476, 704 N.W.2d 324, 04–3014.

The defendant's right to a public trial was violated when the courthouse doors were locked at 4:30 P.M., pursuant to county policy, and the public was denied access to the courtroom while he presented his case and the state presented its rebuttal. State v. Vanness, 2007 WI App 195, 06–2535.

Although a presumption of openness exists, the right to a public trial is not absolute. The closure of a trial is trivial and does not implicate the 6th amendment if the closure does not implicate the values served by the 6th amendment: 1) to ensure a fair trial; 2) to remind the prosecutor and judge of their responsibility to the accused and the importance of their functions; 3) to encourage witnesses to come forward; and 4) to discourage perjury. A circuit court's exclusion of every family member except the defendant's mother, who did not understand English, plainly implicated the values served by the right to a public trial. State v. Ndina, 2009 WI 21, 315 Wis. 2d 653, 761 N.W.2d 612, 07–0005.

Closure of a criminal trial is justified when 4 conditions are met: 1) the party who wishes to close the proceedings must show an overriding interest that is likely to be prejudiced by a public trial; 2) the closure must be narrowly tailored to protect that interest; 3) alternatives to closure must be considered by the trial court; and 4) the court must make findings sufficient to support the closure. Generally, the best course of action is for the trial judge to hold an evidentiary hearing on the issue of closure, but it was not necessary under the facts of this case. State v. Ndina, 2009 WI 21, 315 Wis. 2d 653, 761 N.W.2d 612, 07–0005.

Although a 14–month delay was presumptively prejudicial, that did not end the court's analysis. The defendant in this case was not actually prejudiced by the delay because he was already serving more than two life sentences for a conviction in a homicide case. The delay did not cause his pretrial incarceration; his homicide sentence would have kept him in prison anyway. State v. Lock, 2013 WI App 80, 348 Wis. 2d 334, 833 N.W.2d 189, 12–1514.

There was no violation of the right to a speedy trial when the entirety of the delay in bringing the defendant to trial occurred to accommodate the defendant and the defense. State v. Provost, 2020 WI App 21, 392 Wis. 2d 262, 944 N.W.2d 23, 18–1268.

A balancing test necessarily compels courts to approach speedy trial cases on an ad hoc basis. In determining whether a particular defendant has been deprived of the defendant's right, courts should consider four factors: 1) the length of delay; 2) the reason for the delay; 3) the defendant's assertion of the right; and 4) prejudice to the defendant. Barker v. Wingo, 407 U.S. 514, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972).

Delay between arrest and indictment may deny a speedy trial without a showing of actual prejudice. Dillingham v. United States, 423 U.S. 64, 96 S. Ct. 303, 46 L. Ed. 2d 205 (1975).

A defendant may not, before trial, appeal the denial of a motion to dismiss based on the right to a speedy trial. United States v. MacDonald, 435 U.S. 850 (1978).

No right to a speedy trial arises until charges are pending. United States v. Mac Donald, 456 U.S. 1 (1982).

Any closure of a suppression hearing must advance an overriding interest likely to be prejudiced. Closure must be no broader than necessary to protect that interest. The court must consider alternatives and make a finding adequate to support closure. Waller v. Georgia, 467 U.S. 39 (1984).

The time during which defendants were neither under indictment nor subjected to any official restraint does not weigh toward a defendant's speedy trial claims. United States v. Loud Hawk, 474 U.S. 302 (1986).

The speedy–trial right is "amorphous," "slippery," and "necessarily relative." There is a balancing test in which the conduct of both the prosecution and the defendant are weighed. Some of the factors that courts should weigh include length of delay, the reason for the delay, the defendant's assertion of the right, and prejudice to the defendant. The attorney is the defendant's agent when acting, or failing to act, in furtherance of the litigation, and delay caused by the defendant's counsel is charged against the defendant. The same principle applies whether counsel is privately retained or publicly assigned. Assigned counsel's failure to move the case forward does not warrant attribution of delay to the state. However, delay resulting from a systemic breakdown in the public defender system could be charged to the state. Vermont v. Brillon, 556 U.S. 81, 129 S. Ct. 1283; 172 L. Ed. 2d 768 (2009).

The speedy trial guarantee protects the accused from arrest or indictment through trial, but does not apply once a defendant has been found guilty at trial or has pleaded guilty to criminal charges. For inordinate delay in sentencing, although the Speedy Trial Clause does not govern, a defendant may have other recourse, including, inappropriate circumstances, tailored relief under the Due Process Clauses of the 5th and 14th amendments. Betterman v. Montana, 578 U.S. 437, 136 S. Ct. 1609, 194 L. Ed. 2d 723 (2016).

A violation of the right to a public trial is a structural error. In the case of a structural error when there is an objection at trial and the issue is raised on direct appeal, the defendant generally is entitled to automatic reversal regardless of the error's actual effect on the outcome. When a defendant raises a public–trial violation via an ineffective–assistance–of–counsel claim, *Strickland,* 466 U.S. 668, prejudice is not shown automatically. Instead, the burden is on the defendant to show either a reasonable probability of a different outcome in his or her case or to show that the particular public–trial violation was so serious as to render the trial fundamentally unfair. Weaver v. Massachusetts, 582 U.S. ___, 137 S. Ct. 1899, 198 L. Ed. 2d 42 (2017).

Following guilty plea, defendant could not raise speedy trial issue. United States v. Gaertner, 583 F.2d 308 (1978).

Constitutional Law—Closure of Trials—The Press and the Public Have a First Amendment Right of Access to Attend Criminal Trials, Which Cannot Be Closed Absent an Overriding Interest. *Richmond Newspapers, Inc. v. Virginia*, 100 S. Ct. 2814 (1980). Morris. 64 MLR 717 (1981).

MISCELLANEOUS

A defendant may waive his right to be present at a proceeding when the court ordered his case consolidated with another. It is not error at the start of a trial to revoke bail and remand the defendant to the custody of the sheriff. Beverly v. State, 47 Wis. 2d 725, 177 N.W.2d 870.

A prisoner held in Dodge County, who escaped from a hospital in another county while being treated there, could be tried for the escape in Dodge County. Dolan v. State, 48 Wis. 2d 696, 180 N.W.2d 623.

The defendant is not prejudiced when the court amends the charge against him to charge a lesser included offense without informing him of the nature of the amended charge or allowing him to plead to it. Moore v. State, 55 Wis. 2d 1, 197 N.W.2d 820.

It is not a violation of the defendant's rights if he is prosecuted by information and not by grand jury indictment. State v. Lehtola, 55 Wis. 2d 494, 198 N.W.2d 354.

A defendant is not entitled to be present at a conference in chambers if only questions of law or preliminary matters of procedure are discussed. Leroux v. State, 58 Wis. 2d 671, 207 N.W.2d 589.

Participation of the state in promulgating adverse publicity is relevant in determining whether the trial court abused its discretion in not granting a venue change. Briggs v. State, 76 Wis. 2d 313, 251 N.W.2d 12.

Only the defendant may waive the right to venue where the crime was committed. State v. Mendoza, 80 Wis. 2d 122, 258 N.W.2d 260.

If the defendant acquiesces in counsel's decision that the defendant not testify, the defendant's right to testify is waived. State v. Albright, 96 Wis. 2d 122, 291 N.W.2d 487 (1980).

When the defendant was not relying on an alibi defense and did not file a notice of alibi, the court did not abuse its discretion in barring alibi testimony. State v. Burroughs, 117 Wis. 2d 293, 344 N.W.2d 149 (1984).

Constitutional error is harmless if the court can declare its belief that it was harmless beyond a reasonable doubt because there is no reasonable possibility the error contributed to the conviction. State v. Brecht, 143 Wis. 2d 297, 421 N.W.2d 96 (1988).

Two factors determine the sufficiency of a criminal charge: 1) whether it states an offense to which the defendant can plead; and 2) whether disposition will bar future prosecution for the same offense. Additional factors are discussed. State v. Fawcett, 145 Wis. 2d 244, 426 N.W.2d 91 (Ct. App. 1988).

A judge's bias against counsel must be severe to translate into unconstitutional partiality against a litigant. State v. Hollingsworth, 160 Wis. 2d 883, 467 N.W.2d 555 (Ct. App. 1991).

Rule for pleadings in criminal obscenity cases are the same as for all other criminal cases. If a pleading fails to set forth all elements of a crime but includes correct citations, all elements are sufficiently alleged. State v. Petrone, 161 Wis. 2d 530, 468 N.W.2d 676 (1991).

Notice of the nature and cause of the accusations is a key factor in determining whether an amendment at trial has prejudiced a defendant. The inquiry is whether the new charge is so related to the transaction and facts adduced at the preliminary hearing that a defendant cannot be surprised by the new charge since the preparation for the new charge would be no different than the preparation for the old charge. State v. Neudorff, 170 Wis. 2d 608, 489 N.W.2d 689 (Ct. App. 1992).

A criminal defendant's right to testify is fundamental. In order to determine whether a criminal defendant is waiving the right to testify, a circuit court should conduct an on–the–record colloquy with the defendant outside the presence of the jury consisting of a basic inquiry to ensure that the defendant is aware of his or her right to testify, and the defendant has discussed this right with counsel. State v. Weed, 2003 WI 85, 263 Wis. 2d 434, 666 N.W.2d 485, 01–1746.

Following an unchallenged colloquy wherein the defendant knowingly, voluntarily, and intelligently waived his right to testify, the defendant's failure to seek an offer of proof at the time of trial or in the postconviction motion operated as a waiver of the right to have decided the issue of whether the waiver to testify could be withdrawn. State v. Winters, 2009 WI App 48, 317 Wis. 2d 401, 766 N.W.2d 754, 08–0910.

When a trial court fails to satisfy the *Weed* mandate to conduct an on–the–record colloquy to determine if the defendant knowingly waived the right to testify, an evidentiary hearing to determine whether the waiver was knowingly, voluntarily, and intelligently made is the proper procedural response. The state carries the burden to show that the defendant's waiver was knowing and voluntary and must do so by clear and convincing evidence. State v. Garcia, 2010 WI App 26, 323 Wis. 2d 531, 779 N.W.2d 718, 09–0516.

Weed did not address the situation here, where a defendant prevents the trial court from conducting the on–the–record colloquy it required. By refusing to come to court so the trial court could personally explain what *Weed* requires must be explained, the defendant made it, as a practical matter consistent with safety, impossible for the trial court to explain his right to testify and determine whether his decision to not testify was "knowing, intelligent, and voluntary." State v. Vaughn, 2012 WI App 129, 344 Wis. 2d 764, 823 N.W.2d 543, 12–0094.

Harmless error review applies to the circuit court's alleged denial of a defendant's right to testify because its effect on the outcome of the trial is capable of assessment. State v. Nelson, 2014 WI 70, 355 Wis. 2d 722, 849 N.W.2d 317, 12–2140.

A criminal defendant's right to testify may, in appropriate cases, be subject to forfeiture where conduct incompatible with the assertion of the right is at issue. A forfeiture determination may not be arbitrary or disproportionate to the purposes it is designed to serve. Stated differently, a complete denial of the right to testify must be reasonable under the circumstances of the case. State v. Anthony, 2015 WI 20, 361 Wis. 2d 116, 860 N.W.2d 10, 13–0467.

Two distinct interests formed the basis of the circuit court's complete denial of the defendant's right to testify in this case: 1) the circuit court's ability to control the presentation of evidence so as to ensure the fairness and reliability of the criminal trial process; and 2) the preservation of dignity, order, and decorum in the courtroom. State v. Anthony, 2015 WI 20, 361 Wis. 2d 116, 860 N.W.2d 10, 13–0467.

Where, as here, a defendant repeatedly promises to disobey a circuit court's evidentiary ruling, the effect of which would seriously threaten the fairness and reliability of the criminal trial process, a circuit court has a legitimate interest in placing reasonable limitations on a defendant's right to testify. And, where a defendant displays disruptive conduct, as was the case here, a circuit court has a legitimate interest in placing reasonable limitations on the right to testify. State v. Anthony, 2015 WI 20, 361 Wis. 2d 116, 860 N.W.2d 10, 13–0467.

In order to satisfy the requirements of the U.S. and Wisconsin constitutions, the charges in the complaint and information must be sufficiently stated to allow the defendant to plead and prepare a defense. In child sexual assault cases, courts may apply the seven factors outlined in *Fawcett,* 145 Wis. 2d 244, and may consider any other relevant factors necessary to determine whether the complaint and information states an offense to which the defendant can plead and prepare a defense. No single factor is dispositive, and not every *Fawcett* factor will necessarily be present in all cases. State v. Kempainen, 2015 WI 32, 361 Wis. 2d 450, 862 N.W.2d 587, 13–1531.

The fundamental right to testify on one's own behalf at a criminal trial does not exist at the responsibility phase of bifurcated not guilty by reason of mental disease or defect proceedings because the responsibility phase is not a part of a criminal trial. State v. Lagrone, 2016 WI 26, 368 Wis. 2d 1, 878 N.W.2d 636, 13–1424.

A law providing state–wide venue for certain sex crimes would be unconstitutional. 60 Atty. Gen. 450.

The absolute prohibition of paralegal–conducted jail interviews is an unjustifiable restriction of inmates' due process right of access to the courts. Restrictions on such interviews must be justified by a compelling and overwhelming state interest. 64 Atty. Gen. 152.

The trial court's wholesale exclusion of the defendant's proffered expert and lay testimony regarding post–traumatic stress disorder from the guilt phase of a murder without valid justification violated the defendant's right to present a defense and to testify on her own behalf. Morgan v. Krenke, 72 F. Supp. 2d 980 (1999).

Prosecutions; double jeopardy; self–incrimination; bail; habeas corpus. SECTION 8. [*As amended Nov. 1870 and April 1981*] **(1)** No person may be held to answer for a criminal offense without due process of law, and no person for the same offense may be put twice in jeopardy of punishment, nor may be compelled in any criminal case to be a witness against himself or herself.

(2) All persons, before conviction, shall be eligible for release under reasonable conditions designed to assure their appearance in court, protect members of the community from serious bodily harm or prevent the intimidation of witnesses. Monetary conditions of release may be imposed at or after the initial appearance only upon a finding that there is a reasonable basis to believe that the conditions are necessary to assure appearance in court. The legislature may authorize, by law, courts to revoke a person's release for a violation of a condition of release.

(3) The legislature may by law authorize, but may not require, circuit courts to deny release for a period not to exceed 10 days prior to the hearing required under this subsection to a person who is accused of committing a murder punishable by life imprisonment or a sexual assault punishable by a maximum imprisonment of 20 years, or who is accused of committing or attempting to commit a felony involving serious bodily harm to another or the threat of serious bodily harm to another and who has a previous conviction for committing or attempting to commit a felony involving serious bodily harm to another or the threat of serious bodily harm to another. The legislature may authorize by law, but may not require, circuit courts to continue to deny release to those accused persons for an additional period not to exceed 60 days following the hearing required under this subsection, if there is a requirement that there be a finding by the court based on clear and convincing evidence presented at a hearing that the accused committed the felony and a requirement that there be a finding by the court that available conditions of release will not adequately protect members of the community from serious bodily harm or prevent intimidation of witnesses. Any law enacted under this subsection shall be specific, limited and reasonable. In determining the 10–day and 60–day periods, the court shall omit any period of time found by the court to result from a delay caused by the defendant or a continuance granted which was initiated by the defendant.

(4) The privilege of the writ of habeas corpus shall not be suspended unless, in cases of rebellion or invasion, the public safety requires it. [*1869 J.R. 7, 1870 J.R. 3, 1870 c. 118, vote Nov. 1870; 1979 J.R. 76, 1981 J.R. 8, vote April 1981*]

DOUBLE JEOPARDY

When, after a plea bargain, the state filed an amended complaint to which the defendant pled guilty, but the court refused to accept the plea and reinstated the complaint then later reinstated the amended complaint, the defendant could not claim double jeopardy. Salters v. State, 52 Wis. 2d 708, 191 N.W.2d 19.

The defense of double jeopardy is nonjurisdictional and is waived by a guilty plea intelligently and voluntarily entered. Nelson v. State, 53 Wis. 2d 769, 193 N.W.2d 704.

A person is not put in double jeopardy because of convictions in separate trials of resisting an officer and of battery to an officer, even though the acts charged arose from the same incident. State v. Elbaum, 54 Wis. 2d 213, 194 N.W.2d 660.

When the defendant is tried for one offense and convicted of a lesser included offense the defendant is not placed in double jeopardy. Dunn v. State, 55 Wis. 2d 192, 197 N.W.2d 749.

A defendant is not subjected to double jeopardy when brought to trial a second time after a mistrial is declared. State v. Elkinton, 56 Wis. 2d 497, 202 N.W.2d 28.

A defendant is not subjected to double jeopardy by being charged with both theft and burglary. An acquittal on one charge does not amount to collateral estoppel on the other. Hebel v. State, 60 Wis. 2d 325, 210 N.W.2d 695.

A defendant convicted of false imprisonment and rape committed in Waukesha county was not subjected to double jeopardy by a second conviction for false imprisonment of the same victim in Milwaukee county, because the facts supported 2 separate prosecutions. Baldwin v. State, 62 Wis. 2d 521, 215 N.W.2d 541.

When a trial is terminated prior to a determination of guilt or innocence, the double jeopardy clause does not prevent a retrial if there was a "manifest necessity" to terminate the proceedings because the indictment or information was fatally defective and the trial court lacked jurisdiction to try the case. State v. Russo, 70 Wis. 2d 169, 233 N.W.2d 485.

A defendant convicted of fleeing an officer in Portage County was not put in double jeopardy by a second conviction for fleeing a Wood County officer when the defendant crossed the county line during a chase. State v. Van Meter, 72 Wis. 2d 754, 242 N.W.2d 206.

When the perjured testimony of a key state witness was not offered by the prosecution for the purpose of provoking a mistrial and thus avoiding a probable acquittal, a retrial after the conviction was vacated did not place the defendant in double jeopardy. Day v. State, 76 Wis. 2d 588, 251 N.W.2d 811.

Neither the double jeopardy clause nor the doctrine of collateral estoppel precludes parole revocation on the grounds of a parolee's conduct related to an alleged crime for which the parolee was charged and acquitted. State ex rel. Flowers v. DHSS, 81 Wis. 2d 376, 260 N.W.2d 727.

When a mistrial requested by the defendant is justified by prosecutorial or judicial overreaching intended to prompt the request, the double jeopardy clause bars reprosecution. State v. Harrell, 85 Wis. 2d 331, 270 N.W.2d 428 (Ct. App. 1978).

The double jeopardy provisions of the U.S. and Wisconsin constitutions are identical in scope and purpose. U.S. Supreme Court decisions control both provisions. Multiplicitous rape charges are discussed. Harrell v. State, 88 Wis. 2d 546, 277 N.W.2d 462 (1979).

When the court of appeals reversed the defendant's conviction due to insufficiency of the evidence, the double jeopardy clause did not bar the supreme court from reviewing the case. State v. Bowden, 93 Wis. 2d 574, 288 N.W.2d 139 (1980).

When a crime is against persons rather than property, there are as many offenses as victims. State v. Rabe, 96 Wis. 2d 48, 291 N.W.2d 809 (1980).

A prosecutor's repeated failure to disclose prior statements of witnesses was not prosecutorial overreaching that would bar reprosecution after the defendant moved for a mistrial. State v. Copening, 100 Wis. 2d 700, 303 N.W.2d 821 (1981).

Two sentences for one crime violate the double jeopardy clause. State v. Upchurch, 101 Wis. 2d 329, 305 N.W.2d 57 (1981).

The trial court properly declared a mistrial due to a juror's injury. State v. Mendoza, 101 Wis. 2d 654, 305 N.W.2d 166 (Ct. App. 1981).

The double jeopardy clause did not bar retrial when the judge declared a mistrial due to jury deadlock. State v. DuFrame, 107 Wis. 2d 300, 320 N.W.2d 210 (Ct. App. 1982).

The double jeopardy clause did not bar prosecution of a charge after it was considered as evidence of character in sentencing the defendant on a prior unrelated conviction. State v. Jackson, 110 Wis. 2d 548, 329 N.W.2d 182 (1983).

Without clear legislative intent to the contrary, multiple punishment may not be imposed for felony–murder and the underlying felony. State v. Gordon, 111 Wis. 2d 133, 330 N.W.2d 564 (1983).

Reimposition of a sentence after the defendant has been placed on probation, absent violation of probation condition, violates the double jeopardy clause. State v. Dean, 111 Wis. 2d 361, 330 N.W.2d 630 (Ct. App. 1983).

Governmental action is punishment under the double jeopardy clause if its principal purpose is punishment, retribution, or deterrence. When the principal purpose is nonpunitive, that a punitive motive may also be present does not make the action punishment. State v. Killebrew, 115 Wis. 2d 243, 340 N.W.2d 470 (1983).

When probation was conditioned on the defendant's voluntary commitment to a mental hospital but the hospital refused admittance, the court properly modified the original sentence by imposing a new sentence of 3 years' imprisonment. Double jeopardy was not violated. State v. Sepulveda, 120 Wis. 2d 231, 353 N.W.2d 790 (1984).

The double jeopardy clause was not violated when the trial court imposed illegal sentences then, in resentencing on a valid conviction, imposed an increased sentence. State v. Martin, 121 Wis. 2d 670, 360 N.W.2d 43 (1985).

When police confiscated a large quantity of drugs from an empty house and the next day searched the defendant upon his return home confiscating a small quantity of the same drugs, the defendant's conviction for a lesser–included offense of possession and greater offense of possession with intent to deliver did not constitute double jeopardy. State v. Stevens, 123 Wis. 2d 303, 367 N.W.2d 788 (1985).

The double jeopardy clause was not violated by a state criminal prosecution for conduct that was the basis of a prior remedial civil forfeiture proceeding by a municipality. Collateral estoppel does not bar a criminal prosecution following a guilty plea to a violation of municipal ordinances, even if both actions arise from the same transaction. State v. Kramsvogel, 124 Wis. 2d 101, 369 N.W.2d 145 (1985). See also State v. Thierfelder, 174 Wis. 2d 213, 495 N.W.2d 669 (1993).

A person may be convicted under s. 943.20 (1) (a) for concealing property and be separately convicted for transferring that property. State v. Tappa, 127 Wis. 2d 155, 378 N.W.2d 883 (1985).

Where the trial court declined to acquit the defendant but dismissed the criminal information after the jury deadlocked, double jeopardy barred the state's appeal of the dismissal. State v. Turely, 128 Wis. 2d 39, 381 N.W.2d 309 (1986).

The defendant waived a double jeopardy claim when failing to move for a dismissal of the charges at a retrial following a mistrial to which the defendant objected. State v. Mink, 146 Wis. 2d 1, 429 N.W.2d 99 (Ct. App. 1988).

A criminal prosecution for escape is not barred by the double jeopardy clause when commenced following an administrative disciplinary proceeding. State v. Quiroz, 149 Wis. 2d 691, 439 N.W.2d 621 (Ct. App. 1989).

A court may not, after accepting a guilty plea and ordering a presentence investigation, absent fraud or a party's intentionally withholding material information, vacate the plea and order reinstatement of the original information without violating the double jeopardy clause. State v. Comstock, 168 Wis. 2d 915, 485 N.W.2d 354 (1992).

Whether multiple charges constitute double jeopardy is discussed. State v. Sauceda, 168 Wis. 2d 486, 485 N.W.2d 1 (1992).

For a defendant to invoke double jeopardy protection after successfully moving for a mistrial, the prosecutor must have acted with intent to subvert the double jeopardy protection to gain another chance to convict or to harass the defendant with multiple prosecutions. State v. Quinn, 169 Wis. 2d 620, 486 N.W.2d 542 (Ct. App. 1992).

Charges are multiplicitous if they are identical both in law and fact or if the legislature intended the allowable unit of prosecution for the offense to be a single count. State v. Davis, 171 Wis. 2d 711, 492 N.W.2d 174 (Ct. App. 1992).

Multiple prosecutions for a continuous failure to pay child support are allowed. State v. Grayson, 172 Wis. 2d 156, 493 N.W.2d 23 (1992).

Jeopardy attaches when the jury is sworn. Granting a mistrial, dismissing the jury and convening a second jury is prohibited absent "manifest necessity." Granting a mistrial due to the unavailability of a prosecution witness is to be given the most stringent scrutiny. Alternatives to mistrials are to be considered. State v. Barthels, 174 Wis. 2d 173, 495 N.W.2d 341 (1993).

First offender OMVWI prosecution is civil, and jeopardy does not attach to prevent a subsequent criminal prosecution. State v. Thierfelder, 174 Wis. 2d 213, 495 N.W.2d 669 (1993).

The state supreme court will not interpret Wisconsin's double jeopardy clause to be broader than the U.S. Supreme Court's interpretation of the federal clause. State v. Kurzawa, 180 Wis. 2d 502, 509 N.W.2d 712 (1993).

A criminal conviction for violating terms of bail resulting from the conviction for another crime committed while released on bail does not constitute double jeopardy. State v. West, 181 Wis. 2d 792, 512 N.W.2d 207 (Ct. App. 1993).

Collateral estoppel is incorporated into the protection against double jeopardy and provides that when an ultimate issue of fact has once been determined, that issue cannot be relitigated between the same parties. The test is whether a rational jury could have grounded its verdict upon a separate issue. State v. Jacobs, 186 Wis. 2d 219, 519 N.W.2d 746 (Ct. App. 1994).

To determine whether charges are improperly multiplicitous the following two–prong test is applied: 1) whether the charged offenses are identical in law and fact; and 2) the legislative intent as to the allowable unit of prosecution for the offense. State v. Richter, 189 Wis. 2d 105, 525 N.W.2d 108 (Ct. App. 1994).

An acquittal does not prove innocence. Evidence of a crime for which a defendant was acquitted may be offered to show motive, plan, and other matters authorized under s. 904.04 if a jury could find by a preponderance of the evidence that the defendant committed the other act. State v. Landrum, 191 Wis. 2d 107, 528 N.W.2d 36 (Ct. App. 1995).

The extension of a previously entered juvenile dispositional order due to the juvenile's participation in an armed robbery while subject to the order was not a "disposition" of the armed robbery charge. Subsequent prosecution of the armed robbery charge in adult court did not violate s. 48.39 [now s. 938.39] or the protection against double jeopardy. State v. Stephens, 201 Wis. 2d 82, 548 N.W.2d 108 (Ct. App. 1996), 95–2103.

Whether a statute is criminal or civil for purposes of double jeopardy analysis depends on whether the legislature intended the statute to provide a remedial civil sanction and whether there are aspects of the statute that are so punitive either in effect or nature as to render the overall purpose punishment. State v. McMaster, 206 Wis. 2d 30, 556 N.W.2d 673 (1996), 95–1159.

Student disciplinary action under University of Wisconsin system administrative rules does not constitute punishment triggering double jeopardy protection. City of Oshkosh v. Winkler, 206 Wis. 2d 538, 557 N.W.2d 464 (Ct. App. 1996), 96–0967.

Service in prison of time successfully served on parole and forfeited through revocation does not constitute punishment within the meaning of the double jeopardy clause. State ex rel. Ludtke v. DOC, 215 Wis. 2d 1, 572 N.W.2d 864 (Ct. App. 1997), 96–1745.

A defendant may be charged and convicted of multiple crimes arising out of one criminal act only if the legislature intends it. When one charged offense is not a lesser included offense of the other, there is a presumption that the legislature intended to allow punishment for both offenses, which is rebutted only if other factors clearly indicate a contrary intent. State v. Lechner, 217 Wis. 2d 392, 576 N.W.2d 912 (1998), 96–2830.

Whether a single course of conduct has been impermissibly divided into separate violations of the same statute requires consideration of whether each offense is identical in fact and law and whether the legislature intended to allow multiple convictions. For each victim there is generally a separate offense. Legislative intent is shown by whether the statute punishes an individual for each act or for the course of conduct those acts constitute. State v. Lechner, 217 Wis. 2d 392, 576 N.W.2d 912 (1998), 96–2830.

The protection against double jeopardy embraces the defendant's right of having his or her trial completed by a particular tribunal. When the state moves for a mistrial over the objections of the defense, the trial court may not grant the motion unless there is a manifest necessity for the act. State v. Collier, 220 Wis. 2d 825, 584 N.W.2d 689 (Ct. App. 1998), 97–2589.

The double jeopardy clause prevents retrial when there was no motion for a mistrial but prosecutorial misconduct, the motivation for and effect of which were not known to the defendant at trial, had been committed. State v. Lettice, 221 Wis. 2d 69, 585 N.W.2d 171 (Ct. App. 1998), 97–3708.

Multiple criminal punishments are appropriate for multiple acts, but not multiple thoughts. Multiple punishments for a single act of enticement when the defendant intended to commit multiple illegal acts was not allowable. State v. Church, 223 Wis. 2d 641, 589 N.W.2d 638 (Ct. App. 1998), 97–3140.

If the legislature unambiguously has enacted 2 distinct prohibitions, each requiring proof of an element the other does not, the *Blockburger* presumption of intent to allow multiple punishment applies. But when the statue is language is ambiguous, the rule of lenity applies, requiring resolving the ambiguity against allowing multiple punishment. State v. Church, 223 Wis. 2d 641, 589 N.W.2d 638 (Ct. App. 1998), 97–3140.

Double jeopardy was not violated when the trial court realized it made an error in speech in pronouncing sentence and took immediate steps to correct the sentence before the judgment was entered into the record. State v. Burt, 2000 WI App 126, 237 Wis. 2d 610, 614 N.W.2d 42, 99–1209.

Double jeopardy prevents a court that, under a mistaken view of the law, entered a valid concurrent sentence from revising the sentence 3 months later to be a con-

secutive sentence. State v. Willett, 2000 WI App 212, 238 Wis. 2d 621, 618 N.W.2d 881, 99–2671.

A defendant was not subjected to double jeopardy when, after a presentence investigation following a no contest plea, the court took the defendant's plea for a second time and engaged the defendant in a colloquy to determine if the plea was knowing and intelligent. For double jeopardy to apply, an acquittal or dismissal followed by a second prosecution for the same offense is required. State v. Clark, 2000 WI App 245, 239 Wis. 2d 417, 620 N.W.2d 435, 00–0932.

Issue preclusion does not bar the prosecution of a defendant for perjury who was tried and acquitted on a single issue when newly discovered evidence suggests that the defendant falsely testified on the issue. The state must show that: 1) the evidence came to the state's evidence after trial; 2) the state was not negligent in failing to discover the evidence; 3) the evidence is material to the issue; and 4) the evidence is not merely cumulative. State v. Canon, 2001 WI 11, 241 Wis. 2d 164, 622 N.W.2d 270, 98–3519.

A lesser included offense must be both lesser and included. An offense with a heavier penalty cannot be regarded as a lesser offense than one with a lighter penalty. State v. Smits, 2001 WI App 45, 241 Wis. 2d 374, 626 N.W.2d 42, 00–1158.

When a defendant claims the state did not present enough evidence at trial to support splitting a course of conduct into multiple violations of the same statute, a multiplicity objection is waived if it is not raised prior to the time the case is submitted to the jury. State v. Koller, 2001 WI App 253, 248 Wis. 2d 259, 635 N.W.2d 838, 99–3084.

When a defendant repudiates a negotiated plea agreement on the ground that it contains multiplicitous counts, the defendant materially and substantially breaches the agreement. When an accused successfully challenges a plea to and a conviction on multiplicity grounds and the information has been amended pursuant to a negotiated plea agreement by which the state made charging concessions, ordinarily the remedy is to reverse the convictions and sentences, vacate the plea agreement, and reinstate the original information, but a different remedy may be appropriate. State v. Robinson, 2002 WI 9, 249 Wis. 2d 553, 638 N.W.2d 564, 00–2435.

A court's correction of an invalid sentence by increasing the punishment does not constitute double jeopardy; the initial sentence being invalid, the second, more severe sentence is the only valid sentence imposed. State v. Helm, 2002 WI App 154, 256 Wis. 2d 285, 647 N.W.2d 405, 01–2398.

If a defendant makes a fraudulent representation to the court, which the court accepts and relies upon in granting a sentence, the court may later declare the sentence void. Double jeopardy does not bar a subsequently increased sentence. State v. Jones, 2002 WI App 208, 257 Wis. 2d 163, 650 N.W.2d 855, 01–2969.

There is a spectrum of deference that appellate courts may apply to trial court findings of mistrials ranging from strictest scrutiny to the greatest deference, depending on the circumstances. However, even if the mistrial order is entitled to great deference, the reviewing court must find that the trial judge exercised sound discretion in concluding that the state satisfied its burden of showing a manifest necessity for the mistrial. State v. Seefeldt, 2003 WI 47, 261 Wis. 2d 383, 661 N.W.2d 822, 01–1969.

Trial courts may correct obvious errors in sentencing when it is clear that a good faith mistake was made in an initial sentencing pronouncement, the court promptly recognizes the error, and the court, by reducing an erroneous original sentence on one count and increasing the original sentence on another, seeks to impose a lawfully structured sentence that achieves the overall disposition that the court originally intended. State v. Gruetzmacher, 2004 WI 55, 271 Wis. 2d 585, 679 N.W.2d 533, 02–3014.

In a multi–count trial, if the defendant is convicted of one or more counts and acquitted of one or more counts, and the defendant successfully appeals the conviction or convictions, the acquittals pose no direct bar to retrying the defendant. Rather, acquittal may indirectly impact the state's ability to retry the defendant under collateral estoppel principles. State v. Henning, 2004 WI 89, 273 Wis. 2d 352, 681 N.W.2d 871, 02–1287.

The state's attempt to retry the defendant for armed robbery alleging the use of a different weapon after a trial court conclusion that an acquittal on a first armed robbery charge resulted from insufficient evidence of the use of a gun violated double jeopardy protections. It did not necessarily follow that the state was prevented from pursuing a charge of simple robbery however. Losey v. Frank, 268 F. Supp. 2d 1066 (2003).

A guilty plea waives a multiplicity claim anytime the claim cannot be resolved on the record, regardless whether a case presents on direct appeal or collateral attack. State v. Kelty, 2006 WI 101, 294 Wis. 2d 62, 716 N.W.2d 886, 03–3055.

Retrial is barred when a defendant moves for and obtains a mistrial due to prosecutorial overreaching when the prosecutor intentionally attempts to prejudice the defendant or create another chance to convict. A police officer's testimony that forms the basis of a mistrial will not be imputed to the prosecutor in the absence of evidence of collusion by the prosecutor's office intended to provoke the defendant to move for a mistrial and does not constitute prosecutorial overreaching barring a retrial. State v. Jaimes, 2006 WI App 93, 292 Wis. 2d 656, 715 N.W.2d 669, 05–1511.

The defendant's argument that his conviction on two bail–jumping counts was multiplicitous because the preliminary hearings at which he failed to appear were scheduled for the same time and he had signed only one bond for the two underlying cases failed because the counts were different in fact. Proof of notification and failure to appear in one case would not prove notification and failure to appear in the other, making the two charges different in nature and therefore different in fact. State v. Eaglefeathers, 2009 WI App 2, 316 Wis. 2d 152, 762 N.W.2d 690, 07–0845.

Multiple punishments may not be imposed for charges that are identical in law and fact unless the legislature intended to impose such punishments. An "elements–only" test, to determine whether charges are identical in law and fact, is the first prong of a multiplicity analysis. Offenses with elements identical in law and fact establish a presumption that the legislature did not intend to permit multiple punishments. Offenses with elements that differ in law or fact establish a presumption that the legislature did intend to permit multiple punishments. State v. Patterson, 2010 WI 130, 329 Wis. 2d 599, 790 N.W.2d 909, 08–1968.

Regardless of the outcome of the "elements–only" test, the court proceeds to discern legislative intent. Operating under the presumption established under the first prong, the court then proceeds in a 4–factor analysis to determine whether the legislature intended to permit multiple punishments for the offenses in question, examining: 1) all relevant statutory language; 2) the legislative history and context of the statutes; 3) the nature of the proscribed conduct; and 4) the appropriateness of multiple punishments for the defendant's conduct. State v. Patterson, 2010 WI 130, 329 Wis. 2d 599, 790 N.W.2d 909, 08–1968.

In any challenge to a law on double jeopardy and ex post facto grounds, the threshold question is whether the ordinance is punitive, as both clauses apply only to punitive laws. Courts employ a two–part "intent–effects" test to answer whether a law applied retroactively is punitive and, therefore, an unconstitutional violation of the Double Jeopardy and Ex Post Facto Clauses. If the intent was to impose punishment, the law is considered punitive and the inquiry ends there. If the intent was to impose a civil and nonpunitive regulatory scheme, the court must determine whether the effects of the sanctions imposed by the law are so punitive as to render them criminal. City of South Milwaukee v. Kester, 2013 WI App 50, 347 Wis. 2d 334, 830 N.W.2d 710, 12–0724.

A per se rule no longer exists prohibiting a court from increasing a defendant's sentence after the defendant has begun to serve the sentence. If a defendant has a legitimate expectation of finality in the sentence, then an increase in that sentence is prohibited by the double jeopardy clause. A significant factor in determining that the circuit court acted appropriately in resentencing the defendant is whether the justice system as a whole has not yet begun to act upon the circuit court's sentence. State v. Robinson, 2014 WI 35, 354 Wis. 2d 351, 847 N.W.2d 352, 11–2833.

The circuit court must exercise sound discretion in declaring a mistrial. Sound discretion requires that the circuit court ensure that the record reflects that there is an adequate basis for a finding of manifest necessity. State v. Troka, 2016 WI App 35, 369 Wis. 2d 193, 880 N.W.2d 161, 14–2470.

When a jury, instructed on both second–degree and third–degree sexual assault and after deliberation, sent a note stating that all jurors "agree on not guilty for the second degree," but "are hung on the third degree" and the court concluded the jury was deadlocked and ordered a mistrial, the state was not prevented from retrying the second–degree charge. *Blueford,* 566 U.S. 599, stands for the proposition that a jury's expression of agreement at a certain point in time is not an acquittal if the jury was free to reconsider its decision. The jury's note was not a resolution of some or all of the factual elements of second–degree sexual assault. Because the jury was free to reconsider its currently expressed view on the second–degree charge, the jury's note was not a verdict of acquittal. State v. Alvarado, 2017 WI App 53, 377 Wis. 2d 710, 903 N.W.2d 122, 16–0142.

For the purposes of determining whether a crime is a lesser included offense because it is different in fact from the other crime based on a subset of a defendant's many acts, the state must give the circuit court a basis for differentiating the defendant's acts with respect to the two crimes at issue. State v. Kloss, 2019 WI 13, 386 Wis. 2d 314, 925 N.W.2d 563, 18–0651.

When the state charges a defendant in a subsequent prosecution for conduct the defendant contends overlaps the first prosecution's timeframe, courts may examine the entire record of the first proceeding to determine the actual scope of jeopardy in the first proceeding. The test to determine whether the earlier timeframe included the second is not what a reasonable person would think the earlier timeframe includes. Instead, the court ascertains the parameters of the offense for which the defendant was actually in jeopardy during the first proceeding by reviewing all of the evidence, testimony, and arguments of the parties. State v. Schultz, 2020 WI 24, 390 Wis. 2d 570, 939 N.W.2d 519, 17–1977.

Section 939.71 substantially enacts the *Blockburger*, 284 U.S. 299 (1932), test for determining whether two offenses are the same offense for double jeopardy purposes. The test for determining whether there are two offenses or only one is whether each provision requires proof of a fact that the other does not. State v. Triebold, 2021 WI App 13, 396 Wis. 2d 176, 955 N.W.2d 415, 19–1209.

Multiplicity arises when the defendant is charged in more than one count for a single offense. The established methodology for reviewing a multiplicity claim is a two–step test. First, the court determines whether the charged offenses are identical in law and fact using the *Blockburger*, 284 U.S. 299 (1932), test. The *Blockburger* test inquires whether each provision requires proof of an additional fact which the other does not. As a general proposition, different elements of law distinguish one offense from another when different statutes are charged. Different facts distinguish one count from another when the counts are charged under the same statute. Section 346.17 (3) (b) to (d) provides additional elements to the offense stated in s. 346.04 (3) when death, great bodily harm, or property damage is involved, as it was in this case. Thus, under the *Blockburger* test, the defendant's charges were not the same in law and fact because the charges involved proof of additional elements or facts that the others did not. State v. Wise, 2021 WI App 87, 400 Wis. 2d 174, 968 N.W.2d 705, 20–1756.

A conclusion that the legislature did not intend multiple punishments results in either a double jeopardy or a due process violation. If the offenses are determined to be the same in law and fact, the defendant's double jeopardy rights have been violated. However, if the offenses are determined to not be the same in law or fact, then there has been a due process violation, as opposed to a double jeopardy violation. State v. Wise, 2021 WI App 87, 400 Wis. 2d 174, 968 N.W.2d 705, 20–1756.

When the judge dismissed a charge after the jury returned a guilty verdict, the prosecution's appeal did not constitute double jeopardy. United States v. Wilson, 420 U.S. 332.

When a juvenile court found the defendant guilty but unfit for treatment as a juvenile, the defendant would be put in double jeopardy if tried in a criminal court. Breed v. Jones, 421 U.S. 519.

A guilty plea does not waive the defense of double jeopardy. Menna v. New York, 423 U.S. 61.

When defense counsel's improper opening statement prompted the trial judge to grant a mistrial over defense objections, and when the record provided sufficient justification for the mistrial ruling, the judge's failure to make explicit findings of "manifest necessity" did not support the defendant's claim of double jeopardy. Arizona v. Washington, 434 U.S. 497 (1978).

The protection against double jeopardy did not bar federal prosecution of an American Indian previously convicted in a tribal court of a lesser included offense arising out of the same incident. United States v. Wheeler, 435 U.S. 313 (1978).

The double jeopardy clause bars a second trial after reversal of a conviction for insufficiency of evidence, as distinguished from reversal for trial error. Burks v. United States, 437 U.S. 1 (1978).

There is no exception permitting a retrial once the defendant has been acquitted, no matter how erroneously. Sanabria v. United States, 437 U.S. 54 (1978).

The test for determining whether 2 offenses are the same for purposes of barring successive prosecutions is discussed. Illinois v. Vitale, 447 U.S. 410 (1980).

A statute authorizing the government to appeal a sentence did not violate the double jeopardy clause. United States v. Di Franceseo, 449 U.S. 117 (1980).

When the judge granted the defendant's motion for a new trial on the ground that the evidence was insufficient to support the jury's guilty verdict, the double jeopardy clause barred a second trial. Hudson v. Louisiana, 450 U.S. 40 (1981).

A criminal defendant who successfully moves for a mistrial may invoke the double jeopardy clause to bar a retrial only if the mistrial was based on prosecutorial or judicial conduct intended to provoke the defendant into moving for the mistrial. Oregon v. Kennedy, 456 U.S. 667 (1982).

Reversal based on the weight of the evidence, unlike reversal based on insufficient evidence, does not preclude retrial. Tibbs v. Florida, 457 U.S. 31 (1982).

The defendant's conviction and sentence by Missouri for both armed criminal action and first–degree robbery in single trial did not constitute double jeopardy. Missouri v. Hunter, 459 U.S. 359 (1983).

The double jeopardy clause did not bar prosecution on more serious charges after the defendant pled guilty to lesser included offenses. Ohio v. Johnson, 467 U.S. 493 (1984).

When the jury acquitted on one count but was unable to agree on two others, the double jeopardy clause did not bar retrial on the remaining two counts. Richardson v. United States, 468 U.S. 317 (1984).

Under the dual sovereignty doctrine, successive prosecutions by two states for the same conduct does not constitute double jeopardy. Heath v. Alabama, 474 U.S. 82 (1985). See also Gamble v. United States, 587 U.S. ___, 139 S. Ct. 1960, 204 L. Ed. 2d 322 (2019).

An appellate court remedied a double jeopardy violation by reducing a jeopardy–barred conviction to that of lesser included offense that was not jeopardy barred. Morris v. Mathews, 475 U.S. 237 (1986).

When the defendant breached a plea agreement and a second degree murder conviction was vacated as a result, a subsequent prosecution for first degree murder did not constitute double jeopardy. Ricketts v. Adamson, 483 U.S. 1 (1987).

The double jeopardy clause does not prohibit retrial after the reversal of a conviction based upon improperly admitted evidence that, once suppressed, would result in evidence insufficient to support the conviction. Lockhart v. Nelson, 488 U.S. 33, 102 L. Ed. 2d 265 (1988).

The double jeopardy clause bars a subsequent prosecution if, to establish an essential element of the offense charged, the prosecution will prove conduct constituting the offense for which the defendant was previously prosecuted. Grady v. Corbin, 495 U.S. 508, 109 L. Ed. 2d 548 (1990).

The *Grady v. Corbin* "same conduct" test is overruled. United States v. Dixon, 509 U.S. 688, 125 L. Ed. 2d 556 (1993).

Generally, the double jeopardy clause prohibits reexamination of a court–decreed acquittal to the same extent it prohibits reexamination of an acquittal by jury verdict whether in a bench or jury trial. If, after a facially unqualified midtrial dismissal of one count, the trial proceeded to the defendant's introduction of evidence, the acquittal must be treated as final, unless the availability of reconsideration has been plainly established by pre–existing rule or case authority expressly applicable to midtrial rulings on the sufficiency of the evidence. Smith v. Massachusetts, 543 U.S. 462, 160 L. Ed. 2d 914, 125 S. Ct. 1129 (2004).

The double jeopardy clause precludes the government from relitigating any issue that was necessarily decided by a jury's acquittal in a prior trial. Consideration of hung counts has no place in the issue–preclusion analysis. To identify what a jury necessarily determined at trial, courts should scrutinize a jury's decisions, not its failures to decide. A jury's verdict of acquittal represents the community's collective judgment regarding all the evidence and arguments presented to it. Thus, if there was a critical issue of ultimate fact in all charges, a jury verdict that necessarily decided that issue in the defendant's favor protects him or her from prosecution for any charge for which that fact is an essential element. Yeager v. United States, 557 U.S. 110, 129 S. Ct. 2360, 174 L. Ed. 2d 78 (2009).

When the jury in this case did not convict or acquit the defendant of any offense and was unable to return a verdict, the trial court properly declared a mistrial and discharged the jury. As a consequence, the Double Jeopardy Clause did not stand in the way of a second trial on the same offenses even though before the jury concluded deliberations it reported that it was unanimous against guilt on charges of capital murder and first–degree murder, was deadlocked on manslaughter, and had not voted on negligent homicide. Blueford v. Arkansas, 566 U.S. 599, 132 S. Ct. 2044, 182 L. Ed. 2d 937 (2012).

The double jeopardy clause bars retrial following a court–decreed acquittal, even if the acquittal is based upon an egregiously erroneous foundation. An acquittal encompasses any ruling that the prosecution's proof is insufficient to establish criminal liability for an offense. There is no meaningful constitutional distinction between a trial court's "misconstruction" of a statute and its erroneous addition of a statutory element. A midtrial acquittal in either of these circumstances is an acquittal for double jeopardy purposes. Evans v. Michigan, 568 U.S. 313, 133 S. Ct. 1069, 185 L. Ed. 2d 124 (2013).

A jury trial begins, and jeopardy attaches, when the jury is sworn. This has consistently been treated as a bright–line rule. Martinez v. Illinois, 572 U.S. 313, 134 S. Ct. 2070, 188 L. Ed. 2d 1112 (2014).

Perhaps the most fundamental rule in the history of double jeopardy jurisprudence has been that a verdict of acquittal could not be reviewed without putting a defendant twice in jeopardy, and thereby violating the Constitution. In this case, the state declined to present evidence against the defendant whose counsel moved for directed findings of not guilty and the court granted the motion for a directed finding. That is a textbook acquittal: a finding that the state's evidence cannot support a conviction. What constitutes an acquittal is not to be controlled by the form of the judge's action; it turns on whether the ruling of the judge, whatever its label, actually represents a resolution of some or all of the factual elements of the offense charged. Martinez v. Illinois, 572 U.S. 313, 134 S. Ct. 2070, 188 L. Ed. 2d 1112 (2014).

In criminal prosecutions the issue–preclusion principle means that when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit. Issue preclusion applies when a jury returns inconsistent verdicts, convicting on one count and acquitting on another count, when both counts turn on the very same issue of ultimate fact. When inconsistent guilty verdicts are vacated on appeal because of error in the judge's instructions unrelated to the verdicts' inconsistency, the vacatur of a conviction for unrelated legal error does not reconcile the jury's inconsistent returns. Issue preclusion does not apply when verdict inconsistency renders unanswerable what the jury necessarily decided. The acquittal remains inviolate, but, because it is unknown what the jury would have concluded had there been no instructional error, a new trial on the counts of conviction is in order. Bravo–Fernandez v. United States, 580 U.S. 5, 137 S. Ct. 352, 196 L. Ed. 2d 242 (2016).

If a defendant consents to two trials when one would have avoided a double jeopardy problem, that consent precludes any constitutional violation associated with holding a second trial. In those circumstances, the defendant wins a potential benefit and experiences none of the prosecutorial oppression the double jeopardy clause exists to prevent. Currier v. Virginia, 585 U.S. ___, 138 S. Ct. 2144, 201 L. Ed. 2d 650 (2018).

Under the dual–sovereignty doctrine, a state may prosecute a defendant under state law even if the federal government has prosecuted the defendant for the same conduct under a federal statute. Gamble v. United States, 587 U.S. ___, 139 S. Ct. 1960, 204 L. Ed. 2d 322 (2019).

Custody in the county jail incidental to conviction added to the maximum term imposed on conviction subjected the petitioner to multiple penalties for one offense in excess of the maximum statutory penalty and in violation of the guarantee against double jeopardy. Taylor v. Gray, 375 F. Supp. 790.

Double jeopardy was not violated when the defendant was convicted of separate offenses under s. 161.41 [now s. 961.41] for simultaneous delivery of different controlled substances. Leonard v. Warden, Dodge Correctional Inst., 631 F. Supp. 1403 (1986).

Multiple Punishment in Wisconsin and the *Wolske* Decision: Is It Desirable to Permit Two Homicide Convictions for Causing a Single Death? 1990 WLR 553.

State v. Grayson: Clouding the Already Murky Waters of Unit Prosecution Analysis in Wisconsin. Leslie. 1993 WLR 811.

The Use of Wisconsin's Bail Jumping Statute: A Legal and Quantitative Analysis. Johnson. 2018 WLR 619.

DUE PROCESS

It is not necessary to hold a second *Goodchild* type hearing before admitting testimony of a second witness to the same confession. State v. Watson, 46 Wis. 2d 492, 175 N.W.2d 244.

The sentencing duties of a trial court following a second conviction after retrial or upon resentencing bars the trial court from imposing an increased sentence unless events occur or come to the sentencing court's attention subsequent to the first imposition of sentence that warrant an increased penalty and the court affirmatively states the ground for increasing the sentence on the record. Denny v. State, 47 Wis. 2d 541, 178 N.W.2d 38.

An arrest is not void because of a three–month interval between the time of the offense and the arrest. Gonzales v. State, 47 Wis. 2d 548, 177 N.W.2d 843.

A lineup, wherein 2 suspects were required to wear special clothing and a number of victims were allowed to identify them out loud, influencing others, was unfair and later influenced in–court identification. Jones v. State, 47 Wis. 2d 642, 178 N.W.2d 42.

An out of court identification by a witness shown only a photograph of the defendant and no other persons was not a denial of due process, but does reflect on the weight given the evidence. Defense counsel need not be present at the identification. Kain v. State, 48 Wis. 2d 212, 179 N.W.2d 777.

The rule that a defendant during a trial should not be handcuffed does not extend to periods outside the courtroom, and the fact that some jurors saw the defendant shackled was not prejudicial. State v. Cassel, 48 Wis. 2d 619, 180 N.W.2d 607.

It is not a violation of due process for the judge who conducts a hearing regarding the admissibility of a confession to continue as the trial judge in the case. State v. Cleveland, 50 Wis. 2d 666, 184 N.W.2d 899.

A statute denying probation to second offenders and that does not require proof of criminal intent is constitutional. State v. Morales, 51 Wis. 2d 650, 187 N.W.2d 841.

When a defendant is no longer entitled to a substitution of judge, prejudice in fact by the judge must be shown. State v. Garner, 54 Wis. 2d 100, 194 N.W.2d 649.

A child committed to the state who is released under supervision, who then violates the terms of the release is entitled to the same protections as an adult as to a hearing on probation revocation. State ex rel. Bernal v. Hershman, 54 Wis. 2d 626, 196 N.W.2d 721.

A defendant who, believing he was seriously wounded, began to tell what happened and was given *Miranda* warnings waived his rights when he continued to talk. Waiver need not be express when the record shows the defendant was conscious and alert and said he understood his rights. State v. Parker, 55 Wis. 2d 131, 197 N.W.2d 742.

The duty of the state to disclose exculpatory evidence is not excused by the district attorney's belief that the evidence is incredible, but failure to disclose is not prejudicial when the evidence would not have affected the conviction. Nelson v. State, 59 Wis. 2d 474, 208 N.W.2d 410.

Due process requires that a juvenile be afforded a copy of a hearing examiner's report recommending revocation of aftercare supervision and the opportunity to object thereto in writing prior to the decision of the H & S S department secretary. State ex rel. R. R. v. Schmidt, 63 Wis. 2d 82, 216 N.W.2d 18.

Circumstances to be considered in determining whether the delay between the alleged commission of a crime and an arrest denies a defendant due process of law include: 1) the period of the applicable statute of limitations; 2) prejudice to the conduct of the defense; 3) intentional prosecution delay to gain some tactical advantage; and 4) the loss of evidence or witnesses, and the dimming of memories. The

mere possibility of prejudice from these factors is not alone sufficient to demonstrate that a fair trial is impossible — actual prejudice must be shown. State v. Rogers, 70 Wis. 2d 160, 233 N.W.2d 480.

A photo identification using one color and 4 black and white photos when 2 of the 5, including the color photo, were of the defendant was not impermissibly suggestive. Mentek v. State, 71 Wis. 2d 799, 238 N.W.2d 752.

The fact that the accused, who demanded a jury trial, received a substantially greater sentence than an accomplice who pleaded guilty does not constitute punishment for exercising the right to a jury trial or a denial of either due process or equal protection. Drinkwater v. State, 73 Wis. 2d 674, 245 N.W.2d 664.

Improper remarks by a prosecutor are not necessarily prejudicial when objections are promptly made and sustained and curative instructions and admonitions are given by the court. Hoppe v. State, 74 Wis. 2d 107, 246 N.W.2d 122 (1976).

Persons committed under ch. 975 are entitled to periodic review hearings that afford the same minimal requirements of due process as parole determinations. Habeas corpus is an appropriate remedy. State ex rel. Terry v. Schubert, 74 Wis. 2d 487, 247 N.W.2d 109.

A sentencing judge does not deny due process by considering pending criminal charges in imposing a sentence. Handel v. State, 74 Wis. 2d 699, 247 N.W.2d 711.

Due process requires that a prosecutor voluntarily disclose highly exculpatory evidence that would raise a reasonable doubt when none existed before. Ruiz v. State, 75 Wis. 2d 230, 249 N.W.2d 277.

The trial court did not err in refusing to grant a mistrial when police reports concerning an unrelated pending charge against the defendant and the defendant's mental history were accidentally sent to the jury room. Johnson v. State, 75 Wis. 2d 344, 249 N.W.2d 593.

The defendant received a fair, though not perfect, trial when a prosecution witness attempted to ingratiate himself with the jury prior to trial and another prosecution witness violated a sequestration order. Nyberg v. State, 75 Wis. 2d 400, 249 N.W.2d 524.

The defendant's refusal to name accomplices was properly considered by the sentencing judge. Because the defendant had pleaded guilty to a crime, self–incrimination would not have resulted from the requested cooperation. Holmes v. State, 76 Wis. 2d 259, 251 N.W.2d 56.

A parole revocation hearing is not part of a criminal prosecution and thus the full panoply of rights, including *Miranda* warnings and the exclusionary rule, are not applicable. State ex rel. Struzik v. DHSS, 77 Wis. 2d 216, 252 N.W.2d 660.

Due process does not require that a person know with certainty which crime, among several, the person is committing, at least until the prosecution exercises its charging discretion. Harris v. State, 78 Wis. 2d 357, 254 N.W.2d 291.

The due process rationale of *Doyle v. Ohio*, 426 U.S. 610, is limited to prosecutorial use of a defendants' custodial interrogation silence to impeach exculpatory statements made during trial. Rudolph v. State, 78 Wis. 2d 435, 254 N.W.2d 471.

Due process does not require that a John Doe witness be advised of the nature of the proceeding or that the witness is a "target" of the investigation. Ryan v. State, 79 Wis. 2d 83, 255 N.W.2d 910.

The due process requirements an administrative body must provide when it imposes regulatory or remedial sanctions upon conduct that is also subject to criminal punishment are discussed. Layton School of Art & Design v. WERC, 82 Wis. 2d 324, 262 N.W.2d 218.

The right to a fair trial does not entitle the defendant to inspect the entire file of the prosecutor. State ex rel. Lynch v. County Ct. 82 Wis. 2d 454, 262 N.W.2d 773.

Under the "totality of circumstances" test, lineup and in–court identifications were properly admitted, although an earlier photographic identification was unnecessarily suggestive. Simos v. State, 83 Wis. 2d 251, 265 N.W.2d 278 (1978).

A deliberate failure to object to prejudicial evidence at trial constitutes a binding waiver. Murray v. State, 83 Wis. 2d 621, 266 N.W.2d 288 (1978).

The test to determine if the denial of a continuance acted to deny the defendant of either due process or the effective right of counsel is discussed. State v. Wollman, 86 Wis. 2d 459, 273 N.W.2d 225 (1979).

The accused has the right to answer some questions after a *Miranda* warning and then to reassert the privilege and break off all questioning. Odell v. State, 90 Wis. 2d 149, 279 N.W.2d 706 (1979).

Trial courts do not have subject matter jurisdiction to convict defendants under unconstitutionally vague statutes. The right to raise the issue on appeal cannot be waived, regardless of a guilty plea. State ex rel. Skinkis v. Treffert, 90 Wis. 2d 528, 280 N.W.2d 316 (Ct. App. 1979).

A probationer's due process right to prompt revocation proceedings was not triggered when the probationer was detained as the result of unrelated criminal proceedings. State ex rel. Alvarez v. Lotter, 91 Wis. 2d 329, 283 N.W.2d 408 (Ct. App. 1979).

Before the "totality of circumstances" analysis is applied to confrontation identification, it must first be determined whether police deliberately contrived the confrontation between the witness and defendant. State v. Marshall, 92 Wis. 2d 101, 284 N.W.2d 592 (1979).

Due process requires that evidence reasonably support a finding of guilt beyond a reasonable doubt. State v. Stawicki, 93 Wis. 2d 63, 286 N.W.2d 612 (Ct. App. 1979).

An eight–month delay between the date of the alleged offense and the filing of a complaint did not violate the defendant's due process rights. State v. Davis, 95 Wis. 2d 55, 288 N.W.2d 870 (Ct. App. 1980).

Exculpatory hearsay lacked assurances of trustworthiness and was properly excluded. State v. Brown, 96 Wis. 2d 238, 291 N.W.2d 528 (1980).

The use of an unsworn prior inconsistent statement of a witness as substantive evidence did not deprive the defendant of due process. Vogel v. State, 96 Wis. 2d 372, 291 N.W.2d 838 (1980).

An inmate in administrative confinement has a state–created interest protected by due process in his eventual return to the general prison population. State ex rel. Irby v. Israel, 100 Wis. 2d 411, 302 N.W.2d 517 (Ct. App. 1981).

Factors that the court should consider when the defendant requests to be tried after the trial of a codefendant in order to secure testimony of the codefendant are discussed. State v. Anastas, 107 Wis. 2d 270, 320 N.W.2d 15 (Ct. App. 1982).

A revocation of probation denied due process when there was a lack of notice of the total extent and nature of the alleged violations of probation. State ex rel. Thompson v. Riveland, 109 Wis. 2d 580, 326 N.W.2d 768 (1982).

Continued questioning after the accused mentioned the word "attorney" was prejudicial error. Harmless error is discussed. State v. Billings, 110 Wis. 2d 661, 329 N.W.2d 192 (1983).

Due process requires the state to preserve evidence that: 1) possesses exculpatory value apparent to the custodian; and 2) is of a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means. State v. Oinas, 125 Wis. 2d 487, 373 N.W.2d 463 (Ct. App. 1985).

When 2 statutes have identical criminal elements but different penalties, the state does not deny equal protection or due process by charging defendants with the more serious crime. State v. Cissel, 127 Wis. 2d 205, 378 N.W.2d 691 (1985).

If the state shows that delay in charging an offense committed by an adult defendant while still a juvenile was not with a manipulative intent, due process does not require dismissal. State v. Montgomery, 148 Wis. 2d 593, 436 N.W.2d 303 (1989).

Lineup and in–court identifications of a defendant may be suppressed as the fruit of an illegal arrest under appropriate circumstances. State v. Walker, 154 Wis. 2d 158, 453 N.W.2d 127 (1990).

A comment during closing argument on the defendant's courtroom demeanor when evidence of the demeanor was adduced during trial did not violate the 5th amendment. State v. Norwood, 161 Wis. 2d 676, 468 N.W.2d 741 (Ct. App. 1991).

Evidence favorable to the defendant must be disclosed if there is a "reasonable probability" that disclosure would have resulted in a different trial outcome. State v. Garrity, 161 Wis. 2d 842, 469 N.W.2d 219 (Ct. App. 1991).

When prior convictions are used to enhance a minimum penalty, collateral attack of the prior convictions must be allowed. State v. Baker, 165 Wis. 2d 42, 477 N.W.2d 292 (Ct. App. 1991).

The defense of outrageous governmental conduct arises when the government violates a specific constitutional right and was itself so enmeshed in the criminal activity that prosecution of the defendant would be repugnant to the criminal justice system. State v. Hyndman, 170 Wis. 2d 198, 488 N.W.2d 111 (Ct. App. 1992).

When the argument of the defense invited and provoked an otherwise improper remark by the prosecutor, the question is whether, taken in context, the "invited remark" unfairly prejudiced the defendant. State v. Wolff, 171 Wis. 2d 161, 491 N.W.2d 498 (Ct. App. 1992).

Due process is not violated when a burden of production is placed on the defendant to come forward with some evidence of a negative defense. State v. Pettit, 171 Wis. 2d 627, 492 N.W.2d 633 (Ct. App. 1992).

To sustain a conviction when alternative methods of proof resting upon different evidentiary facts are presented to the jury, the evidence must be sufficient to convict beyond a reasonable doubt upon both of the alternative modes of proof. State v. Chambers, 173 Wis. 2d 237, 496 N.W.2d 191 (Ct. App. 1992).

Due process rights of a probationer at a hearing to modify probation are discussed. State v. Hayes, 173 Wis. 2d 439, 496 N.W.2d 645 (Ct. App. 1992).

The interval between an arrest and an initial appearance is never unreasonable when the arrested suspect is already in the lawful physical custody of the state. State v. Harris, 174 Wis. 2d 367, 497 N.W.2d 742 (Ct. App. 1993).

The admissibility of an out–of–court identification rests on whether the procedure was impermissibly suggestive and whether under all the circumstances the identification was reliable despite any suggestiveness. That another procedure might have been better does not render the identification inadmissible. State v. Ledger, 175 Wis. 2d 116, 499 N.W.2d 199 (Ct. App. 1993).

A defendant has a fundamental right to testify in his or her own behalf. Waiver of the right must be supported by a record of a knowing and voluntary waiver. State v. Wilson, 179 Wis. 2d 660, 508 N.W.2d 44 (Ct. App. 1993).

The good or bad faith of police in destroying apparently exculpatory evidence is irrelevant, but in the absence of bad faith, destruction of evidence that only provides an avenue of investigation does not violate due process protections. State v. Greenwold, 181 Wis. 2d 881, 512 N.W.2d 237 (Ct. App. 1994).

Bad faith can only be shown if the officers were aware of the potentially exculpatory value of evidence they fail to preserve and the officers acted with animus or made a conscious effort to suppress the evidence. State v. Greenwold, 189 Wis. 2d 59, 525 N.W.2d 294 (Ct. App. 1994).

An executory plea bargain is without constitutional significance and a defendant has no right to require the performance of an executory agreement, but upon entry of a plea due process requires the defendant's expectations to be fulfilled. State v. Wills, 187 Wis. 2d 528, 523 N.W.2d 569 (Ct. App. 1994).

A prosecutor's closing argument is impermissible when it goes beyond reasoning drawn from the evidence and suggests that the verdict should be arrived at by considering other factors. Substantially misstating the law and appearing to speak for the trial court was improper and required court intervention in the absence of an objection. State v. Neuser, 191 Wis. 2d 131, 528 N.W.2d 49 (Ct. App. 1995).

Whether the interplay of legally correct instructions impermissibly misled a jury is to be determined based on whether there is a reasonable likelihood that a juror was misled. State v. Lohmeier, 205 Wis. 2d 183, 556 N.W.2d 90 (1996), 94–2187.

Prosecutorial misconduct violates the due process right to a fair trial if it poisons the entire atmosphere of the trial. State v. Lettice, 205 Wis. 2d 347, 556 N.W.2d 376 (Ct. App. 1996), 96–0140.

A criminal conviction cannot be affirmed on the basis of a theory not presented to the jury. State v. Wulff, 207 Wis. 2d 144, 557 N.W.2d 813 (1997), 94–3364.

A defendant is denied due process when identification is derived from police procedures so impermissibly suggestive as to give rise to a very substantial likelihood of misidentification. A suppression hearing is not always required when a defendant moves to suppress identification, but must be considered on a case–by–case basis. State v. Garner, 207 Wis. 2d 520, 558 N.W.2d 916 (Ct. App. 1996), 96–0168.

There is no constitutional right to a sworn complaint in a criminal case. State v. Zanelli, 212 Wis. 2d 358, 569 N.W.2d 301 (Ct. App. 1997), 96–2159.

A defendant has a due process right to have the full benefit of a relied upon plea bargain. The unintentional misstatement of a plea agreement, promptly rectified by the efforts of both counsel, did not deny that right. State v. Knox, 213 Wis. 2d 318, 570 N.W.2d 599 (Ct. App. 1997), 97–0682.

The state's use, as a witness, of an informant who purchased and used illegal drugs while making controlled drug buys for the state, in violation of her agreement with the state, was not a violation of fundamental fairness that shocks the universal justice system and did not constitute outrageous governmental conduct. State v. Givens, 217 Wis. 2d 180, 580 N.W.2d 340 (Ct. App. 1998), 97–1248.

Due process does not require that judges' personal notes be made available to litigants. It is only the final reasoning process that judges are required to place on the record that is representative of the performance of judicial duties. State v. Panknin, 217 Wis. 2d 200, 579 N.W.2d 52 (Ct. App. 1998), 97–1498.

The state's failure to disclose that it took samples but failed to have them analyzed affected the defendant's right to a fair trial because it prevented the defendant from raising the issue of the reliability of the investigation and from challenging the credibility of a witness who testified that the test had not been performed. State v. DelReal, 225 Wis. 2d 565, 593 N.W.2d 461 (Ct. App.1999), 97–1480.

When defense counsel has appeared for and represented the state in the same case in which he or she later represents the defendant, and no objection was made at trial, to prove a violation of the right to effective counsel, the defendant must show that counsel converted a potential conflict of interest into an actual conflict by knowingly failing to disclose the attorney's former prosecution of the defendant or representing the defendant in a manner that adversely affected the defendant's interests. State v. Love, 227 Wis. 2d 60, 594 N.W.2d 806 (1999), 97–2336.
See also State v. Kalk, 2000 WI App 62, 234 Wis. 2d 98, 608 N.W.2d 98, 99–1164.

A new rule of criminal procedure applies to all cases pending on direct review or that are not yet final that raised the issue that was subject to the change. There is no retroactive application to cases in which the issue was not raised. State v. Zivcic, 229 Wis. 2d 119, 598 N.W.2d 565 (Ct. App. 1999), 98–0909.

Neither a presumption of prosecutor vindictiveness or actual vindictiveness was found when, following a mistrial resulting from a hung jury, the prosecutor filed increased charges and then offered to accept a plea bargain requiring a guilty plea to the original charges. Adding additional charges to obtain a guilty plea does no more than present the defendant with the alternative of forgoing trial or facing charges on which the defendant is subject to prosecution. State v. Johnson, 2000 WI 12, 232 Wis. 2d 679, 605 N.W.2d 846, 97–1360.

When an indigent defendant requests that the state furnish a free transcript of a separate trial of a codefendant, the defendant must show that the transcript will be valuable to him or her. State v. Oswald, 2000 WI App 3, 232 Wis. 2d 103, 606 N.W.2d 238, 97–1219.

The entry of a plea from jail by closed circuit tv, while a violation of a statute, does not violate due process absent a showing of coercion, threat, or other unfairness. State v. Peters, 2000 WI App 154, 237 Wis. 2d 741, 615 N.W.2d 655, 99–1940.

A pretrial detainee, including the subject of an arrest, is entitled to receive medical attention. The scope of this due process protection is not specifically defined, but is at least as great as the 8th amendment protection available to convicted prisoners. Robinson v. City of West Allis, 2000 WI 126, 239 Wis. 2d 595, 619 N.W.2d 692, 98–1211.

While the subtleties of police practice in some cases necessitate an expert witness, there is no per se requirement that there be expert testimony to prove an excessive use of force claim. Robinson v. City of West Allis, 2000 WI 126, 239 Wis. 2d 595, 619 N.W.2d 692, 98–1211.

A defendant is denied due process when identification evidence stems from a pretrial procedure that is so impermissibly suggestive as to give rise to a substantial likelihood of irreparable misidentification. Whether an identification is impermissible is decided on a case–by–case basis. State v. Benton, 2001 WI App 81, 243 Wis. 2d 54, 625 N.W.2d 923, 00–1096.

The clear and convincing evidence and close case rules do not apply in determining a breach of a plea agreement. Historical facts are reviewed with a clearly erroneous standard and whether the state's conduct was a substantial and material breach is a question of law. State v. Williams, 2002 WI 1, 249 Wis. 2d 492, 637 N.W.2d 733, 00–0535.

A prosecutor is not required to enthusiastically advocate for a bargained for sentence and may inform the court about the character of the defendant, even if it is negative. The prosecutor may not personalize information presented in a way that indicates that the prosecutor has second thoughts about the agreement. State v. Williams, 2002 WI 1, 249 Wis. 2d 492, 637 N.W.2d 733, 00–0535.

Due process demands that a conviction not be based on unreliable evidence obtained through coerced witness statements resulting from egregious police practices. There are several factors to consider in determining whether police misconduct is so egregious that it produces statements that are unreliable as a matter of law and must be suppressed. State v. Samuel, 2002 WI 34, 252 Wis. 2d 26, 643 N.W.2d 423, 99–2587.

Although there is no place in a criminal prosecution for gratuitous references to race, the state may properly refer to race when it is relevant to the defendant's motive. A racial remark is improper if it is intentionally injected into volatile proceedings when the prosecutor has targeted the defendant's ethnic origin for emphasis in an attempt to appeal to the jury's prejudices. State v. Chu, 2002 WI App 98, 253 Wis. 2d 666, 643 N.W.2d 878, 01–1934.

Cases addressing the pretrial destruction of evidence and a defendant's due process rights apply to posttrial destruction as well. A defendant's due process rights are violated by the destruction of evidence: 1) if the evidence destroyed was apparently exculpatory and of such a nature that the defendant would be unable to obtain comparable evidence by other reasonable means; or 2) if the evidence was potentially exculpatory and was destroyed in bad faith. State v. Parker, 2002 WI App 159, 256 Wis. 2d 154, 647 N.W.2d 430, 01–2721.

A trial court did not erroneously exercise its discretion in denying the defendant's request that his alibi witnesses be allowed to testify in street clothes rather than jail attire due to the difficulty associated with having the in–custody witnesses brought to the courtroom while keeping them separate, because allowing the clothing changes would create security risks, and because the witnesses had prior convictions that the jury would hear about anyway. State v. Reed, 2002 WI App 209, 256 Wis. 2d 1019, 650 N.W.2d 855, 01–2973.

When an attorney represents a party in a matter in which the adverse party is that attorney's former client, the attorney will be disqualified if the subject matter of the two representations are substantially related such that the lawyer could have obtained confidential information in the first representation that would have been relevant in the second. This test applies in a criminal serial representation case when the defendant raises the issue prior to trial. The actual prejudice standard in *Love* applies when a defendant raises a conflict of interest objection after trial. State v. Tkacz, 2002 WI App 281, 258 Wis. 2d 611, 654 N.W.2d 37, 02–0192.

Neither a presumption of prosecutor vindictiveness or actual vindictiveness was found when, following reversal of a conviction on appeal, the prosecutor offered a less favorable plea agreement than had been offered prior to the initial trial. A presumption of vindictiveness is limited to cases in which a realistic likelihood of vindictiveness exists; a mere opportunity for vindictiveness is insufficient. To establish actual vindictiveness, there must be objective evidence that a prosecutor acted in order to punish the defendant for standing on his or her legal rights. State v. Tkacz, 2002 WI App 281, 258 Wis. 2d 611, 654 N.W.2d 37, 02–0192.

Courts employ two tests to determine whether a defendant's due process right to trial by an impartial judge is violated: 1) a subjective test based on the judge's own determination of his or her impartiality;and 2) an objective test that asks whether objective facts show actual bias. In applying the objective test, there is a presumption that the judge is free of bias. To overcome this presumption the defendant must show by a preponderance of the evidence that the judge is in fact biased an not that there is an appearance of bias or that the circumstance might lead one to speculate that the judge is biased. State v. O'Neill, 2003 WI App 73, 261 Wis. 2d 534, 663 N.W.2d 292, 02–0808.

Following the reversal of one of multiple convictions on multiplicity grounds an increased sentence was presumptively vindictive, in violation of the right to due process. In order to assure the absence of a vindictive motive whenever a judge imposes a more severe sentence upon a defendant after a new trial, the reasons for doing so must affirmatively appear and must be based on objective information concerning identifiable conduct on the part of the defendant occurring after the time of the original sentencing proceeding. State v. Church, 2003 WI 74, 262 Wis. 2d 678, 665 N.W.2d 141, 01–3100.

Coercive conduct by a private person, absent any claim of state involvement, is insufficient to render a confession inadmissible on due process grounds. Involuntary confession jurisprudence is entirely consistent with settled law requiring some state action to support a claim of violation of the due process clause. The most outrageous behavior by a private party seeking to secure evidence against a defendant does not make that evidence inadmissible under the due process clause. State v. Moss, 2003 WI App 239, 267 Wis. 2d 772, 672 N.W.2d 125, 03–0436.

The defendant's due process rights were violated when the investigating detective gave a sentencing recommendation, written on police department letterhead and forwarded by the court to the presentence investigation writer to assess and evaluate, that undermined the state's plea bargained recommendation, in effect breaching the plea agreement. State v. Matson, 2003 WI App 253, 268 Wis. 2d 725, 674 N.W.2d 51, 03–0251.

The right to testify must be exercised at the evidence–taking stage of trial. Once the evidence has been closed, whether to reopen for submission of additional testimony is a matter left to the trial court's discretion. A trial court must consider whether the likely value of the defendant's testimony outweighs the potential for disruption or prejudice in the proceedings, and if so whether the defendant has a reasonable excuse for failing to present the testimony during his case–in–chief. State v. Arredondo, 2004 WI App 7, 269 Wis. 2d 369, 674 N.W.2d 647, 02–2361.

Whether a claim that newly discovered evidence entitles a probation revokee to an evidentiary hearing to determine whether a new probation revocation hearing should be conducted shall be governed by procedures analogous to those in criminal cases under s. 974.06. Booker v. Schwarz, 2004 WI App 50, 270 Wis. 2d 745, 678 N.W.2d 361, 03–0217.

In considering prosecutorial vindictiveness when charges are increased following a successful appeal, whether the defendant is facing stiffer charges arising out of a single incident is important. The concern is that the defendant will be discouraged from exercising his or her right to appeal because of fear the state will retaliate by substituting a more serious charge for the original one on retrial. That concern does not come into play when the new charges stem from a separate incident. State v. Williams, 2004 WI App 56, 270 Wis. 2d 761, 677 N.W.2d 691, 03–0603.

A deaf defendant who was shackled during trial and sentencing had the burden to show that he in fact was unable to communicate, not that he theoretically might have had such difficulty. State v. Russ, 2006 WI App 9, 289 Wis. 2d 65, 709 N.W.2d 483, 04–2869.

Dubose, 2005 WI 126, does not directly control cases involving identification evidence derived from accidental confrontations resulting in spontaneous identifications. However, in light of developments since it's time, *Marshall*, 92 Wis. 2d 101, a case in which the court determined that identification evidence need not be scrutinized for a due process violation unless the identification occurs as part of a police procedure directed toward obtaining identification evidence, does not necessarily resolve all such cases. The circuit court still has a limited gate–keeping function to exclude such evidence under s. 904.03. State v. Hibl, 2006 WI 52, 290 Wis. 2d 595, 714 N.W.2d 194, 04–2936. But see State v. Roberson, 2019 WI 102, 389 Wis. 2d 190, 935 N.W.2d 813, 17–1894.

When analyzing a judicial bias claim, there is a rebuttable presumption that the judge was fair, impartial, and capable of ignoring any biasing influences. The test for bias comprises two inquiries, one subjective and one objective, either of which can violate a defendant's due process right to an impartial judge. Actual bias on the part of the decision maker meets the objective test. The appearance of partiality can also offend due process. Every procedure that would offer a possible temptation to the average person as a judge not to hold the balance nice, clear, and true between the state and the accused, denies the latter due process of law. State v. Gudgeon, 2006 WI App 143, 295 Wis. 2d 189, 720 N.W.2d 114, 05–1528.

Absent a pervasive and perverse animus, a judge may assess a case and potential arguments based on what he or she knows from the case in the course of the judge's judicial responsibilities. Opinions formed by the judge on the basis of facts introduced or events occurring in the course of current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep–seated favoritism or antagonism that would make fair judgment impossible. State v. Rodriguez, 2006 WI App 163, 295 Wis. 2d 801, 722 N.W.2d 136, 05–1265. Affirmed on other grounds. 2007 WI App 252, 306 Wis. 2d 129, 743 N.W.2d 460, 05–1265.

Dubose, 2005 WI 126, did not alter the standard for determining whether admission of an out−of−court identification from a photo array violates due process. State v. Drew, 2007 WI App 213, 305 Wis. 2d 641, 740 N.W.2d 404, 06−2522.

The admissibility of an in−court identification following an inadmissible out−of−court identification depends on whether the evidence has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint. To be admissible, the in−court identification must rest on an independent recollection of the witness's initial encounter with the suspect. State v. Nawrocki, 2008 WI App 23, 308 Wis. 2d 227, 746 N.W.2d 509, 06−2502.

When the prosecutor goes beyond reasoning from the evidence to a conclusion of guilt and instead suggests that the jury arrive at a verdict by considering factors other than the evidence, the statements are impermissible. Improper comments do not necessarily give rise to a due process violation. For a due process violation, the court must ask whether the statements so infected the trial with unfairness as to make the resulting conviction a denial of due process. State v. Jorgensen, 2008 WI 60, 310 Wis. 2d 138, 754 N.W.2d 77, 06−1847.

Due process requires that vindictiveness against a defendant for having successfully attacked his or her first conviction must play no part in the sentence received after a new trial. Whenever a judge imposes a more severe sentence upon a defendant after a new trial, the reasons for doing so must be free from a retaliatory motive. Because retaliatory motives can be complex and difficult to prove, the U.S. Supreme Court has found it necessary to presume an improper vindictive motive. This presumption also applies when a defendant is resentenced following a successful attack on an invalid sentence. However, the presumption stands only when a reasonable likelihood of vindictiveness exists. A new sentence that is longer than the original sentence, when it implements the original dispositional scheme, is not tainted by vindictiveness. State v. Sturdivant, 2009 WI App 5, 316 Wis. 2d 197, 763 N.W.2d 185, 07−2508.

There is not an exclusive possession requirement as an element of the due process test when apparently exculpatory evidence is not preserved by the state. In this case, while the physical evidence, cell phones, was solely within the state's possession, the concomitant electronic voicemail evidence was stored elsewhere and could have been accessed by both the state and the defense until it was destroyed by the phone service provider in the normal course of business. Given the facts of this case, however, it was reasonable for the defendant to expect that the state would preserve the voicemail recordings. State v. Huggett, 2010 WI App 69, 324 Wis. 2d 786, 783 N.W.2d 675, 09−1684.

A defendant has a constitutional due process right not to be sentenced on the basis of race or gender. The defendant has has the burden to prove that the circuit court actually relied on race or gender in imposing its sentence. The standard of proof is clear and convincing evidence. The defendant must provide evidence indicating that it is highly probable or reasonably certain that the circuit court actually relied on race or gender when imposing its sentence. A reasonable observer test is rejected. State v. Harris, 2010 WI 79, 326 Wis. 2d 685, 786 N.W.2d 409, 08−0810.

In order to establish that the state violated his or her due process rights by destroying apparently exculpatory evidence, the defendant must demonstrate that: 1) the evidence destroyed possessed an exculpatory value that was apparent to those who had custody of the evidence before the evidence was destroyed; and 2) the evidence is of such a nature that the defendant is unable to obtain comparable evidence by other reasonably available means. The mere possibility that evidence of a bullet having been lodged in a destroyed van after a detective thoroughly examined the van and specifically looked for just such a bullet or bullet strike did not support the argument that the van's purported exculpatory value was apparent. State v. Munford, 2010 WI App 168, 330 Wis. 2d 575, 794 N.W.2d 264, 09−2658.

The public interest would be unduly harmed if the state were equitably estopped from prosecuting criminal charges. There is a compelling societal interest in convicting and punishing criminal offenders. On balance, the public interests at stake will always outweigh any potential injustice to a criminal defendant where he or she seeks to evade prosecution via equitable estoppel. State v. James M. Drown, 2011 WI App 53, 332 Wis. 2d 765, 797 N.W.2d 919, 10−1303.

A prosecutor has great discretion in charging decisions and generally answers to the public, not the courts, for those decisions. Courts review a prosecutor's charging decisions for an erroneous exercise of discretion. If there is a reasonable likelihood that a prosecutor's decision to bring additional charges was rooted in prosecutorial vindictiveness, a rebuttable presumption of vindictiveness applies. If there is no presumption of vindictiveness, the defendant must establish actual prosecutorial vindictiveness. The filing of additional charges during the give−and−take of pretrial plea negotiations does not warrant a presumption of vindictiveness. State v. Cameron, 2012 WI App 93, 344 Wis. 2d 101, 820 N.W.2d 433, 11−1368.

The circuit court's decision to exclude the defendant from in−chambers meetings with jurors during the trial regarding possible bias did not deprive the defendant of a fair and just hearing. The factors a trial court should consider in determining whether a defendant's presence is required to ensure a fair and just hearing include whether the defendant could meaningfully participate, whether the defendant would gain anything by attending, and whether the presence of the defendant would be counterproductive. State v. Alexander, 2013 WI 70, 349 Wis. 2d 327, 833 N.W.2d 126, 11−0394.

The court's invocations of a religious deity during sentencing were ill−advised. However, not every "ill−advised word" will create reversible error. The transcript reflects that the court's offhand religious references addressed proper secular sentencing factors. The judge's comments did not suggest the defendant required a longer sentence to pay religious penance. State v. Betters, 2013 WI App 85, 349 Wis. 2d 428, 835 N.W.2d 249, 12−1339.

There are two approaches that courts use to see if an alleged enhancing conviction carries its burden of qualifying as an enhancing offense. Under the categorical approach, courts ordinarily look only to the fact of conviction and the statutory definition of the prior offense. When a statute defines an element in the alternative, however, the categorical approach is modified to determine which alternative formed the basis of conviction. Under the modified categorical approach, courts consult a limited class of documents, including charging documents, transcripts of plea colloquies, and jury instructions. The purpose of consulting such documents is to identify, from among several alternatives, the crime of conviction. State v. Guarnero, 2014 WI App 56, 354 Wis. 2d 307, 848 N.W.2d 329, 13−1753. Affirmed. 2015 WI 72, 363 Wis. 2d 857, 867 N.W.2d 400, 13−1753.

In order to satisfy the requirements of the U.S. and Wisconsin constitutions, the charges in the complaint and information must be sufficiently stated to allow the defendant to plead and prepare a defense. In child sexual assault cases, courts may apply the 7 factors outlined in *Fawcett,* 145 Wis. 2d 244, and may consider any other relevant factors necessary to determine whether the complaint and information states an offense to which the defendant can plead and prepare a defense. No single factor is dispositive, and not every *Fawcett* factor will necessarily be present in all cases. State v. Kempainen, 2015 WI 32, 361 Wis. 2d 450, 862 N.W.2d 587, 13−1531.

In the context of evidence preservation and destruction, the Wisconsin constitution does not provide greater due process protections under Article 1, Section 8, Clause 1 than the U.S. Constitution does under either the 5th or 14th amendments. Defendants must show that the state failed to preserve evidence that was apparently exculpatory or acted in bad faith by failing to preserve evidence that was potentially exculpatory. Bad faith can be shown only if : 1) the officers were aware of the potentially exculpatory value or usefulness of the evidence they failed to preserve; and 2) the officers acted with official animus or made a conscious effort to suppress exculpatory evidence. The routine destruction of a driver's blood or breath sample, without more, does not deprive a defendant of due process. State v. Weissinger, 2015 WI 42, 362 Wis. 2d 1, 863 N.W.2d 592, 13−1737.

When a defendant seeks to present evidence that a third party committed the crime for which the defendant is being tried, the defendant must show a legitimate tendency that the third party committed the crime; in other words, that the third party had motive, opportunity, and a direct connection to the crime. State v. Wilson, 2015 WI 48, 362 Wis. 2d 193, 864 N.W.2d 52, 11−1803.

A court of appeals' decision remanding the case to the circuit court with instructions to enter an amended judgment of conviction for operating with a prohibited alcohol content (PAC) as a 7th offense and impose sentence for a 7th offense violated the defendant's right to due process after the defendant entered a knowing, intelligent, and voluntary guilty plea to operating with a PAC as a 6th offense Because a 7th offense carries a greater range of punishment than does a 6th offense, the court of appeals' remedy rendered the plea unknowing, unintelligent, and involuntary. State v. Chamblis, 2015 WI 53, 362 Wis. 2d 370, 864 N.W.2d 806, 12−2782.

When determining whether a defendant's right to an objectively impartial decisionmaker has been violated, the court considers the appearance of bias in addition to actual bias. When the appearance of bias reveals a great risk of actual bias, the presumption of impartiality is rebutted and a due process violation occurs. In this case, although the judge's statements about her sister were personal, they were used in an attempt to illustrate the seriousness of the crime and the need to deter drunk driving in our society and not as as an expression of bias against the defendant. State v. Herrmann, 2015 WI 84, 364 Wis. 2d 336, 867 N.W.2d 772, 13−0197.

A sentencing court may consider a Correctional Offender Management Profiling for Alternative Sanctions (COMPAS) risk assessment at sentencing without violating a defendant's right to due process if the risk assessment is used properly with an awareness of the limitations and cautions set forth in the opinion. State v. Loomis, 2016 WI 68, 371 Wis. 2d 235, 881 N.W.2d 749, 15−0157.

When the state alleged that the defendant engaged in repeated sexual assaults of the same child during 2007 and 2008, and during that time period s. 948.025 (1) was repealed and recreated, the applicable law was the statute in effect when the last criminal action constituting a continuing offense occurred. Although the defendant should have been charged under the 2007−08 law, the defendant was mistakenly charged under the 2005−06 law. Nevertheless, the defendant was charged with a crime that existed at law. Class C criminal liability attached under the 2005−06 and 2007−08 laws to the same conduct as it pertained to the defendant. The wording difference was immaterial as the elements, as applied to the defendant, were the same. The technical charging error did not prejudice the defendant, nor did it affect the circuit court's subject matter jurisdiction. State v. Scott, 2017 WI App 40, 376 Wis. 2d 430, 899 N.W.2d 728, 16−1411.

If a prosecutor's statements are fairly characterized as impressing on the jury the importance of assessing a witness's credibility, there is no error. In this case, a verdict would necessarily follow the jury's determination of the victims' credibility; therefore, the state's argument that the jurors should not find the defendant not guilty unless they conclude the victims lied was equivalent to asking the jurors to carefully weigh the victims' credibility. There was no error and no denial of due process. State v. Bell, 2018 WI 28, 380 Wis. 2d 616, 909 N.W.2d 750, 15−2667.

The intent−effects test is the proper test used to determine whether a sanction rises to the level of punishment such that due process requires a defendant be informed of it before entering a plea of guilty. Under the intent−effects test, the court first looks to the statute's primary function, intent. Determining whether the legislature intended a statute to be punitive is primarily a matter of statutory construction. The court also considers whether the effect of the statute is penal or regulatory in character. To aid its determination of the effect, the court applies the seven factors set out in *Mendoza−Martinez*, 372 U.S. 144: 1) whether the sanction involves an affirmative disability or restraint; 2) whether the sanction has historically been regarded as a punishment; 3) whether the sanction comes into play only on a finding of scienter; 4) whether the sanction's operation will promote the traditional aims of punishment—retribution and deterrence; 5) whether the behavior to which the sanction applies is already a crime; 6) whether an alternative purpose to which the sanction may rationally be connected is assignable for it; and 7) whether the sanction appears excessive in relation to the alternative purpose assigned. State v. Muldrow, 2018 WI 52, 381 Wis. 2d 492, 912 N.W.2d 74, 16−0740.

In order to establish that the state suppressed exculpatory or impeaching evidence in violation of *Brady*, 373 U.S. 83 (1963), there is no requirement to show that the evidence was in the state's exclusive possession and control, and it is not necessary to establish that the suppression of evidence imposes an intolerable burden on the defense. State v. Wayerski, 2019 WI 11, 385 Wis. 2d 344, 922 N.W.2d 468, 15−1083.

A funding statute for drug court programs did not create a fundamental liberty interest and did not need to provide expulsion procedures to survive a procedural due process challenge. State v. Keister, 2019 WI 26, 385 Wis. 2d 739, 924 N.W.2d 203, 17−1618.

A circuit court is not required at the guilt phase to inform a defendant who has pled not guilty by reason of mental disease or defect (NGI) of the maximum possible term of civil commitment because: 1) a defendant who prevails at the responsi-

bility phase of the NGI proceeding has proven an affirmative defense in a civil proceeding, avoiding incarceration, and is not waiving any constitutional rights by so proceeding in that defense; and 2) an NGI commitment is not punishment but, rather, is a collateral consequence to one who successfully mounts an NGI defense to criminal charges. State v. Fugere, 2019 WI 33, 386 Wis. 2d 76, 924 N.W.2d 469, 16–2258.

An undisclosed social media connection between the judge and a litigant that was formed during ongoing litigation created a great risk of actual bias resulting in the appearance of partiality and violated due process. Miller v. Carroll, 2019 WI App 10, 386 Wis. 2d 267, 925 N.W.2d 580, 17–2132.
Affirmed. 2020 WI 56, 392 Wis. 2d 49, 944 N.W.2d 542, 17–2132.

A circuit court may utilize a waiver of rights form for a defendant who is pleading guilty, but the use of that form does not otherwise eliminate the circuit court's plea colloquy duties. While a circuit court must exercise great care when conducting a plea colloquy so as to best ensure that a defendant is knowingly, intelligently, and voluntarily entering a plea, a formalistic recitation of the constitutional rights being waived is not required. State v. Pegeese, 2019 WI 60, 387 Wis. 2d 119, 928 N.W.2d 590, 17–0741.

Under *Sell,* 539 U.S. 166 (2003), a court may order involuntary medication for the purpose of competency to stand trial only if four factors are met: 1) important governmental interests are at stake; 2) involuntary medication will significantly further the government's interest in prosecuting the offense; 3) involuntary medication is necessary to further those interests; and 4) administration of the drugs is medically appropriate. Section 971.14 (4) (b) does not require the circuit court to determine whether the *Sell* factors have been met. Rather, it requires circuit courts to order involuntary medication for a defendant who is incapable of expressing an understanding of the proposed medication or treatment or who is substantially incapable of applying an understanding of his or her mental illness in order to make an informed choice regarding medication or treatment. The mere inability of a defendant to express an understanding of medication or to make an informed choice about it is constitutionally insufficient to override a defendant's significant liberty interest in avoiding the unwanted administration of antipsychotic drugs. To the extent that s. 971.14 (3) (dm) and (4) (b) requires circuit courts to order involuntary medication when the *Sell* standard has not been met, the statute is unconstitutional. State v. Fitzgerald, 2019 WI 69, 387 Wis. 2d 384, 929 N.W.2d 165, 18–1214.

General allegations of physical abuse by a third party against the victim do not provide a sufficient direct connection between the third party and the perpetration of the crime charged to satisfy the legitimate tendency test established under *Wilson*, 2015 WI 48. State v. Griffin, 2019 WI App 49, 388 Wis. 2d 581, 933 N.W.2d 681, 18–0649.

Dubose, 2005 WI 126, is overturned. Reliability is the linchpin in determining the admissibility of identification testimony. A criminal defendant bears the initial burden of demonstrating that a showup is impermissibly suggestive. If the defendant meets this burden, the state must prove that under the totality of the circumstances the identification was reliable even though the confrontation procedure was suggestive. State v. Roberson, 2019 WI 102, 389 Wis. 2d 190, 935 N.W.2d 813, 17–1894.

Defendants have a due process right to be sentenced based upon accurate information. A defendant who was sentenced based on inaccurate information may request resentencing. The defendant must show by clear and convincing evidence that: 1) some information at the original sentencing was inaccurate; and 2) the circuit court actually relied on the inaccurate information at sentencing. If the defendant meets this burden then the burden shifts to the state to prove beyond a reasonable doubt that the error was harmless. State v. Coffee, 2020 WI 1, 389 Wis. 2d 627, 937 N.W.2d 579, 17–2292.

In Wisconsin, courts employ the guilty plea waiver rule, which states that a guilty, no contest, or *Alford* plea waives all nonjurisdictional defects, including constitutional claims. An exception to the rule states that a facial constitutional challenge is a matter of subject matter jurisdiction, which cannot be waived, whereas an as–applied challenge is a nonjurisdictional defect that can be waived. State v. Jackson, 2020 WI App 4, 390 Wis. 2d 402, 938 N.W.2d 639, 18–2074.

The defendant's due process rights were not violated by the circuit court's use of the previously unknown information regarding sentences imposed by the court upon similarly situated defendants. State v. Counihan, 2020 WI 12, 390 Wis. 2d 172, 938 N.W.2d 530, 17–2265.

In this case, when the judge served as both the presiding judge in the drug court program in which the defendant participated and as the sentencing judge in the defendant's criminal case, the defendant met his burden to demonstrate objective judicial bias based on the combined effect of 1) the judge's comments indicating he had determined before the sentencing–after–revocation hearing that the defendant would be sentenced to prison if he did not succeed in drug court; and 2) the judge's dual role as the presiding judge in the drug court proceedings and as the judge who sentenced the defendant after the revocation of his probation. State v. Marcotte, 2020 WI App 28, 392 Wis. 2d 183, 943 N.W.2d 911, 19–0695.

The court will not exercise its superintending power to require that courts employ a specific procedure to establish a sufficient factual basis when accepting an *Alford*, 400 U.S. 25 (1970), plea when there is another adequate remedy, by appeal or otherwise, for the conduct of the trial court. State v. Nash, 2020 WI 85, 394 Wis. 2d 238, 951 N.W.2d 404, 18–0731.

Denial of a change of venue due to local prejudice solely because the offense is a misdemeanor is unconstitutional. Groppi v. Wisconsin, 400 U.S. 505.

The retention of 10 percent of a partial bail deposit, with no penalty for release on recognizance or when full bail is given, does not violate equal protection requirements. Schilb v. Kuebel, 403 U.S. 357.

A defendant convicted of selling heroin supplied by undercover police was not entrapped. Hampton v. United States, 425 U.S. 484.

Prisons must provide inmates with a law library or legal advisers. Bounds v. Smith, 430 U.S. 817.

Due process was not denied when a prosecutor carried out a threat to reindict the defendant on a more serious charge if the defendant did not plead guilty to the original charge. Bordenkircher v. Hayes, 434 U.S. 357 (1978).

The plaintiff was not deprived of liberty without due process of law when arrested and detained pursuant to a lawful warrant, even though the police mistook the identity of the plaintiff. Baker v. McCollan, 443 U.S. 137 (1979).

The sentencing judge properly considered the defendant's refusal to cooperate with police by naming co–conspirators. Roberts v. United States, 445 U.S. 552 (1980).

The federal constitution does not prohibit electronic media coverage of a trial over the defendant's objections. Chandler v. Florida, 449 U.S. 560 (1981).

Due process does not require police to preserve breath samples in order to introduce breath–analysis test results at trial. California v. Trombetta, 467 U.S. 479 (1984).

After retrial and conviction following the defendant's successful appeal, sentencing authority may justify an increased sentence by affirmatively identifying relevant conduct or events that occurred subsequent to the original sentencing. Wasman v. United States, 468 U.S. 559 (1984). See also Texas v. McCullough, 475 U.S. 134 (1986).

When an indigent defendant's sanity at the time of committing a murder was seriously in question, due process required access to a psychiatrist and the assistance necessary to prepare an effective defense based on the mental condition. Ake v. Oklahoma, 470 U.S. 68 (1985).

A prosecutor's use of a defendant's postarrest, post–*Miranda* warnings silence as evidence of the defendant's sanity violated the due process clause. Wainwright v. Greenfield, 474 U.S. 284 (1986).

Coercive police activity is a necessary predicate to a finding that a confession was not "voluntary" within the meaning of the due process clause. Colorado v. Connelly, 479 U.S. 157 (1986).

A defendant who denies elements of an offense is entitled to an entrapment instruction as long as there is sufficient evidence from which a jury could find entrapment. Mathews v. United States, 485 U.S. 58 (1988).

Unless the defendant shows bad faith on the part of law enforcement, failure to preserve potentially useful evidence does not violate due process. Arizona v. Youngblood, 488 U.S. 51, 102 L. Ed. 2d 281 (1988).

New constitutional rules announced by the U.S. Supreme Court that place certain kinds of primary individual conduct beyond the power of the states to proscribe, as well as water–shed rules of criminal procedure, must be applied in all future trials, all cases pending on direct review, and all federal habeas corpus proceedings. All other new rules of criminal procedure must be applied in future trials and in cases pending on direct review, but may not provide the basis for a federal collateral attack on a state–court conviction. These rules do not constrain the authority of state courts to give broader effect to new rules of criminal procedure. Danforth v. Minnesota, 552 U.S. 264, 128 S. Ct. 1029, 169 L. Ed. 2d 859 (2008).

Although the state is obliged to prosecute with earnestness and vigor, it is as much its duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one. Accordingly, when the state withholds from a defendant evidence that is material to the defendant's guilt or punishment, it violates the right to due process of law. Evidence is material when there is a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different. Evidence that is material to guilt will often be material for sentencing purposes as well; the converse is not always true, however. Cone v. Bell, 556 U.S. 449, 129 S. Ct. 1769; 173 L. Ed. 2d 701 (2009).

The fallibility of eyewitness evidence does not, without the taint of improper state conduct, warrant a due process rule requiring a trial court to screen such evidence for reliability before allowing the jury to assess its creditworthiness. Perry v. New Hampshire, 565 U.S. 228, 132 S. Ct. 716, 181 L. Ed. 2d 694 (2012).

A guilty plea does not bar a claim on appeal where, on the face of the record, the court had no power to enter the conviction or impose the sentence. Class v. United States, 583 U.S. ___, 138 S. Ct. 798, 200 L. Ed. 2d 37 (2018).

Revocation of probation without a hearing is a denial of due process. Hahn v. Burke, 430 F.2d 100.

Pretrial publicity; the Milwaukee 14. 1970 WLR 209.

Due process; revocation of a juvenile's parole. Sarosiek. 1973 WLR 954.

As I See It: Due Process and the Voluntary Intoxication Defense. Larson. Wis. Law. Feb. 2019.

HABEAS CORPUS AND BAIL

Habeas corpus is a proper remedy with which to challenge the personal jurisdiction of a trial court over a criminal defendant and to challenge a ruling on a motion to suppress evidence when constitutional issues are involved. State ex rel. Warrender v. Kenosha County Court, 67 Wis. 2d 333, 227 N.W.2d 450.

The scope of inquiry in extradition habeas corpus cases is discussed. State v. Ritter, 74 Wis. 2d 227, 246 N.W.2d 552.

Relief under habeas corpus is not limited to the release of the person confined. State ex rel. Memmel v. Mundy, 75 Wis. 2d 276, 249 N.W.2d 573.

Application of bail posted by third parties to the defendant's fines was not unconstitutional. State v. Iglesias, 185 Wis. 2d 118, 517 N.W.2d 175 (1994).

A defendant's prejudicial deprivation of appellate counsel, be it the fault of the attorney or the appellate court, is properly remedied by a petition for habeas corpus in the Supreme Court. State ex rel. Fuentes v. Court of Appeals, 225 Wis. 2d 446, 593 N.W.2d 48 (1999), 98–1534.

A question of statutory interpretation may be considered on a writ of habeas corpus only if noncompliance with the statute at issue resulted in the restraint of the petitioner's liberty in violation of the constitution or the court's jurisdiction. State ex rel. Hager v. Marten, 226 Wis. 2d 687, 594 N.W.2d 791 (1999), 97–3841.

As an extraordinary writ, habeas corpus is available to a petitioner only under limited circumstances. A party must be restrained of his or her liberty, must show that the restraint was imposed by a body without jurisdiction or that the restraint was imposed contrary to constitutional protections, and there must be no other adequate remedy available in the law. Haas v. McReynolds, 2002 WI 43, 252 Wis. 2d 133, 643 N.W.2d 771, 00–2636.

Laches is available as a defense to a habeas petition. When a habeas petition is brought by a Wisconsin prisoner, the burden is on the state to show that: 1) the petitioner unreasonably delayed in bringing the claim; 2) the state lacked knowledge that the claim would be brought; and 3) the state has been prejudiced by the delay. Washington v. State, 2012 WI App 74, 343 Wis. 2d 434, 819 N.W.2d 305, 09–0746. See also State ex rel. Wren v. Richardson, 2019 WI 110, 389 Wis. 2d 516, 936 N.W.2d 587, 17–0880.

SELF–INCRIMINATION AND CONFESSION

Granting a witness immunity and ordering him to answer questions does not violate his constitutional rights. State v. Blake, 46 Wis. 2d 386, 175 N.W.2d 210.

Although a person may invoke the right against self incrimination in a civil case in order to protect himself in a subsequent criminal action, an inference against the person's interest may be drawn as a matter of law based upon an implied admission that a truthful answer would tend to prove that the witness had committed the criminal act or what might constitute a criminal act. Molloy v. Molloy, 46 Wis. 2d 682, 176 N.W.2d 292.

A hearing to determine the voluntariness of a confession is not necessary when a defendant knowingly fails to object to the evidence for purposes of trial strategy. Police officers need not stop all questioning after a suspect requests an attorney, since the suspect can change his mind and volunteer a statement. Sharlow v. State, 47 Wis. 2d 259, 177 N.W.2d 88.

The admission of evidence of the spending of money after a burglary did not unconstitutionally require the defendant to testify against himself in order to rebut it. State v. Heidelbach, 49 Wis. 2d 350, 182 N.W.2d 497.

When the defendant volunteered an incriminatory statement outside the presence of retained counsel, the statement was admissible. State v. Chabonian, 50 Wis. 2d 574, 185 N.W.2d 289.

There is no requirement that a hearing as to the voluntariness of a confession be separated into 2 stages as to the circumstances leading up to it and then as to its content. The content of *Miranda* warnings is discussed. Bohachef v. State, 50 Wis. 2d 694, 185 N.W.2d 339.

The argument by the district attorney that certain evidence was uncontroverted does not amount to a comment on the defendant's failure to testify. Bies v. State, 53 Wis. 2d 322, 193 N.W.2d 46.

Questions of investigational versus custodial interrogation in relation to a confession are discussed. Mikulovsky v. State, 54 Wis. 2d 699, 196 N.W.2d 748.

A defendant who, believing he was seriously wounded, began to tell what happened and was given *Miranda* warnings waived his rights when he continued to talk. Waiver need not be express when the record shows the defendant was conscious and alert and said he understood his rights. State v. Parker, 55 Wis. 2d 131, 197 N.W.2d 742.

The privilege against self–incrimination does not extend to the production of corporate records by their custodian, even though the records may tend to incriminate the custodian personally. State v. Balistrieri, 55 Wis. 2d 513, 201 N.W.2d 18.

A defendant who waived counsel and who agreed to sign a confession admitting 18 burglaries in return for an agreement that he would be prosecuted for only one, could not claim that the confession was improperly induced. The state has the burden of showing voluntariness beyond a reasonable doubt. Pontow v. State, 58 Wis. 2d 135, 205 N.W.2d 775.

The administration of a blood or breathalyzer test does not violate the defendant's privilege against self–incrimination. State v. Driver, 59 Wis. 2d 35, 207 N.W.2d 850.

Factors to be considered in determining whether a confession is voluntary are discussed. State v. Wallace, 59 Wis. 2d 66, 207 N.W.2d 855.

A voluntary confession is not rendered inadmissible because the arrest was made outside the statutory jurisdictional limits of the arresting officer. State v. Ewald, 63 Wis. 2d 165, 216 N.W.2d 213.

While *Miranda* does require that upon exercise of the defendant's 5th amendment privilege the interrogation must cease, *Miranda* does not explicitly state that the defendant may not, after again being advised of his rights, be interrogated in the future. State v. Estrada, 63 Wis. 2d 476, 217 N.W.2d 359.

Statements given to police without *Miranda* warnings, while the defendant was injured and in bed that he was the driver and had been drinking, while voluntary, were inadmissible since at that time accusatorial attention had focused on him. Scales v. State, 64 Wis. 2d 485, 219 N.W.2d 286.

The voluntariness of a confession must be determined by examining all the surrounding facts under a totality of circumstances test. Brown v. State, 64 Wis. 2d 581, 219 N.W.2d 373.

Requirements of a claim of immunity are discussed. State v. Hall, 65 Wis. 2d 18, 221 N.W.2d 806.

The validity of a juvenile confession is determined by an analysis of the totality of the circumstances surrounding the confession. The presence of a parent, guardian, or attorney is not an absolute requirement for the juvenile to validly waive the right to remain silent but only one of the factors to be considered in determining voluntariness. Theriault v. State, 66 Wis. 2d 33, 223 N.W.2d 850.

A written confession is admissible in evidence, although it is not signed by the defendant, so long as the defendant has read the statement and adopted it as his or her own. Kutchera v. State, 69 Wis. 2d 534, 230 N.W.2d 750.

When the defendant claimed to understand his *Miranda* rights but agreed to talk to police without counsel because of a stated inability to afford a lawyer, further questioning by police was improper and the resulting confession was inadmissible. Micale v. State, 76 Wis. 2d 370, 251 N.W.2d 458.

The state may compel a probationer's testimony in a revocation proceeding if the probationer is first advised that the testimony will be inadmissible in criminal proceedings arising out of the alleged probation violation, except for purposes of impeachment or rebuttal. State v. Evans, 77 Wis. 2d 225, 252 N.W.2d 664.

A volunteered confession made while in custody and prior to *Miranda* warnings was held to be admissible despite an earlier inadmissible statement in response to custodial interrogation. LaTender v. State, 77 Wis. 2d 383, 253 N.W.2d 221.

No restrictions of the 4th and 5th amendments preclude enforcement of an order for handwriting exemplars directed by a presiding judge in a John Doe proceeding. State v. Doe, 78 Wis. 2d 161, 254 N.W.2d 210.

Due process does not require that a John Doe witness be advised of the nature of the proceeding or that the witness is a "target" of the investigation. Ryan v. State, 79 Wis. 2d 83, 255 N.W.2d 910.

The defendant's confession was admissible although it was obtained through custodial interrogation following the defendant's request for a lawyer. Leach v. State, 83 Wis. 2d 199, 265 N.W.2d 495 (1978).

When a "conversational" visit was not a custodial interrogation, the defendant's voluntary statement was admissible despite a lack of *Miranda* warnings. State v. Hockings, 86 Wis. 2d 709, 273 N.W.2d 339 (1979).

A confession after a 28–hour post–arrest detention was admissible. Wagner v. State, 89 Wis. 2d 70, 277 N.W.2d 849 (1979).

Immunity for compelled testimony contrary to the 5th amendment privilege extends to juvenile court proceedings. State v. J.H.S., 90 Wis. 2d 613, 280 N.W.2d 356 (Ct. App. 1979).

The defendant's voluntary statements were admissible for impeachment even though they were obtained in violation of *Miranda*. State v. Mendoza, 96 Wis. 2d 106, 291 N.W.2d 478 (1980).

When the accused cut off the initial interrogation but was interrogated by another officer 9 minutes later following fresh *Miranda* warnings, the confession was admissible. State v. Shaffer, 96 Wis. 2d 531, 292 N.W.2d 370 (Ct. App. 1980).

By testifying as to his actions on the day a murder was committed, the defendant waived his self–incrimination privilege on cross–examination as to prior actions related to the murder that were the subject of the pending prosecution. Neely v. State, 97 Wis. 2d 38, 292 N.W.2d 859 (1980).

Miranda warnings were unnecessary when an officer entered the defendant's home in the belief that the defendant might have killed his wife 4 days earlier, and asked, "Where is your wife?" State v. Kraimer, 99 Wis. 2d 306, 298 N.W.2d 568 (1980).

A prosecutor's comment on the failure of an alibi witness to come forward with an alibi story did not infringe on the defendant's right of silence. State v. Hoffman, 106 Wis. 2d 185, 316 N.W.2d 143 (Ct. App. 1982).

The defendant's silence both before and after *Miranda* warnings may not be referred to at trial by the prosecution. State v. Fencl, 109 Wis. 2d 224, 325 N.W.2d 703 (1982).

Videotapes of sobriety tests were properly admitted to show physical manifestations of the defendant driver's intoxication. State v. Haefer, 110 Wis. 2d 381, 328 N.W.2d 894 (Ct. App. 1982).

A John Doe subpoena requiring the production of income tax returns violated the self–incrimination right. B.M. v. State, 113 Wis. 2d 183, 335 N.W.2d 420 (Ct. App. 1983).

A statement given to police, without *Miranda* warnings, while the accused was in an emergency room that the accused was the driver in a fatal crash was admissible. State v. Clappes, 117 Wis. 2d 277, 344 N.W.2d 141 (1984).

After a guilty plea the privilege against self–incrimination continues at least until sentencing. State v. McConnohie, 121 Wis. 2d 57, 358 N.W.2d 256 (1984).

When the defendant does not testify but presents his own argument to the jury, the prosecutor may caution the jury that the defendant's statements are not evidence. State v. Johnson, 121 Wis. 2d 237, 358 N.W.2d 824 (Ct. App. 1984).

When a relative of the accused contacted police and asked if anything could be done to help the accused, a subsequent confession elicited from the accused by the relative was inadmissible. Factors to be considered in determining when a civilian becomes an agent of the police are discussed. State v. Lee, 122 Wis. 2d 266, 362 N.W.2d 149 (1985).

Police had no duty to inform a suspect during custodial interrogation that a lawyer retained by the suspect's family was present. State v. Hanson, 136 Wis. 2d 195, 401 N.W.2d 771 (1987).

Incriminating statements by an intoxicated defendant undergoing medical treatment for painful injuries was voluntary since there was no affirmative police misconduct compelling the defendant to answer police questioning. State v. Clappes, 136 Wis. 2d 222, 401 N.W.2d 759 (1987).

The "rescue doctrine" exception to the *Miranda* rule is discussed. State v. Kunkel, 137 Wis. 2d 172, 404 N.W.2d 69 (Ct. App. 1987).

A probationer's answers to a probation agent's questions are "compelled" and may not be used for any purpose in a criminal trial. State v. Thompson, 142 Wis. 2d 821, 419 N.W.2d 564 (Ct. App. 1987).

The prosecution may comment on an accused's pre–*Miranda* silence when the accused elects to testify on his own behalf. State v. Sorenson, 143 Wis. 2d 226, 421 N.W.2d 77 (1988).

The "functional equivalent" of direct custodial interrogation is discussed. State v. Cunningham, 144 Wis. 2d 272, 423 N.W.2d 862 (1988).

The admission of an involuntary or coerced confession is subject to the harmless error test. State v. Childs, 146 Wis. 2d 116, 430 N.W.2d 353 (Ct. App. 1988).

The use of *Goodchild* testimony to impeach the defendant's trial testimony does not violate the privilege against self–incrimination. State v. Schultz, 152 Wis. 2d 408, 448 N.W.2d 424 (1989).

An unconstitutionally obtained confession may be admitted and serve as the sole basis for a bindover at a preliminary examination. State v. Moats, 156 Wis. 2d 74, 457 N.W.2d 299 (1990).

When a psychiatrist did not comply with *Miranda*, the constitution does not require exclusion of the results of the interview with the defendant from the competency phase of the trial. State v. Lindh, 161 Wis. 2d 324, 468 N.W.2d 168 (1991).

Miranda does not require warning a suspect that he has the right to stop answering questions. State v. Mitchell, 167 Wis. 2d 672, 482 N.W.2d 364 (1992).

The primary concern in attenuation cases is whether the evidence objected to was obtained by exploitation of a prior police illegality or instead by means sufficiently attenuated so as to be purged of the taint. Under *Brown*, 422 U.S. at 603, the presence of *Miranda* warnings alone does not cause a statement to be sufficiently attenuated so as to purge it of the taint of the illegal action. Other factors to be considered in determining attenuation are the temporal proximity of the official misconduct and the confession, the presence of intervening circumstances, and the purpose and flagrancy of the official misconduct. State v. Anderson, 165 Wis. 2d 441, 477 N.W.2d 277 (1991).

Miranda safeguards are not required when a suspect is simply in custody, but are required when the suspect in custody is subjected to interrogation. State v. Coulthard, 171 Wis. 2d 573, 492 N.W.2d 329 (Ct. App. 1992).

A criminal defendant may be compelled to submit a voice sample consisting of specific words for purposes of identification. The words do not require a revelation of the contents of the mind to impart an admission of or evidence of guilt. Com-

menting on a refusal to give a sample does not violate the right against self–incrimination. State v. Hubanks, 173 Wis. 2d 1, 496 N.W.2d 96 (Ct. App. 1992).

A waiver of *Miranda* rights must be made knowingly and intelligently, as well as voluntarily. A knowing and intelligent waiver must be shown by a preponderance of the evidence as determined from an objective assessment of the circumstances. State v. Lee, 175 Wis. 2d 348, 499 N.W.2d 258 (Ct. App. 1993).

If police do not use coercive tactics, that a defendant is undergoing medical treatment or experiencing pain is not determinative on the issue of voluntariness. State v. Schambow, 176 Wis. 2d 286, N.W.2d (Ct. App. 1993).

When a defendant pleads guilty then appeals the denial of a suppression motion under s. 971.31 (10), the harmless error rule may not be applied when a motion to suppress was erroneously denied. State v. Pounds, 176 Wis. 2d 315, N.W.2d (Ct. App. 1993).

Failure to give *Miranda* warnings during a telephone conversation initiated to encourage the defendant's surrender following an armed robbery police suspected was committed by the defendant did not require suppression of admissions made to the police. State v. Stearns, 178 Wis. 2d 845, 506 N.W.2d 165 (Ct. App. 1993).

Routine booking questions, such as the defendant's name and address, that are not intended to elicit incriminating responses are exempted from the coverage of *Miranda. Miranda* safeguards are applicable to questions asked during an arrest or concerning name and residence when the questions relate to an element of the crime. State v. Stevens, 181 Wis. 2d 410, 511 N.W.2d 591 (1994).

The defendant's intoxication for purposes of motor vehicle statutes did not per se demonstrate an inability to knowingly waive *Miranda* rights. State v. Beaver, 181 Wis. 2d 959, 512 N.W.2d 254 (Ct. App. 1994).

Coercive police activity is a predicate to establishing involuntariness but does not itself establish involuntariness. Officer dissatisfaction with a defendant's answers and statements by the officer that cooperation would benefit the defendant is not coercion without a promise of leniency. State v. Deets, 187 Wis. 2d 629, 523 N.W.2d 180 (Ct. App. 1994).

A refusal to perform a field sobriety test is not testimony and not protected by the constitution. The refusal to submit to the test was properly admitted as evidence to determine probable cause for arrest for intoxicated operation of a motor vehicle. State v. Babbit, 188 Wis. 2d 349, 525 N.W.2d 102 (Ct. App. 1994).

Edwards v. Arizona requires interrogation to cease once a suspect requests an attorney. It does not prohibit questions designed to accommodate the request. When in response to being asked his attorney's name a suspect gave a name and then stated that the person was not an attorney, the interrogating officer was not prevented from continuing interrogation. State v. Lagar, 190 Wis. 2d 423, 526 N.W.2d 836 (Ct. App. 1994).

A forced confession as a condition of probation does not violate the right against self–incrimination. The constitution protects against the use of confessions in subsequent criminal prosecutions but does not protect against the use of those statements in a revocation proceeding. State v. Carrizales, 191 Wis. 2d 85, 528 N.W.2d 29 (Ct. App. 1995).

A suspect's reference to an attorney who had represented or is presently representing the suspect in another matter is not a request for counsel requiring the cessation of questioning. State v. Jones, 192 Wis. 2d 78, 532 N.W.2d 79 (1995).

The rights to counsel and to remain silent are the defendant's. An attorney not requested by the defendant could not compel the police to end questioning by stating that no questioning was to take place outside his presence. State v. Jones, 192 Wis. 2d 78, 532 N.W.2d 79 (1995).

Once given, it is not necessary to repeat the *Miranda* warnings during an investigation of the same person for the same crime. State v. Jones, 192 Wis. 2d 78, 532 N.W.2d 79 (1995).

While polygraph tests are inadmissible, post–polygraph interviews, found distinct both as to time and content from the examination that preceded them and the statements made therein, are admissible. State v. Johnson, 193 Wis. 2d 382, 535 Wis. 2d 441 (Ct. App. 1995).

See also State v. Greer, 2003 WI App 112, 265 Wis. 2d 463, 666 N.W.2d 518, 01–2591 and State v. Davis, 2008 WI 71, 310 Wis. 2d 583, 751 N.W.2d 332, 06–1954.

The privilege against self–incrimination extends beyond sentencing as long as a defendant has a real fear of further incrimination, as when an appeal is pending, before an appeal of right or plea withdrawal has expired, or when the defendant intends or is in the process of moving for sentence modification and shows a reasonable chance of success. State v. Marks, 194 Wis. 2d 79, 533 N.W.2d 730 (1995).

A defendant may selectively waive *Miranda* rights. Refusal to answer specific questions does not assert an overall right to to silence, if there is an unequivocal expression of selective invocation. State v. Wright, 196 Wis. 2d 149, 537 N.W.2d 134 (Ct. App. 1995), 94–3004.

The analytical framework to apply in attenuation cases was set forth in *Brown*. 422 U.S. 603. Under *Brown*, the threshold requirement is the voluntariness of the challenged statements. The remaining factors bearing on admissibility are the temporal proximity of the illegal conduct and the confession, the presence of any intervening circumstances, and the purpose and flagrancy of the official misconduct. The burden of showing admissibility rests on the prosecution. State v. Tobias, 196 Wis. 2d 537, 538 N.W.2d 843 (Ct. App. 1995), 95–0324.

The right to counsel under *Miranda* must be personally invoked by the suspect. Simply retaining counsel is not an unequivocal statement that the suspect wishes to deal with the police only in the presence of counsel. State v. Coerper, 199 Wis. 2d 216, 544 N.W.2d 423 (1996), 94–2791.

Once a suspect invokes the right to counsel, judicial inquiry into voluntariness is beside the point. Physical evidence derived from statements made in violation of the asserted right must be suppressed. However, evidence admitted in violation of this rule is subject to a harmless error analysis. State v. Harris, 199 Wis. 2d 227, 544 N.W.2d 545 (1996), 93–0730.

Prosecution comments on a defendant's claimed lack of memory and subsequent silence during a police interview conducted shortly after the incident when the defendant testified at length at trial on the same subject did not violate the right against self–incrimination when the comments were intended to impeach the defendant's testimony and not to ask the jury to infer guilt from the defendant's silence. State v. Wulff, 200 Wis. 2d 318, 546 N.W.2d 522 (Ct. App. 1996), 95–1732.

A suspect's declaration that he did not wish to speak to a specific police officer is not an invocation of the right to remain silent. Police adoption of "good cop/bad cop" roles did not render an interrogation coercive and its results inadmissible. State v. Owen, 202 Wis. 2d 620, 551 N.W.2d 50 (Ct. App. 1996), 95–2631.

A suspect's silence, standing alone, is insufficient to unambiguously invoke the right to remain silent. State v. Ross, 203 Wis. 2d 66, 552 N.W.2d 428 (Ct. App. 1996), 95–1671.

A suspect's statement to his mother during an arrest that she should call a lawyer was not an unequivocal statement that the suspect wished to deal with the police only in the presence of counsel. State v. Rodgers, 203 Wis. 2d 83, 552 N.W.2d 123 (Ct. App. 1996), 95–2570.

The sufficiency of *Miranda* warnings given by the police in a foreign language and a subsequent waiver of those rights may be challenged. If timely notice of the challenge is given the state has the burden to produce evidence to show that the foreign language words reasonably conveyed the rights and that waiver was knowingly and intelligently made. State v. Santiago, 206 Wis. 2d 3, 556 N.W.2d 687 (1996), 94–1200.

The privilege against self–incrimination may be replaced by a grant of immunity, which has the same scope and effect as the privilege itself. The immunity must protect against derivative use of compelled information that could lead to evidence that could be used in a criminal prosecution as well as information that could be used directly. State v. Hall, 207 Wis. 2d 54, 557 N.W.2d 778 (1997), 94–2848.

A defendant's refusal to submit to a field sobriety test is not protected by the right against self–incrimination and is admissible as evidence. State v. Mallick, 210 Wis. 2d 427, 565 N.W.2d 245 (Ct. App. 1997), 96–3048.

Evidence of why a defendant did not testify has no bearing on guilt or innocence, is not relevant, and is inadmissible. State v. Heuer, 212 Wis. 2d 58, 567 N.W.2d 638 (Ct. App. 1997), 96–3594.

A CHIPS proceeding is not a criminal proceeding within the meaning of the 5th amendment. *Miranda* warnings are not required to be given to the CHIPS petition subject, even though the individual is in custody and subject to interrogation, in order for the subject's statements to be admissible. State v. Thomas J.W. 213 Wis. 2d 264, 570 N.W.2d 586 (Ct. App. 1997), 97–0506.

Use of prearrest silence is barred if it is induced by governmental action. The right to silence was not implicated by a governmental employee defendant's refusal to meet with his supervisors to discuss employment issues. The prosecution was free to comment on that refusal. State v. Adams, 221 Wis. 2d 1, 584 N.W.2d 695 (Ct. App. 1998), 97–1926.

That a police officer intentionally withheld information that she had a warrant for the defendant's arrest and intended to arrest him at some point was irrelevant to whether the defendant was in custody when he made incriminating statements without having received *Miranda* warnings. State v. Mosher, 221 Wis. 2d 203, 584 N.W.2d 553 (Ct. App. 1998), 97–3535.

There are 4 requirements that together trigger the privilege against self–incrimination. The information sought must be: 1) incriminating; 2) personal to the defendant; 3) obtained by compulsion; and 4) testimonial or communicative in nature. Discovery of information not meeting these criteria is not barred. State v. Revels, 221 Wis. 2d 315, 585 N.W.2d 602 (Ct. App. 1998), 97–3148.

The application of the "fruit of the poisonous tree" doctrine to violations of *Miranda* that are not also violations of the 5th or 14th amendment is improper. A failure to administer *Miranda* warnings that was unaccompanied by any actual coercion is insufficient to result in an imputation of taint to subsequent statements. State v. Armstrong, 223 Wis. 2d 331, 588 N.W.2d 606 (1999), 97–0925.

The state must prove by a preponderance of the evidence that a confession was voluntarily made. Whether a confession is true or false cannot play a part in determining whether it was voluntary. A relevancy objection to questioning regarding the truthfulness of a confession was sufficient to preserve the issue for appeal. State v. Agnello, 226 Wis. 2d 164, 593 N.W.2d 427 (1999), 96–3406.

If a statement secured by the police is voluntary, although in violation of *Miranda,* it may be used to impeach the defendant's conflicting testimony, although it is inadmissible in the prosecution's case–in–chief. Whether the statement is voluntary depends on whether it was compelled by coercive means or improper police practices, as indicated by the totality of the circumstances. State v. Franklin, 228 Wis. 2d 408, 596 N.W.2d 855 (Ct. App. 1999), 98–2420.

When a criminal defendant objects to testimony of his or her out–of–court statement as incomplete or attempts to cross–examine the witness on additional parts of the statement, the court must make a discretionary determination regarding whether the additional portions are required for completeness. Additional portions of the defendant's statement are not inadmissible solely because the defendant chooses not to testify. State v. Anderson, 230 Wis. 2d 121, 600 N.W.2d 913 (Ct. App. 1999), 98–3639.

Miranda warnings need not be given in the suspect's language of choice, but the warnings must be given in a language in which the suspect is proficient enough to to understand the concepts that are involved in the warnings. State v. Hindsley, 2000 WI App 130, 237 Wis. 2d 358, 614 N.W.2d 48, 99–1374.

Whether a suspect knowingly and intelligently waived *Miranda* rights is a separate inquiry from whether the statement was voluntary. State v. Hindsley, 2000 WI App 130, 237 Wis. 2d 358, 614 N.W.2d 48, 99–1374.

Whether an interrogation that resumed after an invocation of the right to remain silent violated the right against self–incrimination is analyzed based on whether: 1) the original interrogation was promptly terminated; 2) it was resumed after a significant amount of time; 3) *Miranda* warnings were given at the beginning of the subsequent interrogation; 4) a different officer resumed the questioning; and 5) the subsequent interrogation was limited to a different crime. These factors are not exclusively controlling, however, and should not be woodenly applied. State v. Badker, 2001 WI App 27, 240 Wis. 2d 460, 623 N.W.2d 142, 99–2943.

There is an exception to the application of *Miranda* for routine booking questions. The questions must be asked: 1) by an agency ordinarily involved in booking suspects; 2) during a true booking; and 3) shortly after the suspect is taken into custody. The test of whether questioning constitutes interrogation and is not covered by the exception if in light of all the circumstances the police should have known

that the question was reasonably likely to elicit an incriminating response. State v. Bryant, 2001 WI App 554, 241 Wis. 2d 554, 624 N.W.2d 865, 00–0686.

When the defendant's plea put his mental competency at issue and his attorney consented to 2 competency examinations and had actual notice of them, the use of those reports during sentencing did not violate the right against self–incrimination. State v. Slagoski, 2001 WI App 112, 244 Wis. 2d 49, 629 N.W.2d 50, 00–1586.

If the defendant opens the door to government questioning by the defendant's own remarks about post–arrest behavior or by defense counsel's questioning, the state may use the defendant's silence for the limited purpose of impeaching the defendant's testimony. When defense counsel asked leading questions of the officer who conducted a post–*Miranda* interview of the defendant that implied the defendant had actively denied the crime charged, the state was permitted to clarify that defendant had not answered all questions asked of him. State v. Nielsen, 2001 WI App 192, 247 Wis. 2d 466, 634 N.W.2d 325, 00–3224.

A defendant who offers expert testimony to show the lack of a psychological profile of a sex offender puts his or her mental status at issue and waives the right against self–incrimination. A defendant who intends to present such evidence may be ordered to submit to a psychiatric evaluation by a state–selected expert. If after an exam by the state's expert the defendant foregoes the presentation of the testimony, the state is barred from introducing any evidence derived from the state–sponsored exam on the issue of guilt. State v. Davis, 2001 WI App 210, 247 Wis. 2d 917, 634 N.W.2d 922, 00–2916.

A defendant can only be found not guilty by reason of mental disease or defect after admitting to the criminal conduct or being found guilty. While the decision made in the responsibility phase is not criminal in nature, the mental responsibility phase remains a part of the criminal case in general and the defendant is entitled to invoke the 5th amendment at the mental responsibility phase without penalty. State v. Langenbach, 2001 WI App 222, 247 Wis. 2d 933, 634 N.W.2d 916, 01–0851.

A suspect who is detained during the execution of a search warrant has not suffered a restraint on freedom of movement of the degree associated with a formal arrest and is not in custody for purposes of *Miranda*. Handcuffing after questioning cannot operate retroactively to create custody for purposes of *Miranda* as a reasonable person's perception at the time of questioning cannot be affected by later police activity. State v. Goetz, 2001 WI App 294, 249 Wis. 2d 380, 638 N.W.2d 386, 01–0954.
See also State v. Kilgore, 2016 WI App 47, 370 Wis. 2d 198, 882 N.W.2d 493, 15–0997.

If a suspect makes an ambiguous or equivocal reference to counsel, the police need neither cease questioning nor clarify the suspect's desire for counsel, although the latter will often be good police practice. State v. Jennings, 2002 WI 44, 252 Wis. 2d 228, 647 N.W.2d 142, 00–1680.

The standard for whether a person is in custody so as to require *Miranda* warnings is whether a reasonable innocent person in the situation would believe he or she was in custody. Stated differently, the standard is the objective one of the reasonable person, not the subjective one of the suspect in the particular case, who may assume he or she is being arrested because he or she knows there are grounds for an arrest. State v. Morgan, 2002 WI App 124, 254 Wis. 2d 602, 648 N.W.2d 23, 01–2148. See also State v. Dobbs, 2020 WI 64, 392 Wis. 2d 505, 945 N.W.2d 609, 18–0319.

The right against self–incrimination survives conviction and remains active while a direct appeal is pending. A probationer may be compelled to answer self–incriminating questions from a probation or parole agent, or suffer revocation for refusing to do so, only if there is a grant of immunity rendering the testimony inadmissible in a criminal prosecution. State ex rel. Tate v. Schwarz, 2002 WI App 127, 257 Wis. 2d 40, 654 N.W.2d 438, 00–1635.

The clear rule governing the 6th amendment right to counsel is that once adversarial judicial proceedings have commenced, the accused has a right to legal representation when subject to state interrogation. At the onset of post–charge police interrogations, the accused must be made aware that the adversarial process has begun and that he or she can request the assistance of counsel at the interrogations. State v. Anson, 2002 WI App 270, 258 Wis. 2d 433, 654 N.W.2d 48, 01–2907.

Miranda warnings need only be administered to individuals who are subjected to custodial interrogation. An officer's words and conduct in responding to the defendant's questions regarding the evidence against the defendant was not interrogation. State v. Fischer, 2003 WI App 5, 259 Wis. 2d 799, 656 N.W.2d 503, 02–0147.

Police conduct does not need to be egregious or outrageous in order to be coercive. Subtle pressures are considered to be coercive if they exceed the defendant's ability to resist. Pressures that are not coercive in one set of circumstances may be coercive in another set of circumstances. State v. Hoppe, 2003 WI 43, 261 Wis. 2d 294, 661 N.W.2d 407, 00–1886.

A *Miranda–Goodchild* hearing to determine voluntariness of confessions is an evidentiary hearing for the parties. It is not a soliloquy for the court. The court must not permit itself to become a witness or an advocate for one party. A defendant does not receive a full and fair evidentiary hearing when the role of the prosecutor is played by the judge and the prosecutor is reduced to a bystander. State v. Jiles, 2003 WI 66, 262 Wis. 2d 457, 663 N.W.2d 798, 02–0153.

Police misrepresentation is not so inherently coercive that it renders a statement inadmissible; rather, it is simply one factor to consider out of the totality of the circumstances. State v. Triggs, 2003 WI App 91, 264 Wis. 2d 861, 663 N.W.2d 396, 02–0447.

Coercive conduct by a private person, absent any claim of state involvement, is insufficient to render a confession inadmissible on due process grounds. Involuntary confession jurisprudence is entirely consistent with settled law requiring some state action to support a claim of violation of the due process clause. The most outrageous behavior by a private party seeking to secure evidence against a defendant does not make that evidence inadmissible under the due process clause. State v. Moss, 2003 WI App 239, 267 Wis. 2d 772, 672 N.W.2d 125, 03–0436.

That the defendant was handcuffed to a ring on a wall for all breaks between interrogations was not coercive in and of itself. State v. Agnello, 2004 WI App 2, 269 Wis. 2d 260, 674 N.W.2d 594, 02–2599.

Relay questioning implies that different interrogators relieve each other in an effort to put unremitting pressure on a suspect. When over a 12–hour period there were breaks during and between 3 interrogation sessions with 3 interrogation teams and at least one of the changes in interrogation teams was due to a shift change, there was no impermissible relay questioning or excessively long isolation or interrogation. State v. Agnello, 2004 WI App 2, 269 Wis. 2d 260, 674 N.W.2d 594, 02–2599.

A convicted defendant was not entitled to *Miranda* warnings prior to a court–ordered presentence investigation when the defendant's admission to the crime given in the investigation after denying the crime at trial was later used in a perjury prosecution against the defendant when the interview was routine and was not conducted while the defendant's jeopardy was still in doubt. State v. Jimmie R.R. 2004 WI App 168, 276 Wis. 2d 447, 688 N.W.2d 1, 02–1771.

Neither the text nor the spirit of the 5th amendment confers a privilege to lie. Proper invocation of the privilege against compulsory self–incrimination allows a witness to remain silent, but not to swear falsely. No matter how illusory the right to silence may seem to the defendant, that does not exert a form of pressure that exonerates an otherwise unlawful lie. State v. Reed, 2005 WI 53, 280 Wis. 2d 68, 695 N.W.2d 315, 03–1781.

A prosecuting attorney ordinarily may not comment on an accused's decision not to testify. There are circumstances, however, when an accused opens the door to a measured response by the prosecuting attorney. It may be proper for a prosecutor to comment on an accused's failure to testify after the accused's account of events are given during opening statements but the accused later refuses to testify. State v. Moeck, 2005 WI 57, 280 Wis. 2d 277, 695 N.W.2d 783, 03–0002.

If a defendant takes the stand in order to overcome the impact of confessions illegally obtained and hence improperly introduced, his or her testimony is tainted by the same illegality that rendered the confessions themselves inadmissible. The state has the burden to prove beyond a reasonable doubt that its use of the unlawfully obtained statements did not induce the defendant's testimony. Because the ultimate conclusion as to whether the defendant was impelled to testify is a question of constitutional fact, the circuit court may not hold an evidentiary hearing when making the determination. The hearing is a paper review during which a circuit court makes findings of historical fact based on the record. State v. Anson, 2004 WI 96, 282 Wis. 2d 629, 698 N.W.2d 776, 03–1444.

All custodial interrogation of juveniles must be electronically recorded where feasible, and without exception when questioning occurs at a place of detention. State v. Jerrell C.J. 2005 WI 105, 283 Wis. 2d 145, 699 N.W.2d 110, 02–3423.

Failure to call a juvenile suspect's parents for the purpose of depriving the juvenile of the opportunity to receive advice and counsel will be considered strong evidence that coercive tactics were used to elicit the incriminating statements, but the call is not mandatory. State v. Jerrell C.J. 2005 WI 105, 283 Wis. 2d 145, 699 N.W.2d 110, 02–3423.

Despite *Patane*, 542 U.S. 630, evidence obtained as a direct result of an intentional violation of *Miranda* is inadmissible under Article I, s. 8, of the Wisconsin Constitution. State v. Knapp, 2005 WI 127, 285 Wis. 2d 86, 700 N.W.2d 899, 00–2590.

When a request to remain silent is ambiguous, police need not endeavor to clarify the suspect's request. A suspect's statement, "I don't know if I should speak to you," was insufficient to unambiguously invoke the right to remain silent. State v. Hassel, 2005 WI App 80, 280 Wis. 2d 637, 696 N.W.2d 270, 04–1824.

That a lawyer who, while present during questioning, instructed the interrogating officer not to read the *Miranda* warnings and told his client that if the warnings were not given, whatever he said could not be used in court did not relieve the officer from the duty to read the warnings. State v. Rockette, 2005 WI App 205, 287 Wis. 2d 257, 704 N.W.2d 382, 04–2731.

A two–pronged subjective/objective test is applicable for determining whether, as a matter of law, a police officer's statements given in a criminal investigation are coerced and involuntary, and therefore subject to suppression. In order for statements to be considered sufficiently compelled such that immunity attaches, a police officer must subjectively believe he or she will be fired for asserting the privilege against self–incrimination, and that belief must be objectively reasonable. State v. Brockdorf, 2006 WI 76, 291 Wis. 2d 635, 717 N.W.2d 657, 04–1519.
See also State v. McPike, 2009 WI App 166, 322 Wis. 2d 561, 776 N.W.2d 617, 08–3037.

When a defendant seeks to exclude prior statements based upon his or her 5th amendment privilege, he or she must first establish that the statements at issue are 1) testimonial; 2) compelled; and 3) incriminating. State v. Mark, 2006 WI 78, 292 Wis. 2d 1, 718 N.W.2d 90, 03–2068.

When defense counsel prompted jurors to speculate that the defendant's alleged cohorts did not testify because they would not corroborate the accusations of an undercover officer, the prosecutor fairly suggested that the pair had the right not to testify in accordance with their 5th amendment right against self–incrimination. It is not improper for a prosecutor to note that the defendant has the same subpoena powers as the government, particularly when done in response to a defendant's argument about the prosecutor's failure to call a specific witness. State v. Jaimes, 2006 WI App 93, 292 Wis. 2d 656, 715 N.W.2d 669, 05–1511.

Under the totality of the circumstances of this case, that it was not necessary for a prosecutor interviewing the defendant to formally re–advise the defendant of his *Miranda* rights when it was undisputed that the defendant had been advised of his rights the day before, and he clearly indicated to the prosecutor in her office that he remembered those rights and understood those rights, and therefore the statement the defendant made to the prosecutor was admissible. State v. Backstrom, 2006 WI App 114, 293 Wis. 2d 809, 718 N.W.2d 246, 05–1270.

Pre–custody invocation of the right to counsel was not an invocation of the right to counsel under *Miranda* and therefore the defendant's ensuing post–Mirandized inculpatory statements made while undergoing custodial interrogation did not need to be suppressed. State v. Kramer, 2006 WI App 133, 294 Wis. 2d 780, 720 N.W.2d 459, 05–0105.

Pre–*Miranda* silence may be used: 1) to impeach a defendant when he or she testifies; or 2) substantively to suggest guilt. Once the defendant testifies, his or her pre–*Miranda* silence may be used by the prosecutor. State v. Mayo, 2007 WI 78, 301 Wis. 2d 642, 734 N.W.2d 115, 04–1592.

The corroboration rule is a common law rule that requires that a conviction of a crime may not be grounded on the admission or confessions of the accused alone. There must be corroboration of a significant fact in order to produce a confidence in the truth of the confession. The significant fact need not independently establish

a specific element of a crime. It is also unnecessary that the significant fact be particular enough to independently link the defendant to the crime. State v. Bannister, 2007 WI 86, 302 Wis. 2d 158, 734 N.W.2d 892, 05–0767.

Once the defendant initiated the topic of why he chose to remain silent and his explanation put him in a better position than had he not mentioned the reason, it was not then fundamentally unfair for the state on cross–examination to attack the credibility of that explanation. The suggestion of fabrication in cross–examination was not fundamentally unfair and not the equivalent of asking the jury to infer guilt from the defendant's silence. State v. Cockrell, 2007 WI App 217, 306 Wis. 2d 52, 741 N.W.2d 267, 05–2672.

Under *Ross*, a suspect's claimed unequivocal invocation of the right to remain silent must be patent. The *Ross* rule allows no room for an assertion that permits even the possibility of reasonable competing inferences. There is no invocation of the right to remain silent if any reasonable competing inference can be drawn. State v. Markwardt, 2007 WI App 242, 306 Wis. 2d 420, 742 N.W.2d 546, 06–2871. See also State v. Cummings, 2014 WI 88, 357 Wis. 2d 1, 850 N.W.2d 915, 11–1653.

The fact that an interrogating officer was at times confrontational and raised his voice was not improper police procedure and did not, by itself, establish police coercion, nor did the length of the defendant's custody nor her two–hour interrogation qualify as coercive or improper police conduct. As such, it was improper to consider the defendant's personal characteristics because consideration of personal characteristics is triggered only if there exists coercive police conduct against which to balance them. State v. Markwardt, 2007 WI App 242, 306 Wis. 2d 420, 742 N.W.2d 546, 06–2871.

Factors to consider in determining if a suspect's freedom to act is restricted to a degree associated with formal arrest so that *Miranda* warnings are required, include the suspect's freedom to leave, the purpose, place, and length of the interrogation, and the degree of restraint. Degree of restraint includes, the manner in which the suspect is restrained, the number of officers involved and whether: 1) the suspect is handcuffed; 2) a weapon is drawn; 3) a frisk is performed; 4) the suspect is moved to another location; and 5) questioning took place in a police vehicle. State v. Torkelson, 2007 WI App 272, 306 Wis. 2d 673, 743 N.W.2d 511, 07–0636.

Under either a standard requiring only that a suspect be in custody when the request for counsel is made or a standard requiring that interrogation be imminent or impending when the request for counsel is made, the defendant effectively invoked his *Miranda* right to counsel when he requested counsel while in custody and before law enforcement officers interrogated him. (The court divided on the question whether to adopt a temporal standard to determine whether a suspect in custody has effectively invoked his or her 5th amendment *Miranda* right to counsel.) State v. Hambly, 2008 WI 10, 307 Wis. 2d 98, 745 N.W.2d 48, 05–3087.

Under *Edwards v. Arizona,* after the defendant effectively invokes his or her *Miranda* right to counsel, police interrogation, unless initiated by the defendant, must cease. Interrogation refers not only to express questioning, but also to the functional equivalent of express questioning, which means any words or actions on the part of the police other than those normally attendant to arrest and custody that the police should know are reasonably likely to elicit an incriminating response. Interrogation must reflect a measure of compulsion above and beyond that inherent in custody itself. State v. Hambly, 2008 WI 10, 307 Wis. 2d 98, 745 N.W.2d 48, 05–3087.

In order to establish that a suspect has validly waived the *Miranda* right to counsel after effectively invoking it, the state has the burden to show: 1) as a preliminary matter, that the suspect initiated further communication, exchanges, or conversations with the police; and 2) the suspect waived the right to counsel voluntarily, knowingly, and intelligently. Whether a suspect "initiates" communication or dialogue does not depend solely on the time elapsing between the invocation of the right to counsel and the suspect's beginning an exchange with law enforcement, although the lapse of time is a factor to consider. State v. Hambly, 2008 WI 10, 307 Wis. 2d 98, 745 N.W.2d 48, 05–3087.

When the defendant asserts that he or she previously invoked his or her right to counsel as a basis for invalidating a later waiver, both the burden of going forward with a prima facie case and the burden of persuasion are on the state to show a prior waiver of the 5th amendment/*Miranda* right to counsel when the defendant has timely raised the issue. State v. Cole, 2008 WI App 178, 315 Wis. 2d 75, 762 N.W.2d 711, 07–2472.

As a criminal defendant's constitutional right to testify on his or her behalf is a fundamental right, it follows that the constitutionally articulated corollary to the right to testify, the right not to testify, is fundamental as well. Because the right not to testify is fundamental, a defendant's waiver of this right must be knowing and voluntary. The circuit court was not obligated to conduct a colloquy during the trial to ensure the defendant waived that right. Nevertheless, the court was required, once the issue was raised in the postconviction motion, to determine whether the defendant knowingly and voluntarily waived the right not to testify. State v. Jaramillo, 2009 WI App 39, 316 Wis. 2d 538, 765 N.W.2d 855, 08–1785.

Without custody, there is no *Miranda* violation. Although police were present and asked some questions during what the state conceded was an interrogation from which the defendant high school student was not free to leave, when the defendant was not placed in a police vehicle during questioning and the investigation was being conducted primarily by a school official, the defendant, "if in custody at all, was in custody of the school and was not being detained by the police at that time." State v. Schloegel, 2009 WI App 85, 319 Wis. 2d 741, 769 N.W.2d 130, 08–1310.

A request to speak with family members triggers no constitutional rights in the manner that a request to speak with counsel does. The police had no obligation to inform a defendant that her husband was waiting outside. The defendant's challenge of her *Miranda* waiver and challenge to the voluntariness of her statements subsequent to that waiver because of detectives' evasiveness in response to questions regarding the status and location of her husband, who was actually waiting outside the interrogation room, did not go to the validity of her waiver of rights. It was the defendant's responsibility, not her husband's, to determine whether she wanted to exercise her 5th amendment rights. State v. Ward, 2009 WI 60, 318 Wis. 2d 301, 767 N.W.2d 236, 07–0079.

Where the dictates of *Miranda* are otherwise followed, the only impermissible aspect of incommunicado questioning is that which prevents a suspect from speaking with those to whom he or she has a constitutional right to speak. Preventing others from contacting the suspect has no impact on the suspect's ability to waive his or her rights or on his or her choice to speak voluntarily with the police. State v. Ward, 2009 WI 60, 318 Wis. 2d 301, 767 N.W.2d 236, 07–0079.

When a defendant seeks to introduce evidence of prior specific instances of violence within the defendant's knowledge at the time of the incident in support of a self–defense claim, an order that the defendant disclose prior to trial any specific acts that the defendant knew about at the time of the incident and that the defendant intends to offer as evidence so that admissibility determinations can be made prior to trial does not violate the protection against compelled self–incrimination. State v. McClaren, 2009 WI 69, 318 Wis. 2d 739, 767 N.W.2d 550, 07–2382.

An opposing party may object if a person who originally claimed the privilege against self–incrimination in a civil action seeks to withdraw the privilege and testify. Courts should further the goal of permitting as much testimony as possible to be presented in the civil litigation, despite the assertion of the privilege. Because the privilege is constitutionally based, the detriment to the party asserting it should be no more than is necessary to prevent unfair and unnecessary prejudice to the other side. The general rule is that if the claimant makes a timely request to the court, the court should explore all possible measures to select that means that strikes a fair balance and accommodates both parties. S.C. Johnson & Son, Inc. v. Morris, 2010 WI App 6, 322 Wis. 2d 766, 779 N.W.2d 19, 08–1647.

When a person who asserted the privilege against self–incrimination in a civil proceeding seeks to withdraw the privilege and testify, one of the most important factors in the balancing process is the timing of the withdrawal. Timing can mean everything when determining whether the privilege was invoked primarily to abuse, manipulate, or gain an unfair strategic advantage over opposing parties. The trial court is in a far better position than an appellate court to determine whether prejudice has evolved as a consequence of the belated withdrawal of the invocation. It is eminently fair and reasonable that the trial court have the responsibility to perform the balancing test and make the ultimate decision of whether withdrawal is allowed in the exercise of its discretion. S.C. Johnson & Son, Inc. v. Morris, 2010 WI App 6, 322 Wis. 2d 766, 779 N.W.2d 19, 08–1647.

All custodial interrogation of juveniles must be electronically recorded when feasible under *Jerrell C.J.* 2005 WI 105. "Feasible" in this context is not a synonym for "effortless." Although the police officer may not have been capable of recording the initial conversation while in a squad car, nothing prevented the officer from waiting a short time until recording equipment was available. State v. Dionicia M. 2010 WI App 134, 329 Wis. 2d 524, 791 N.W.2d 236, 09–3109.

Jerrell C.J. 2005 WI 105, does not allow the admission of partially recorded interrogations of juveniles. A major purpose of the *Jerrell C.J.* rule is to avoid involuntary, coerced confessions by documenting the circumstances in which a juvenile has been persuaded to give a statement. This purpose is not served by allowing an officer to turn on the recorder only after a juvenile has been convinced to confess. State v. Dionicia M. 2010 WI App 134, 329 Wis. 2d 524, 791 N.W.2d 236, 09–3109.

If a probationer refuses to incriminate himself or herself as required by a condition of supervision, he or she cannot be automatically revoked on that ground. If the probationer refuses despite a grant of immunity, his or her probation may be revoked on that basis. Any incriminating statements the probationer provides under the grant of immunity may be used as justification for revocation, but not used in any criminal proceedings. If a probationer is compelled by way of probation rules to incriminate himself or herself, the resulting statements may not be used in any criminal proceeding. State v. Peebles, 2010 WI App 156, 330 Wis. 2d 243, 792 N.W.2d 212, 09–3111.

When both the circuit court and the defendant's probation agent ordered the defendant to attend sex offender counseling, his supervision rules required that he be truthful, that he submit to lie detector tests, and that he fully cooperate with and successfully complete sex offender counseling, the probation supervision rules documents explicitly informed the defendant he could be revoked for failure to comply with any conditions, and the defendant gave his statements, at least in part, because he was required to take lie detector tests, his statements were compelled for purposes of the 5th amendment. Because the statements were then used against him at sentencing to increase his prison sentence, they were incriminating and should have been excluded. State v. Peebles, 2010 WI App 156, 330 Wis. 2d 243, 792 N.W.2d 212, 09–3111.

A criminal defendant's constitutional right not to testify is a fundamental right that must be waived knowingly, voluntarily, and intelligently. Circuit courts are not required to conduct an on–the–record colloquy to determine whether a defendant is so waiving this right although such a colloquy is recommended as the better practice. Once a defendant properly raises in a postconviction motion the issue of an invalid waiver of the right not to testify, an evidentiary hearing is an appropriate remedy to ensure that the defendant knowingly, voluntarily, and intelligently waived the right. State v. Denson, 2011 WI 70 335 Wis. 2d 681, 799 N.W.2d 831, 09–0694.

The state cannot compel a probationer to provide incriminating testimonial evidence, which may be used against him in the noncriminal revocation proceeding, and then use that information again, directly or indirectly, to prosecute the probationer criminally. Compelled statements may not be used in a criminal proceeding, even if the revocation proceeding occurs after the criminal proceeding. State v. Spaeth, 2012 WI 95, 343 Wis. 2d 220, 819 N.W.2d 769, 09–2907.

There is a "general on–the–scene" exception to the requirement that police questioning be preceded by *Miranda* warnings. The "on–the–scene" exception applies only when the person being questioned is not in custody or when law enforcement urgently needs information to attend to a potential emergency. State v. Martin, 2012 WI 96, 343 Wis. 2d 278, 816 N.W.2d 270, 10–0505.

There is no authority for the proposition that an incriminating statement offered by a suspect who has not been Mirandized during the course of a custodial interrogation is admissible simply because that particular statement, viewed in complete isolation, appears "voluntary." It is of no moment to a *Miranda* analysis that an admission, viewed in a vacuum, appears to have been made voluntarily. State v. Martin, 2012 WI 96, 343 Wis. 2d 278, 816 N.W.2d 270, 10–0505.

The defendant withdrew his request for an attorney by voluntarily initiating a request to resume questioning after validly invoking his right to counsel, cancelling his invocation of that right by initiating the dialogue in which he asked to continue the interrogation. That before the interrogator returned, the suspect's attorney on a prior charge arrived at the police station and asked to see the suspect did not

change the court's analysis. State v. Stevens, 2012 WI 97, 343 Wis. 2d 157, 822 N.W.2d 79, 09–2057.

The constitutional prohibition against compelled self–incrimination applies only to testimonial or communicative evidence, not to physical tests. The privilege does not bar compulsion to submit to physical testing such as fingerprinting, photographing or measuring, writing or speaking for identification, assuming a stance, or making a particular gesture. State v. Schmidt, 2012 WI App 137, 345 Wis. 2d 326, 825 N.W.2d 521, 12–0064.

A defendant's statements are voluntary if they are the product of a free and unconstrained will, reflecting deliberateness of choice, as opposed to the result of a conspicuously unequal confrontation in which the pressures brought to bear on the defendant by representatives of the state exceeded the defendant's ability to resist. The determination is made in light of all of the facts surrounding the interview and decided under the totality of the circumstances, balancing the defendant's relevant personal characteristics, including the defendant's age, education and intelligence, physical and emotional condition, and prior experience with law enforcement, with the pressures imposed by the police. State v. Lemoine, 2013 WI 5, 345 Wis. 2d 171, 827 N.W.2d 589, 10–2597.

Misrepresentations by police do not necessarily make a confession involuntary; rather, they are a relevant factor in the totality of the circumstances. In this case, misstatements made by the police were not themselves a constitutional violation when the defendant was not in custody. Because the comments were technically a misrepresentation, they weighed toward a finding of involuntariness, but in the context of the whole interview, they did not suffice to make the defendant's statements involuntary. State v. Lemoine, 2013 WI 5, 345 Wis. 2d 171, 827 N.W.2d 589, 10–2597.

The court declined to adopt the argument that *Miranda* applies when custody is "imminent." While *Hambly* held that *Miranda* was properly invoked before a suspect was interrogated when the suspect had been formally arrested and asked for an attorney, "imminent interrogation" and "imminent custody" are not equally coercive. State v. Herr, 2013 WI App 37, 346 Wis. 2d 603, 828 N.W.2d 896, 12–0935.

A defendant's decision to allow the use of compelled testimony is the same thing as a decision to take the stand. While a personal colloquy must be made if the defense announces that the defendant will not take the stand in his or her own defense, no such personal colloquy is mandated when a defendant wants to take the stand. Failing to conduct a personal colloquy concerning the defendant's desire to waive immunity was not, in itself, an error. State v. Libecki, 2013 WI App 49, 347 Wis. 2d 511, 830 N.W.2d 271, 12–0663.

Miranda does not require suppression of voluntary statements made by a person in custody unless those statements are elicited by the functional equivalent of interrogation. State v. Douglas, 2013 WI App 52, 347 Wis. 2d 407, 830 N.W.2d 126, 12–1275.

When an officer watching a monitor of a defendant alone in an interview room witnessed the defendant removing his shoelaces and worried, correctly, that the defendant was going to strangle himself, the statements the defendant made to the rescuing officer in that situation were not custodial interrogation because they fell within the "private safety" exception to *Miranda*. This exception provides that if questioning occurs during an emergency involving the possibility of saving human life, and rescue is the primary motive of the questioner, then no violation of *Miranda* has occurred. State v. Uhlenberg, 2013 WI App 59, 348 Wis. 2d 44, 831 N.W.2d 799, 12–0827.

Under *Edwards*, 451 U.S. 477 (1981), after a suspect validly invokes the right to counsel, any subsequent waiver is invalid unless an attorney is present or the suspect "initiates further communication, exchanges, or conversations with the police." However, under *Shatzer,* 559 U.S. 98, the *Edwards* presumption ends when the suspect has been outside police custody for 14 days. The holding of *Shatzer* is applicable in Wisconsin cases. State v. Edler, 2013 WI 73, 350 Wis. 2d 1, 833 N.W.2d 564, 11–2916.

The test for whether a subject is in custody for purposes of triggering *Miranda* warnings is an objective one that asks whether a reasonable person in the subject's position would have considered himself or herself to be in custody as set forth in *Torkelson*. A government employee who is not a law enforcement officer may still violate *Miranda* by engaging in questioning designed to elicit incriminating information for law enforcement purposes. The first issue in this appeal was whether the defendant was subjected to custodial interrogation when she was questioned by correctional officers. State v. Ezell, 2014 WI App 101, 357 Wis. 2d 675, 855 N.W.2d 453, 13–2178.

In the absence of actual coercion, the U.S. Constitution does not require suppression of physical evidence obtained as a consequence of unwarned interrogation. The Wisconsin Constitution does require suppression of physical evidence obtained "as a direct result of an intentional violation of *Miranda*," but in the absence of coercion or intentional violation of the suspect's rights, there is no basis for suppressing physical evidence. State v. Ezell, 2014 WI App 101, 357 Wis. 2d 675, 855 N.W.2d 453, 13–2178.

When a defendant was compelled to display his platinum teeth to the jury, that display was physical evidence that did not have a testimonial aspect sufficient to implicate constitutional protections. The relevant question under the case law is whether the evidence in question expresses, makes use of, reveals, or discloses the contents of the defendant's mind. Teeth do not do so. The teeth were material to identification, which was a matter at issue. State v. Ramon G. Gonzalez, 2014 WI 124, 359 Wis. 2d 1, 856 N.W.2d 580, 12–1818.

The 5th amendment privilege against self–incrimination continues after a plea and through sentencing. Accordingly, a circuit court employs an improper factor in sentencing if it actually relies on compelled statements made to a probation agent. The defendant has the burden to prove by clear and convincing evidence that the circuit court actually relied on an improper factor in imposing sentence. State v. Alexander, 2015 WI 6, 360 Wis. 2d 292, 858 N.W.2d 662, 13–0843.

Although the defendant who was only 15 years old when questioned, he had more experience with police and law enforcement than most people his age and demonstrated that he was able not only to develop a story about his non–involvement in the shooting but also to adapt the details of that story to information possessed by the police. That ability to concoct and modify a story on the fly suggested a level of sophistication and adaptability perhaps not accounted for by a standard IQ test. Thus, his below–average intellect did not justify a conclusion that his mental condition, by itself and apart from its relation to official coercion, disposed of the inquiry into constitutional voluntariness. Rather, it had to be be taken into consideration and weighed against the conduct of the police. State v. Moore, 2015 WI 54, 363 Wis. 2d 376, 864 N.W.2d 827, 13–0127.

A probationer is not required to answer questions unless he or she was offered immunity as described in *Evans,* 77 Wis. 2d 225. The *Evans* court stated: "Had sufficient explanation been given to the defendant with regard to the type of immunity herein granted, then refusal to cooperate would be grounds for revocation." The immunity described in *Evans* is both use and derivative use immunity. With use immunity, particular information provided by an individual cannot be used against that individual in criminal proceedings, whereas with derivative use immunity, any evidence subsequently discovered by authorities through direct or indirect utilization of the provided information can not be used against the individual in criminal proceedings. Douglas v. Hayes, 2015 WI App 87, 365 Wis. 2d 497, 872 N.W.2d 152, 14–2977.

The issue in this appeal was not whether the probation agent explained details of derivative use immunity to the defendant, but whether she explained at all that the defendant was afforded use and derivative use immunity. The statement "I have also been advised that none of this information can be used against me in criminal proceedings" would tell a probationer that none of the particular information he or she was providing the agent at that time could be used against the probationer in criminal court, but it would not clearly inform a probationer that other information derived from the information directly provided by the probationer also could not be used against him or her in criminal court. Douglas v. Hayes, 2015 WI App 87, 365 Wis. 2d 497, 872 N.W.2d 152, 14–2977.

Once a compelled, incriminating, testimonial statement has been obtained, the state bears the burden of demonstrating that the evidence the state wishes to use is derived from a legitimate source wholly independent of the compelled testimony. It is insufficient to meet the state's burden by merely denying that an immunized statement was used, even if that denial is made in good faith. Rather, the government must document or account for each step of the investigative chain by which the evidence was obtained from a legitimate source wholly independent of the compelled statement. State v. Quigley, 2016 WI App 53, 370 Wis. 2d 702, 883 N.W.2d 139, 15–0681.

Under *Nix*, 467 U.S. 431, the state need not prove an absence of bad faith for the inevitable discovery exception to the exclusionary rule to apply. State v. Jackson, 2016 WI 56, 369 Wis. 2d 673, 882 N.W.2d 422, 14–2238.

Requiring the state in all inevitable discovery doctrine cases to prove active pursuit of an alternative line of investigation at the time of a constitutional violation risks exclusion of evidence that the state might demonstrate that it inevitably would have discovered. Therefore, the factors in *Schwegler*, 170 Wis. 2d 487, *Lopez*, 207 Wis. 2d 413, and *Avery*, 2011 WI App 124, should be regarded as important indicia of inevitability rather than indispensable elements of proof. Instead, the relevant inquiry is whether the prosecution has met its burden of proving by a preponderance of the evidence that it inevitably would have discovered the evidence sought to be suppressed. State v. Jackson, 2016 WI 56, 369 Wis. 2d 673, 882 N.W.2d 422, 14–2238.

Custodial interrogation can take the form of either express questioning or its functional equivalent. Asking a defendant if he wanted to give a statement, although designed to obtain a response, did not seek the statement itself. The response to such a question is either "yes" or "no," and neither would have any testimonial significance whatsoever. The question did not constitute express questioning or its functional equivalent, so no *Miranda* warnings were necessary before the question was asked. State v. Harris, 2017 WI 31, 374 Wis. 2d 271, 892 N.W.2d 663, 14–1767.

Upon his or her lawful arrest for drunk driving, a defendant has no constitutional or statutory right to refuse to take a breathalyzer test and the state can comment at trial on the defendant's improper refusal to take the test. State v. Lemberger, 2017 WI 39, 374 Wis. 2d 617, 893 N.W.2d 232, 15–1452.

Statements made after *Miranda* warnings but before contact with requested counsel are admissible for impeachment purposes. Oregon v. Hass, 420 U.S. 714.

The defendant's confession to a serious crime did not transform a noncustodial interview into a custodial interrogation for purposes of *Miranda*, 384 U.S. 436 (1966). Not every confession obtained absent *Miranda* warnings is inadmissible. The critical inquiry is not whether the interview took place in a coercive or police dominated environment, but rather whether the defendant's freedom to depart was restricted in any way. In answering that question, the court looks at the totality of the circumstances while keeping in mind that the determination is based on the objective circumstances of the interrogation, not on the subjective views harbored by the interrogating officers or the person being questioned. Although, in this case, police officers clearly suspected the defendant and had enough evidence to arrest the defendant when he confessed, that by itself did not restrain the defendant's freedom of movement. State v. Bartelt, 2018 WI 16, 379 Wis. 2d 588, 906 N.W.2d 684, 15–2506.

A witness at a John Doe proceeding is not subject to custodial interrogation, and therefore *Miranda* warnings are not required. State. v. Hanson, 2019 WI 63, 387 Wis. 2d 233, 928 N.W.2d 607, 16–2058.

It is essential to distinguish between, on the one hand, a valid waiver of *Miranda*, 384 U.S. 436 (1966), rights and, on the other hand, a later invocation of those rights. The state must always show that a *Miranda* waiver is knowing and voluntary, and a suspect's mental condition is a significant factor in this analysis. The suspect may later decide to invoke the right to remain silent or the right to have counsel present. To invoke the right to counsel, a suspect must make an unambiguous and unequivocal request for counsel. A suspect's personal characteristics can be relevant to whether the suspect knowingly and voluntarily waived *Miranda* rights, but a suspect's apparent mental state does not relax the requirement that the right to counsel be invoked with an unambiguous and unequivocal statement. State v. Abbott, 2020 WI App 25, 392 Wis. 2d 232, 944 N.W.2d 8, 19–0021.

A defendant's statements obtained in violation of *Miranda*, 384 U.S. 436 (1966), may be used to impeach only the defendant's testimony and, accordingly, may not be used during the state's case–in–chief. State v. Garcia, 2020 WI App 71, 394 Wis. 2d 743, 951 N.W.2d 631, 18–2319.

Nothing in article I, section 8 (1) suggests that all incarcerated individuals should be deemed "in custody" for purposes of *Miranda*, 384 U.S. 436 (1966). Neither the purposes of *Miranda* warnings nor the text and history of the Wisconsin Consti-

tution support the invitation to adopt this per se rule. State v. Halverson, 2021 WI 7, 395 Wis. 2d 385, 953 N.W.2d 847, 18–0858.

Statements made during a post–polygraph interview are admissible if: 1) the interview is discrete from the polygraph examination; and 2) the statements are not the product of police coercion and are therefore voluntary. State v. Vice, 2021 WI 63, 397 Wis. 2d 682, 961 N.W.2d 1, 18–2220.

While the constitution does not require that a criminal suspect know and understand every possible consequence of a waiver of the 5th amendment privilege, in this case the interrogator misrepresented the defendant's right to counsel, right to silence, and right to testify, and, as a result, the defendant's waiver of his *Miranda*, 384 U.S. 436 (1966), rights was not made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it. Given those misrepresentations, the defendant could not validly waive his *Miranda* rights as he did not have the requisite level of comprehension. State v. Rejholec, 2021 WI App 45, 398 Wis. 2d 729, 963 N.W.2d 121, 20–0056.

For the purpose of the corroboration rule, a significant fact is one that gives confidence that the crime the defendant confessed to actually occurred. It is not necessary that the significant fact either independently establish the specific elements of the crime or independently link the defendant to the crime. While the corroborating evidence does not establish the elements of the crime of sexual assault, it does corroborate the facts of the defendant's confession and produce a confidence in the truth of the confession. The standard is "any significant fact" to corroborate that the crime the defendant confessed to actually occurred. State v. Thomas, 2021 WI App 55, 399 Wis. 2d 277, 963 N.W.2d 887, 20–0032.

A witness who refuses to testify on self–incrimination grounds after the judge grants immunity may summarily be found in criminal contempt. United States v. Wilson, 421 U.S. 309.

The accused's silence during police interrogation lacked probative value for impeachment of an alibi at trial. United States v. Hale, 422 U.S. 171. See also Doyle v. Ohio, 426 U.S. 610.

The use of the defendant's income tax returns to prove a gambling charge did not deny self–incrimination protection. Garner v. United States, 424 U.S. 648.

A voluntary interview at a police station was not "custodial interrogation." Oregon v. Mathiason, 429 U.S. 492.

An instruction to the jury, over defense objection, not to draw an adverse inference from the defendant's failure to testify did not violate the right against self–incrimination. Lakeside v. Oregon, 435 U.S. 333 (1978).

While statements made by the defendant in circumstances violating *Miranda* protections are admissible for impeachment if their trustworthiness satisfies legal standards, any criminal trial use against the defendant of involuntary statements is a denial of due process. Mincey v. Arizona, 437 U.S. 385 (1978).

Testimony before a grand jury under a grant of immunity could not constitutionally be used for impeachment purposes in a later criminal trial. New Jersey v. Portash, 440 U.S. 450 (1979).

An explicit statement of waiver is not necessary to support a finding that the defendant waived *Miranda* rights. North Carolina v. Butler, 441 U.S. 369 (1979).

A voluntary confession obtained during a custodial interrogation following an illegal arrest was inadmissible. Dunaway v. New York, 442 U.S. 200 (1979).

A witness compelled by a grant of immunity to testify despite a claim of the privilege against self–incrimination was property prosecuted for perjured testimony. United States v. Apfelbaum, 445 U.S. 115 (1980).

Any statement given freely and voluntarily without any compelling influences is, of course, admissible in evidence. The fundamental import of the privilege while an individual is in custody is not whether he is allowed to talk to the police without the benefit of warnings and counsel, but whether he can be interrogated. Rhode Island v. Innis, 446 U.S. 291 (1980).

The right against self–incrimination is not violated when the defendant who testifies in his own defense is impeached by use of the defendant's prearrest silence. Jenkins v. Anderson, 447 U.S. 231 (1980).

Upon the defendant's request, the judge must instruct the jury not to infer guilt from the defendant's failure to testify. Carter v. Kentucky, 450 U.S. 288 (1981).

An accused who requests counsel may not be interrogated without counsel unless the accused initiates further communication, exchanges, or conversations with the police. Edwards v. Arizona, 451 U.S. 477 (1981).

When, for impeachment purposes, the prosecution cross–examined the defendant as to postarrest silence before the defendant received *Miranda* warnings, due process was not violated. Fletcher v. Weir, 455 U.S. 603 (1982).

When the prosecutor improperly commented to the jury that the defendants did not challenge certain accusations against them, the court erred in reversing the conviction on appeal without determining whether the error was harmless. U.S. v. Hasting, 461 U.S. 499 (1983).

A probationer under an obligation to appear before a probation officer and answer questions truthfully was not entitled to *Miranda* warnings. A confession was, therefore, admissible. Minnesota v. Murphy, 465 U.S. 420 (1984).

The court adopts an "inevitable discovery" exception to the exclusionary rule. Nix v. Williams, 467 U.S. 431 (1984).

The court adopts a "public safety" exception to the *Miranda* rule. When the accused, known to have had gun, did not have a gun at time of arrest in a supermarket, the officer properly asked where the gun was before giving *Miranda* warnings. New York v. Quarles, 467 U.S. 649 (1984).

A person subjected to custodial interrogation is entitled to *Miranda* warnings regardless of the nature or severity of the offense. Berkemer v. McCarty, 468 U.S. 420 (1984).

A suspect who has once responded to unwarned yet uncoercive questioning may later waive his or her rights and confess after *Miranda* warnings are given. Oregon v. Elstad, 470 U.S. 298 (1985).

The prosecutor's use of the defendant's postarrest, post–*Miranda*–warnings silence as evidence of the defendant's sanity violated the due process clause. Wainwright v. Greenfield, 474 U.S. 284 (1986).

Police failure to inform the defendant that a third party had retained counsel did not invalidate the defendant's waiver of *Miranda* rights. Moran v. Burbine, 475 U.S. 412 (1986).

Exclusion of testimony about the circumstances of a confession deprived the defendant of due process and other fundamental constitutional rights. Crane v. Kentucky, 476 U.S. 683 (1986).

When no evidence is present suggesting that police officers sent the suspect's wife in to see him with the hope of obtaining incriminating information, no "interrogation" was undertaken even though a detective was present and tape recorded the conversation. Arizona v. Mauro, 481 U.S. 520 (1987).

Police may not interrogate a suspect held in custody after the suspect has previously requested counsel, even when the interrogation relates to an offense different from that for which the suspect requested counsel. Arizona v. Roberson, 486 U.S. 675 (1988).

The custodian of corporate records may not resist a subpoena for records on self–incrimination grounds, regardless of the size of the corporate entity. Braswell v. United States, 487 U.S. 99 (1988).

The self–incrimination privilege does not support a refusal to comply with a juvenile court's order to produce a child. Baltimore Soc. Serv. v. Bouknight, 493 U.S. 474, 107 L. Ed. 2d 992 (1990).

An undercover officer is not required to give *Miranda* warnings to a suspect before surreptitious custodial interrogation. Illinois v. Perkins, 496 U.S. 292, 110 L. Ed. 2d 243 (1990).

When counsel is requested, interrogation must cease and may not be reinstated without counsel present even though the accused previously did have an opportunity to consult an attorney. Minnich v. Mississippi, 498 U.S. 146, 112 L. Ed. 2d 489 (1990).

Admission of a coerced confession may be found to be "harmless error." Arizona v. Fulminate, 499 U.S. 279, 113 L. Ed. 2d 302 (1991).

The 6th amendment right to counsel is offense specific. An accused's invocation of the right during a judicial proceeding did not constitute an invocation of the right to counsel under *Miranda* arising from the 5th amendment guarantees against self–incrimination in regard to police questioning concerning a separate offense. McNeil v. Wisconsin, 501 U.S. 171, 115 L. Ed. 2d 158 (1991).

A police officer's subjective and undisclosed view of whether a person being interrogated is a suspect is irrelevant to determining whether the person is in custody and entitled to *Miranda* warnings. Stansbury v. California, 511 U.S. 318, 128 L. Ed. 2d 293 (1994).

Officers need not cease questioning a suspect subject to custodial interrogation when the suspect makes an ambiguous reference to an attorney. Although often good practice, it is not necessary that the officer ask clarifying questions. Davis v. United States, 512 U.S. 452, 129 L. Ed. 2d 362 (1994).

Miranda and its progeny govern the admissibility of statements made during custodial interrogation in both state and federal courts. *Miranda* may not be overruled by act of Congress. Dickerson v. United States, 530 U.S. 428, 147 L. Ed. 2d 405 (2000).

A witness who denies all culpability has a 5th amendment privilege against self–incrimination. Ohio v. Reiner, 532 U.S. 67, 149 L. Ed. 2d 205 (2001).

A prison rehabilitation program that required inmates convicted of sexual assault to admit having committed the crime or have prison privileges reduced did not violate the right against self–incrimination although immunity was not granted and prosecution of previously uncharged crimes that might be revealed by the required admissions was possible. McKune v. Lile, 536 U.S. 24, 153 L. Ed. 2d 47 (2002).

It is not until statements compelled by police interrogations are used use in a criminal case that a violation of the 5th amendment self–incrimination clause occurs. When a confession was coerced, but no criminal case was ever brought there could be no violation. Chavez v. Martinez, 538 U.S. 760, 155 L. Ed. 2d 984, 123 S. Ct. 1994 (2003).

When the defendant's refusal to disclose his name was not based on any articulated real and appreciable fear that his name would be used to incriminate him, or that it would furnish a link in the chain of evidence needed to prosecute him, application of a criminal statute requiring disclosure of the person's name when the police officer reasonably suspected the person had committed a crime did not violate the protection against self–incrimination. Hiibel v. Sixth Judicial District Court of Nevada, Humboldt County, 542 U.S. 177, 124 S. Ct. 2451, 159 L. Ed 2d 292 (2004).

A custodial interrogation in which no *Miranda* warnings are given until the interrogation has produced a confession in which the interrogating officer follows the confession with *Miranda* warnings and then leads the suspect to cover the same ground a second time violates *Miranda* and the repeated statement is inadmissible. Missouri v. Seibert, 542 U.S. 177, 124 S. Ct. 2601, 159 L. Ed 2d 292 (2004).

A failure to give a suspect *Miranda* warnings does not require suppression of the physical fruits of the suspect's unwarned but voluntary statements. *Miranda* protects against violations of the self–Incrimination clause, which is not implicated by the introduction at trial of physical evidence resulting from voluntary statements. United States v. Patane, 542 U.S. 600, 124 S. Ct. 2620, 159 L. Ed 2d 667 (2004).

The 4 warnings *Miranda* requires are invariable, but the U.S. Supreme Court has not dictated the words in which the essential information must be conveyed. The inquiry is simply whether the warnings reasonably convey to a suspect his or her rights as required by *Miranda*. Florida v. Powell, 559 U.S. 50, 130 S. Ct. 1195, 175 L. Ed. 2d 1009 (2010).

Under *Edwards,* 451 U.S. 477, a voluntary *Miranda* waiver is sufficient at the time of an initial attempted interrogation to protect a suspect's right to have counsel present, but not at the time of subsequent interrogation attempts if the suspect initially requested the presence of counsel. However, confessions obtained after a 2–week break in custody and a waiver of *Miranda* rights are most unlikely to be compelled, and hence are unreasonably excluded. Lawful imprisonment imposed upon conviction of a crime does not create the coercive pressures identified in *Miranda* and is not considered continued custody for determining whether custodial interrogation ended. Maryland v. Shatzer, 559 U.S. 50, 130 S. Ct. 1213, 175 L. Ed. 2d 1045 (2010).

An invocation of the right to remain silent must be unambiguous and unequivocal. The defendant did not say that he wanted to remain silent or that he did not want to talk with the police. Had he made either of these simple, unambiguous statements, he would have invoked his right to cut off questioning. He did neither, so he did not invoke his right to remain silent. A suspect who has received and understood the Miranda warnings, and has not invoked his Miranda rights, waives the

right to remain silent by making an uncoerced statement to the police. Berghuis v. Thompkins, 560 U.S. 370, 130 S. Ct. 2250, 176 L. Ed. 2d 1098 (2010).

The age of a child subjected to police questioning is relevant to the custody analysis of *Miranda*. So long as the child's age was known to the officer at the time of police questioning, or would have been objectively apparent to a reasonable officer, its inclusion in the custody analysis is consistent with the objective nature of that test, but a child's age will not be determinative, or even a significant, factor in every case. J.D.B. v. North Carolina, 564 U.S. 261, 131 S. Ct. 2394, 180 L. Ed. 2d 310 (2011).

A prisoner is not always in custody for purposes of *Miranda*, 384 U.S. 436 (1966), whenever the prisoner is isolated from the general prison population and questioned about conduct outside the prison. Imprisonment, questioning in private, and questioning about events in the outside world are not necessarily enough to create a custodial situation for *Miranda* purposes. "Custody" is a term of art that specifies circumstances that are thought generally to present a serious danger of coercion. In determining whether a person is in custody in this sense, the initial step is to ascertain whether, in light of the objective circumstances of the interrogation, a reasonable person would have felt he or she was not at liberty to terminate the interrogation and leave. The court will also ask the additional question of whether the relevant environment presents the same inherently coercive pressures as the type of station house questioning at issue in *Miranda*. Howes v. Fields, 565 U.S. 499, 132 S. Ct. 1181, 182 L. Ed. 2d 17 (2012).

No 5th amendment violation was found in this case. Petitioner, without being placed in custody or receiving *Miranda* warnings, voluntarily answered the questions of a police officer who was investigating a murder then balked when the officer asked whether a ballistics test would show that the shell casings found at the crime scene would match petitioner's shotgun. Petitioner was subsequently charged with murder, and at trial prosecutors argued that his reaction to the officer's question suggested that he was guilty. Salinas v. Texas, 570 U.S. 178, 133 S. Ct. 2174, 186 L. Ed. 2d 376 (2013).

Collateral estoppel barred the state from introducing evidence of a van theft as an overt act in a conspiracy charge when the accuseds had earlier been acquitted in the van theft trial. The accused's silence prior to receiving *Miranda* warnings was properly used to impeach the accused. The prosecution's reference to post–*Miranda* silence was harmless error. Feela v. Israel, 727 F.2d 151 (1984).

Assertion of the constitutional privilege against self–incrimination in federal civil litigation: Rights and remedies. Daskal. 64 MLR 243 (1980).

Privilege against self–incrimination–truthful statements may be used in a perjury prosecution. 64 MLR 744 (1981).

Adding (or Reaffirming) a Temporal Element to the *Miranda* Warning "You Have a Right to an Attorney. Bazelon. 90 MLR 1009 (2007).

The Interrogations of Brendan Dassey. Gallini. 102 MLR 777 (2019).

The privilege against self–incrimination in civil commitment proceedings. 1980 WLR 697.

McNeil v. Wisconsin: Blurring a Bright Line on Custodial Interrogation. 1992 WLR 1643.

Law Enforcement in the American Security State. Said. 2019 WLR 819.

Remedy for wrongs. SECTION 9. Every person is entitled to a certain remedy in the laws for all injuries, or wrongs which he may receive in his person, property, or character; he ought to obtain justice freely, and without being obliged to purchase it, completely and without denial, promptly and without delay, conformably to the laws.

The constitutional guaranty of a remedy for injuries to person and property does not give a constitutional right to sue the state in tort. There is no right of a citizen to hold the sovereign substantively liable for torts, and the state, being immune from suit without its consent, may define the conditions under which it will permit actions against itself. Cords v. State, 62 Wis. 2d 42, 214 N.W.2d 405.

The action for common–law seduction is extended to allow recovery against the seducer by the woman herself. Slawek v. Stroh, 62 Wis. 2d 295, 215 N.W.2d 9.

The constitution does not entitle state litigants to the exact remedy they desire, but merely to their day in court. Wiener v. J.C. Penney Co. 65 Wis. 2d 139, 222 N.W.2d 149.

Illegal aliens have the right to sue in Wisconsin for injuries negligently inflicted upon them. Arteaga v. Literski, 83 Wis. 2d 128, 265 N.W.2d 148 (1978).

No legal rights are conferred by this section. Mulder v. Acme–Cleveland Corp., 95 Wis. 2d 173, 290 N.W.2d 176 (1980).

Pre–1981 statutory paternity proceedings, which vested exclusive authority in district attorney to commence paternity action, unconstitutionally denied the child a "day in court." Accordingly, the child's action was not barred by any statute of limitations. In re Paternity of R.W.L., 116 Wis. 2d 150, 341 N.W.2d 682 (1984).

When an adequate remedy or forum does not exist to resolve disputes or provide due process, the courts can fashion an adequate remedy. Collins v. Eli Lilly Co., 116 Wis. 2d 166, 342 N.W.2d 37 (1984).

The state is not entitled to protection under this section. State v. Halverson, 130 Wis. 2d 300, 387 N.W.2d 124 (Ct. App. 1986).

A register in probate's fee based on the value of the estate does not violate this section. Treiber v. Knoll, 135 Wis. 2d 58, 398 N.W.2d 756 (1987).

A court faced with a litigant who has engaged in a pattern of frivolous litigation has the authority to implement a remedy that may include restrictions on the litigant's access to the court. Village of Tigerton v. Minniecheske, 211 Wis. 2d 777, 565 N.W.2d 586 (Ct. App. 1997), 96–1933.

This section applies only when a prospective litigant seeks a remedy for an already existing right. It preserves the right to obtain justice on the basis of law as it in fact exists. Legislative actions define how the law does exist. Aicher v. Wisconsin Patients Compensation Fund, 2000 WI 98, 237 Wis. 2d 99, 613 N.W.2d 849, 99–2955.

Although Article I, s. 9, itself may not create new rights, it does allow for a remedy through the existing common law. The goal of providing certainty is not necessarily achievable, and that is not necessarily a bad thing. The common law develops to adapt to the changing needs of society. Thomas v. Mallett, 2005 WI 129, 285 Wis. 2d 236, 701 N.W.2d 523, 03–1528.

A referee's fees increase the costs of litigation and may have a chilling effect on litigants. If the expenses are not circumscribed, people with meritorious claims will be discouraged from pursuing them in court because they cannot afford to go to court. A reference to a referee in effect requires litigants to pay for the court system twice — once through the tax system and a second time by paying fees to a referee for resolution of their suit. Referee fees may offend constitutional mandates "if they chill advocacy severely enough to 'effectively end the litigation' or impose 'an intolerable burden on a losing litigant.'" Appointment of a referee is for the exceptional case; it is not the general rule. Universal Processing Services v. Circuit Court of Milwaukee County, 2017 WI 26, 374 Wis. 2d 26, 892 N.W.2d 267, 16–0923.

Victims of crime. SECTION 9m. [*As created April 1993 and amended April 2020*] **(1)** (a) In this section, notwithstanding any statutory right, privilege, or protection, "victim" means any of the following:

1. A person against whom an act is committed that would constitute a crime if committed by a competent adult.

2. If the person under subd. 1. is deceased or is physically or emotionally unable to exercise his or her rights under this section, the person's spouse, parent or legal guardian, sibling, child, person who resided with the deceased at the time of death, or other lawful representative.

3. If the person under subd. 1. is a minor, the person's parent, legal guardian or custodian, or other lawful representative.

4. If the person under subd. 1. is adjudicated incompetent, the person's legal guardian or other lawful representative.

(b) "Victim" does not include the accused or a person who the court finds would not act in the best interests of a victim who is deceased, incompetent, a minor, or physically or emotionally unable to exercise his or her rights under this section.

(2) In order to preserve and protect victims' rights to justice and due process throughout the criminal and juvenile justice process, victims shall be entitled to all of the following rights, which shall vest at the time of victimization and be protected by law in a manner no less vigorous than the protections afforded to the accused:

(a) To be treated with dignity, respect, courtesy, sensitivity, and fairness.

(b) To privacy.

(c) To proceedings free from unreasonable delay.

(d) To timely disposition of the case, free from unreasonable delay.

(e) Upon request, to attend all proceedings involving the case.

(f) To reasonable protection from the accused throughout the criminal and juvenile justice process.

(g) Upon request, to reasonable and timely notification of proceedings.

(h) Upon request, to confer with the attorney for the government.

(i) Upon request, to be heard in any proceeding during which a right of the victim is implicated, including release, plea, sentencing, disposition, parole, revocation, expungement, or pardon.

(j) To have information pertaining to the economic, physical, and psychological effect upon the victim of the offense submitted to the authority with jurisdiction over the case and to have that information considered by that authority.

(k) Upon request, to timely notice of any release or escape of the accused or death of the accused if the accused is in custody or on supervision at the time of death.

(L) To refuse an interview, deposition, or other discovery request made by the accused or any person acting on behalf of the accused.

(m) To full restitution from any person who has been ordered to pay restitution to the victim and to be provided with assistance collecting restitution.

(n) To compensation as provided by law.

(o) Upon request, to reasonable and timely information about the status of the investigation and the outcome of the case.

(p) To timely notice about all rights under this section and all other rights, privileges, or protections of the victim provided by law, including how such rights, privileges, or protections are enforced.

(3) Except as provided under sub. (2) (n), all provisions of this section are self–executing. The legislature may prescribe further remedies for the violation of this section and further procedures for compliance with and enforcement of this section.

(4) (a) In addition to any other available enforcement of rights or remedy for a violation of this section or of other rights, privileges, or protections provided by law, the victim, the victim's attorney or other lawful representative, or the attorney for the government upon request of the victim may assert and seek in any circuit court or before any other authority of competent jurisdiction, enforcement of the rights in this section and any other right, privilege, or protection afforded to the victim by law. The court or other authority with jurisdiction over the case shall act promptly on such a request and afford a remedy for the violation of any right of the victim. The court or other authority with jurisdiction over the case shall clearly state on the record the reasons for any decision regarding the disposition of a victim's right and shall provide those reasons to the victim or the victim's attorney or other lawful representative.

(b) Victims may obtain review of all adverse decisions concerning their rights as victims by courts or other authorities with jurisdiction under par. (a) by filing petitions for supervisory writ in the court of appeals and supreme court.

(5) This section does not create any cause of action for damages against the state; any political subdivision of the state; any officer, employee, or agent of the state or a political subdivision of the state acting in his or her official capacity; or any officer, employee, or agent of the courts acting in his or her official capacity.

(6) This section is not intended and may not be interpreted to supersede a defendant's federal constitutional rights or to afford party status in a proceeding to any victim. [*1991 J.R. 17, 1993 J.R. 2, vote April 1993; 2017 J.R. 13, 2019 J.R. 3, vote April 2020*]

The state did not breach a plea agreement when two police officers, one of whom the defendant shot during the execution of a search warrant, requested during the sentencing hearing that the sentencing court impose the maximum sentence. The police officers were not speaking to the court as investigating officers, but as victims of a crime, which they have a right to do. In Wisconsin, every crime victim has the right to make a statement to the court at disposition. State v. Stewart, 2013 WI App 86, 349 Wis. 2d 385, 836 N.W.2d 456, 12–1457.

The 2020 constitutional amendment creating this section grants standing to a crime victim to oppose and to make arguments supporting the victim's opposition to a defendant's *Shiffra*, 175 Wis. 2d 600 (1993), motion for an in camera review. That grant of standing applies retrospecitvely to a victim's request for standing. This section therefore abrogates the holding regarding standing in *Jessica J.L.*, 223 Wis. 2d 622 (1998). State v. Johnson, 2020 WI App 73, 394 Wis. 2d 807, 951 N.W.2d 616, 19–0664.

This section provides for restitution only insofar as the legislature confers that right through statute. The legislature makes restitution available to crime victims under s. 973.20 and other statutes, but crime victims are not guaranteed restitution in every instance. Section 973.20 (12) (b) makes clear that restitution payments take priority over specific statutory fees, surcharges, fines, and costs, but the priority scheme does not include supervision fees under s. 304.074. OAG 2–15.

Marsy's Law: Changes for Crime Victims? Donaldson, Rabe Mayer, Robson, Rufo, Sattler, & Shirley. Wis. Law. Sept. 2020.

Treason. SECTION 10. Treason against the state shall consist only in levying war against the same, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

Searches and seizures. SECTION 11. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

GENERAL

Electronic eavesdropping, done with the consent of one of the parties, does not violate the U.S. Constitution. State ex rel. Arnold v. County Court, 51 Wis. 2d 434, 187 N.W.2d 354 (1971).

The prohibition against unreasonable searches and seizures is not limited to criminal cases. It applies in forfeiture actions arising out of ordinance violations. City of Milwaukee v. Cohen, 57 Wis. 2d 38, 203 N.W.2d 633 (1973).

An inspection by police of a basement storage room accessible to the public and the observation of evidence found there in open view that was later seized under a search warrant did not amount to an improper invasion of the defendant's privacy. Watkins v. State, 59 Wis. 2d 514, 208 N.W.2d 449 (1973).

Police have a right to lock a car to protect its contents after arresting the driver, but if it is already locked they cannot enter it on the pretense of locking it and thus discover contraband. When the car was borrowed, consent by the lawful user of the car was sufficient to allow a search and any containers found could be opened and examined. Soehle v. State, 60 Wis. 2d 72, 208 N.W.2d 341 (1973).

When officers, armed with a search warrant, knocked on a door, pushed it open when the defendant opened it two inches, and put him under restraint before showing the warrant, they acted legally. State v. Meier, 60 Wis. 2d 452, 210 N.W.2d 685 (1973).

The observation of tools in a car by police officers did not constitute a search, and the tools could be seized and were properly admissible into evidence. Anderson v. State, 66 Wis. 2d 233, 223 N.W.2d 879 (1974).

Pertinent to the validity of an investigative stop is whether the facts available to the officer at the moment of the seizure warrant a man of reasonable caution in the belief that the action taken was appropriate. Wendricks v. State, 72 Wis. 2d 717, 242 N.W.2d 187 (1976).

When an abused child, an occupant of defendant's house, was accompanied to the house by social workers to recover the child's belongings and exhibited to the workers the instruments used to inflict punishment, a subsequent search warrant was not tainted by an unconstitutional search. State v. Killory, 73 Wis. 2d 400, 243 N.W.2d 475 (1976).

When evidence seized in an illegal search was admitted, no reversible error resulted when other evidence uninfluenced by the inadmissible evidence was sufficient to convict. Kelly v. State, 75 Wis. 2d 303, 249 N.W.2d 800 (1977).

The drawing and testing of blood solely for diagnostic and not government–instigated purposes was not a "search or seizure" even when the testing physician testified at a negligent homicide trial. State v. Jenkins, 80 Wis. 2d 426, 259 N.W.2d 109 (1977).

A stop and frisk was not an unreasonable search and seizure. State v. Williamson, 113 Wis. 2d 389, 335 N.W.2d 814 (1983).

A person who is lawfully in custody for a civil offense may be required to participate in a lineup for an unrelated criminal offense. State v. Wilks, 121 Wis. 2d 93, 358 N.W.2d 273 (1984).

There is no reasonable expectation of privacy in garbage once it has been routinely collected by garbage collectors. State v. Stevens, 123 Wis. 2d 303, 367 N.W.2d 788 (1985).

An unlawful arrest does not deprive a court of personal jurisdiction over a defendant. State v. Smith, 131 Wis. 2d 220, 388 N.W.2d 601 (1986).

Under the inevitable discovery doctrine, evidence seized under a defective search warrant was admissible because a later inventory search would have discovered it. State v. Kennedy, 134 Wis. 2d 308, 396 N.W.2d 765 (Ct. App. 1986).

The reasonableness of an investigative stop depends on facts and circumstances present at the time of the stop. State v. Guzy, 139 Wis. 2d 663, 407 N.W.2d 548 (1987).

When an officer observed a traffic violation but stopped the vehicle merely to render assistance, inadvertently discovered criminal evidence was admissible. State v. Baudhuin, 141 Wis. 2d 642, 416 N.W.2d 60 (1987).

The trial court is permitted to consider suppressed evidence at sentencing when nothing suggests consideration will encourage illegal searches. State v. Rush, 147 Wis. 2d 225, 432 N.W.2d 688 (Ct. App. 1988).

An escapee does not have a legitimate privacy expectation in premises other than the penal institution the escapee is sent to. State v. Amos, 153 Wis. 2d 257, 450 N.W.2d 503 (Ct. App. 1989).

Aerial surveillance using standard binoculars and cameras with generally available standard and zoom lenses from an airplane flying no lower than 800 feet was reasonable. State v. Lange, 158 Wis. 2d 609, 463 N.W.2d 390 (Ct. App. 1990).

The statutory privilege protecting an informer protects the contents of a communication that will tend to reveal the identity of the informant. The trial court may rely on redacted information in determining the informant's reliability and credibility in determining whether there was reasonable suspicion justifying a warrantless seizure. State v. Gordon, 159 Wis. 2d 335, 464 N.W.2d 91 (Ct. App. 1990).

Discussing factors used to determine the extent of a home's curtilage. State v. Moley, 171 Wis. 2d 207, 490 N.W.2d 764 (Ct. App. 1992).

Bank customers have no protectable privacy interest in bank records relating to accounts. State v. Swift, 173 Wis. 2d 870, 496 N.W.2d 713 (Ct. App. 1993).

A defendant had no reasonable expectation of privacy in a porch through which the door to the living area was visible and that was entered through an unlocked screen door. When an officer came to the defendant's residence for a legitimate purpose, observation of contraband from the porch through a window in the interior door was not a search. State v. Edgeberg, 188 Wis. 2d 339, 524 N.W.2d 911 (Ct. App. 1994).

The use of a police dog to sniff an automobile parked in a motel parking lot did not constitute a search. There is no legitimate expectation of privacy in the air space around a car in a motel parking lot. State v. Garcia, 195 Wis. 2d 68, 535 N.W.2d 124 (Ct. App. 1995), 94–2573.

Although a vehicle had been improperly seized, evidence obtained in a later search of the vehicle under a warrant that was not based on information gathered from the illegal seizure was not subject to suppression. State v. Gaines, 197 Wis. 2d 102, 539 N.W.2d 723 (Ct. App. 1995), 94–1225.

When executing a search warrant on private premises, the belongings of a visitor on the premises that are plausible repositories for the objects of the search, except

those worn by or in the physical possession of persons whose search is not authorized by the warrant, may be searched. State v. Andrews, 201 Wis. 2d 383, 549 N.W.2d 210 (1996), 94–1888.

Presence in a high drug–trafficking area, a brief meeting of individuals on a sidewalk in the afternoon, and the officer's experience that drug transactions that take place in that neighborhood involve brief meetings on the street, without more, is not particularized suspicion justifying an investigative stop. State v. Young, 212 Wis. 2d 417, 569 N.W.2d 84 (Ct. App. 1997), 97–0034.

A prison inmate does not possess a reasonable expectation of privacy in the inmate's body that permits a 4th amendment challenge to strip searches. Prisoners convicted of crimes are protected from cruel and unusual treatment that prohibits prison officials from utilizing strip searches to punish, harass, humiliate, or intimidate inmates regardless of their status in the institution. Al Ghashiyah v. McCaughtry, 230 Wis. 2d 587, 602 N.W.2d 307 (Ct. App. 1999), 98–3020.

Police failure to comply with the rule of announcement in violation of the 4th amendment and this section did not require suppression of the evidence seized when the officers relied, in objective good faith, upon the pronouncements of the Wisconsin Supreme Court, as no remedial purpose would be served. State v. Ward, 2000 WI 3, 231 Wis. 2d 723, 604 N.W.2d 517, 97–2008.

A curtilage determination is a question of constitutional fact subject to a two–step review. The findings of evidentiary or historical fact are reviewed for clear error to determine if they are contrary to the great weight and clear preponderance of the evidence. The ultimate determination of constitutional fact is reviewed de novo. State v. Martwick, 2000 WI 5, 231 Wis. 2d 801, 604 N.W.2d 552, 98–0101.

Generally a premises warrant authorizes the search of all items that are plausible receptacles of the objects of the search. When currency was an object, looking through documents for hidden currency was appropriate. When the incriminating nature of the document was apparent upon brief perusal, its seizure was justified under the plain view doctrine. State v. Oswald, 2000 WI App 3, 232 Wis. 2d 103, 606 N.W.2d 238, 97–1219.

When a person turns material over to a third party, the person who turned over the material has no 4th amendment protection if the third party reveals or conveys the material to governmental authorities, whether or not the person who turned over the material had a subjective belief that the third party would not betray him or her. State v. Knight, 2000 WI App 16, 232 Wis. 2d 305, 606 N.W.2d 291, 99–0368.

While the subtleties of police practice in some cases necessitate an expert witness, there is no per se requirement that there be expert testimony to prove an excessive use of force claim. Robinson v. City of West Allis, 2000 WI 126, 239 Wis. 2d 595, 619 N.W.2d 692, 98–1211.

What a person knowingly exposes to the public is not subject to 4th amendment protection. An inner tube rental and campground business did not have a reasonable expectation of privacy in areas open to the public. Float–Rite Park, Inc. v. Village of Somerset, 2001 WI App 113, 244 Wis. 2d 34, 629 N.W.2d 818, 00–1610.

The use of an infrared sensing device to detect heat emanating from a residence constitutes a search requiring a warrant. State v. Loranger, 2002 WI App 5, 250 Wis. 2d 198, 640 N.W.2d 555, 00–3364. See also Kyllo v. United States, 533 U.S. 27, 121 S. Ct. 2038, 150 L. Ed. 2d 94 (2001).

An individual does not have a reasonable expectation of privacy in a public restroom stall when the individual occupies it with another individual, leaves the door slightly ajar, and evinces no indication that the stall is being used for its intended purpose. State v. Orta, 2003 WI App 93, 264 Wis. 2d 765, 663 N.W.2d 358, 02–1008.

The first sentence of this section is a statement of purpose that describes the policies to be promoted by the state and does not create an enforceable, self–executing right. Schilling v. Wisconsin Crime Victims Rights Board, 2005 WI 17, 278 Wis. 2d 216, 692 N.W.2d 623, 03–1855.

For a search to be a private action not covered by the 4th amendment: 1) the police may not initiate, encourage, or participate in a private entity's search; 2) the private entity must engage in the activity to further its own ends or purpose; and 3) the private entity must not conduct the search for the purpose of assisting governmental efforts. A search may be deemed a government search when it is a "joint endeavor" between private and government actors. Once the state raises the issue, asserting that a search is a private search, the defendant has the burden of proving by a preponderance of the evidence that government involvement in a search or seizure brought it within the protections of the 4th amendment. State v. Payano–Roman, 2006 WI 47, 290 Wis. 2d 380, 714 N.W.2d 548, 04–1029.

Although the defendant's initial trip to the police station was consensual, when the defendant was left in a locked room for five hours, the defendant was seized within the meaning of the 4th amendment. Under these circumstances, a reasonable person would not have believed that the person was free to leave. The defendant's post–*Miranda* confession, offered within five minutes of the officers' first questions to the defendant after five hours of isolation, was insufficiently attenuated from the illegal seizure and should have been suppressed. State v. Farias–Mendoza, 2006 WI App 134, 294 Wis. 2d 726, 720 N.W.2d 489, 05–0365.

When officers were met with disorderly conduct during the execution of a search warrant, they possessed the lawful authority to arrest notwithstanding the invalidity of the warrant. State v. Annina, 2006 WI App 202, 296 Wis. 2d 599, 723 N.W.2d 708, 05–0876.

A premises warrant generally authorizes the search of all items on the premises so long as those items are plausible receptacles of the objects of the search. A lawful search of fixed premises generally extends to the entire area in which the object of the search may be found and is not limited by the possibility that separate acts of entry or opening may be required to complete the search. State v. LaCount, 2008 WI 59, 310 Wis. 2d 85, 750 N.W.2d 780, 06–0672.

What a person knowingly exposes to the public, even in the person's own home or office, is not a subject of 4th amendment protection. When affidavits were left unattended in a public hallway frequented by hundreds, there was no illegal search when a court commissioner picked up and looked at or photocopied the affidavits. State v. Russ, 2009 WI App 68, 317 Wis. 2d 764, 767 N.W.2d 629, 08–1641.

The good faith exception precludes application of the exclusionary rule when officers conduct a search in objectively reasonable reliance upon clear and settled Wisconsin precedent that is later deemed unconstitutional by the U.S. Supreme Court. State v. Dearborn, 2010 WI 84, 327 Wis. 2d 252; 786 N.W.2d 97, 07–1894.

It is a violation of a defendant's right to due process for a prosecutor to comment on the defendant's failure to consent to a warrantless search. It has long been a tenet of federal jurisprudence that a defendant's invocation of a constitutional right cannot be used to imply guilt. State v. Banks, 2010 WI App 107, 328 Wis. 2d 766, 790 N.W.2d 526, 09–1436.

Even if police use excessive force in making an arrest, a defendant's remedy is a suit for damages rather than exclusion of the evidence in the defendant's criminal trial. For evidence to be suppressed there must be a causal relationship between the alleged use of unreasonable force and the evidence sought to be suppressed. State v. Herr, 2013 WI App 37, 346 Wis. 2d 603, 828 N.W.2d 896, 12–0935.

Under *Nix*, 467 U.S. 431 (1984), the state need not prove an absence of bad faith for the inevitable discovery exception to the exclusionary rule to apply. State v. Jackson, 2016 WI 56, 369 Wis. 2d 673, 882 N.W.2d 422, 14–2238.

Requiring the state in all inevitable discovery doctrine cases to prove active pursuit of an alternative line of investigation at the time of the constitutional violation risks exclusion of evidence that the state might demonstrate that it inevitably would have discovered. Therefore, the factors in *Schwegler*, 170 Wis. 2d 487 (1992), *Lopez*, 207 Wis. 2d 413 (1996), and *Avery*, 2011 WI App 124, should be regarded as important indicia of inevitability rather than indispensable elements of proof. Instead, the relevant inquiry is whether the prosecution has met its burden of proving by a preponderance of the evidence that it inevitably would have discovered the evidence sought to be suppressed. State v. Jackson, 2016 WI 56, 369 Wis. 2d 673, 882 N.W.2d 422, 14–2238.

It was constitutionally reasonable for an emergency medical technician (EMT), as opposed to a physician, to draw an operating while intoxicated suspect's blood. The important point for constitutional purposes was that the evidence demonstrated that the EMT was thoroughly trained and experienced in properly drawing blood. Also, it was not unreasonable for the blood draw to occur in the non–medical setting of the jail when the evidence indicated that the room in which the blood was drawn "was clean and as clean as a hospital emergency room," and the EMT used a new blood draw kit containing a sterile needle. State v. Kozel, 2017 WI 3, 373 Wis. 2d 1, 889 N.W.2d 423, 15–0656.

In this case, incriminating cell phone data was obtained via an unrelated criminal investigation and kept in a police database. A different law enforcement agency investigating a homicide came upon this data and used it to connect the defendant to the homicide. Even if some constitutional defect attended either the initial download or subsequent accessing of the cell phone data, there was no law enforcement misconduct that would warrant exclusion of that data. Unless evidence was obtained by sufficiently deliberate and sufficiently culpable police misconduct, resort to the massive remedy of suppressing evidence of guilt is unjustified. State v. Burch, 2021 WI 68, 398 Wis. 2d 1, 961 N.W.2d 314, 19–1404.

Arson investigations under s. 165.55 (9) and (10) are subject to search warrant requirements set forth in *Tyler*, 436 U.S. 499 (1978). Discussing consent to search. 68 Atty. Gen. 225.

In–custody statements stemming from an illegal arrest are not admissible merely because *Miranda*, 384 U.S. 436 (1966), warnings were given. Brown v. Illinois, 422 U.S. 590, 95 S. Ct. 2254, 45 L. Ed. 2d 416 (1975).

Bank records are not private papers protected by a legitimate "expectation of privacy." United States v. Miller, 425 U.S. 435, 96 S. Ct. 1619, 48 L. Ed. 2d 71 (1976).

Standard procedure inventorying of any container impounded by police is a reasonable search. South Dakota v. Opperman, 428 U.S. 364, 96 S. Ct. 3092, 49 L. Ed. 2d 1000 (1976).

Discussing standards for application of the exclusionary rule to live–witness testimony. United States v. Ceccolini, 435 U.S. 268, 98 S. Ct. 1054, 55 L. Ed. 2d 268 (1978).

A newspaper office may be searched for evidence of a crime even though the newspaper is not suspected of a crime. Zurcher v. Stanford Daily, 436 U.S. 547, 98 S. Ct. 1970, 56 L. Ed. 2d 525 (1978).

Stopping a car for no other reason than to check the license and registration was unreasonable under the 4th amendment. Delaware v. Prouse, 440 U.S. 648, 99 S. Ct. 1391, 59 L. Ed. 2d 660 (1979).

In–court identification of the accused was not suppressed as the fruit of an unlawful arrest. United States v. Crews, 445 U.S. 463, 100 S. Ct. 1244, 63 L. Ed. 2d 537 (1980).

A person has been seized within the meaning of the 4th amendment only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that the person was not free to leave. United States v. Mendenhall, 446 U.S. 544, 100 S. Ct. 1870, 64 L. Ed. 2d 497 (1980).

Illegally seized evidence was properly admitted to impeach the defendant's false trial testimony, given in response to proper cross–examination, when the evidence did not squarely contradict the defendant's testimony on direct examination. United States v. Havens, 446 U.S. 620, 100 S. Ct. 1912, 64 L. Ed. 2d 559 (1980).

Arcane concepts of property law do not control the ability to claim 4th amendment protections. Rawlings v. Kentucky, 448 U.S. 98, 100 S. Ct. 2556, 65 L. Ed. 2d 633 (1980).

Resemblance to a "drug courier profile" was an insufficient basis for seizure. Reid v. Georgia, 448 U.S. 438, 100 S. Ct. 2752, 65 L. Ed. 2d 890 (1980).

Objective facts and circumstantial evidence justified an investigative stop of a smuggler's vehicle. United States v. Cortez, 449 U.S. 411, 101 S. Ct. 690, 66 L. Ed. 2d 621 (1981).

A warrant to search premises for contraband implicitly carries with it limited authority to detain occupants during a search. Michigan v. Summers, 452 U.S. 692, 101 S. Ct. 2587, 69 L. Ed. 2d 340 (1981).

The automobile exception does not extend to a closed, opaque container located in the luggage compartment. Robbins v. California, 453 U.S. 420, 101 S. Ct. 2841, 69 L. Ed. 2d 744 (1981).

Police placement of a beeper in a container of precursor chemical used to manufacture an illicit drug and the subsequent surveillance of the defendant's car by monitoring beeper transmissions was not prohibited by the 4th amendment. United States v. Knotts, 460 U.S. 276, 103 S. Ct. 1081, 75 L. Ed. 2d 55 (1983).

The detention and interrogation of an airline passenger fitting a "drug courier profile" was unconstitutional. Florida v. Royer, 460 U.S. 491, 103 S. Ct. 1319, 75 L. Ed. 2d 229 (1983).

Under the "independent source" doctrine, evidence discovered during a valid search was admissible regardless of whether initial entry was illegal. Segura v. United States, 468 U.S. 796, 104 S. Ct. 3380, 82 L. Ed. 2d 599 (1984).

The "good faith" exception to the exclusionary rule allowed the admission of evidence obtained by officers acting in objectively reasonable reliance on a search warrant, issued by a detached and neutral magistrate, later found to be unsupported by probable cause. United States v. Leon, 468 U.S. 897, 104 S. Ct. 3405, 82 L. Ed. 2d 677 (1984).

Discussing the "good faith" exception to the exclusionary rule. Massachusetts v. Sheppard, 468 U.S. 981, 104 S. Ct. 3424, 82 L. Ed. 2d 737 (1984).

If a "wanted flyer" has been issued on the basis of articulable facts supporting reasonable suspicion that a wanted person has committed a crime, other officers may rely on the flyer to stop and question that person. United States v. Hensley, 469 U.S. 221, 105 S. Ct. 675, 83 L. Ed. 2d 604 (1985).

In assessing whether detention is too long to be justified as an investigative stop, it is appropriate to examine whether the police diligently pursued a means of investigation likely to quickly confirm or dispel their suspicions. United States v. Sharpe, 470 U.S. 675, 105 S. Ct. 1568, 84 L. Ed. 2d 605 (1985).

Proposed surgery under general anesthetic to recover a bullet from an accused robber's body was an unreasonable search. Winston v. Lee, 470 U.S. 753, 105 S. Ct. 1611, 84 L. Ed. 2d 662 (1985).

Fingerprints were not admissible when the police transported the suspect to a station house for fingerprinting without consent, probable cause, or prior judicial authorization. Hayes v. Florida, 470 U.S. 811, 105 S. Ct. 1643, 84 L. Ed. 2d 705 (1985).

Apprehension by the use of deadly force is a seizure subject to the reasonableness requirement. Tennessee v. Garner, 471 U.S. 1, 105 S. Ct. 1694, 85 L. Ed. 2d 1 (1985).

When an officer stopped a car for traffic violations and reached into the car to move papers obscuring the vehicle identification number, discovered evidence was admissible. New York v. Class, 475 U.S. 106, 106 S. Ct. 960, 89 L. Ed. 2d 81 (1986).

The reasonable expectation of privacy was not violated when police, acting on an anonymous tip, flew over the defendant's enclosed backyard and observed marijuana plants. California v. Ciraolo, 476 U.S. 207, 106 S. Ct. 1809, 90 L. Ed. 2d 210 (1986).

Defendants have no reasonable privacy interest in trash left on a curb for pick–up. Therefore, a warrantless search is not prohibited under federal law. California v. Greenwood, 486 U.S. 35, 108 S. Ct. 1625, 100 L. Ed. 2d 30 (1988).

The use of a roadblock to halt a suspect's automobile constituted a seizure. Brower v. County of Inyo, 489 U.S. 593, 109 S. Ct. 1378, 103 L. Ed. 2d 628 (1989).

The impeachment exception to the exclusionary rule does not extend to the use of illegally obtained evidence to impeach testimony of defense witnesses other than the defendant. James v. Illinois, 493 U.S. 307, 110 S. Ct. 648, 107 L. Ed. 2d 676 (1990).

For a seizure of a person to occur there must either be an application of force, however slight, or when force is absent, submission to an officer's "show of authority." California v. Hodari D., 499 U.S. 621, 111 S. Ct. 1547, 113 L. Ed. 2d 690 (1991).

When an officer has no articulable suspicion regarding a person, but requests that person to allow the search of his luggage, there is no seizure of the person if a reasonable person would feel free to decline the officer's request or end the encounter. Florida v. Bostick, 501 U.S. 429, 111 S. Ct. 2382, 115 L. Ed. 2d 389 (1991).

Fourth–amendment protections against unreasonable searches and seizures extend to civil matters. The illegal eviction of a trailer home from a private park with deputy sheriffs present to prevent interference was an unconstitutional seizure of property. Soldal v. Cook County, 506 U.S. 56, 113 S. Ct. 538, 121 L. Ed. 2d 450 (1992).

Whether police must "knock and announce" prior to entering a residence in executing a warrant is part of the reasonableness inquiry under the 4th amendment. Wilson v. Arkansas, 514 U.S. 927, 115 S. Ct. 1914, 131 L. Ed. 2d 976 (1995).

Public school students are granted lesser privacy protections than adults, and student athletes even less. Mandatory drug testing of student athletes did not violate the constitutional protection against unreasonable searches and seizures. Vernonia School District 47J v. Acton, 515 U.S. 646, 115 S. Ct. 2386, 132 L. Ed. 2d 564 (1995).

It is a violation of the 4th amendment for police to bring members of the media or other third persons into a home during the execution of a warrant when the presence of the third persons in the home is not in aid of the execution of the warrant. Wilson v. Layne, 526 U.S. 603, 119 S. Ct. 1692, 143 L. Ed. 2d 818 (1999).

Inherent in the authorization under *Summers*, 452 U.S. 692 (1981), to detain an occupant of the place to be searched is the authority to use reasonable force to effectuate the detention. Use of force in the form of handcuffs to effectuate detention in the garage outside the house being searched was reasonable when the governmental interests outweighed the marginal intrusion. Muehler v. Mena, 544 U.S. 93, 125 S. Ct. 1465, 161 L. Ed. 2d 299 (2005).

Violation of the "knock–and–announce" rule does not require the suppression of all evidence found in the search. Hudson v. Michigan, 547 U.S. 586, 126 S. Ct. 2159, 165 L. Ed. 2d 56 (2006).

A claim of excessive force in the course of making a seizure of the person is properly analyzed under the 4th amendment's objective reasonableness standard. A police officer's attempt to terminate a dangerous high–speed car chase that threatens the lives of innocent bystanders does not violate the 4th amendment, even when it places the fleeing motorist at risk of serious injury or death. Scott v. Harris, 550 U.S. 372, 127 S. Ct. 1769, 167 L. Ed. 2d 686 (2007).

To trigger the exclusionary rule, police conduct must be sufficiently deliberate that exclusion can meaningfully deter the conduct, and sufficiently culpable that such deterrence is worth the price paid by the justice system. The exclusionary rule serves to deter deliberate, reckless, or grossly negligent conduct, or in some circumstances recurring or systemic negligence. When police mistakes are the result of negligence, such as here when a cancelled warrant was not removed from a database, rather than systemic error or reckless disregard of constitutional requirements, any marginal deterrence does not pay its way. Herring v. United States, 555 U.S. 135, 129 S. Ct. 695, 172 L. Ed. 2d 496 (2009).

When officers make an arrest supported by probable cause for a serious offense and bring the suspect to the station to be detained in custody, taking and analyzing a cheek swab of the arrestee's DNA is, like fingerprinting and photographing, a legitimate police booking procedure that is reasonable under the 4th amendment. In the context of a valid arrest supported by probable cause, the arrestee's expectations of privacy were not offended by the minor intrusion of a brief swab of his cheeks for DNA. That same context of arrest gives rise to significant state interests in identifying respondent not only so that the proper name can be attached to his charges but also so that the criminal justice system can make informed decisions concerning pretrial custody. Upon these considerations, DNA identification of arrestees is a reasonable search that can be considered part of a routine booking procedure. Maryland v. King, 569 U.S. 435, 133 S. Ct. 1958, 186 L. Ed. 2d 1 (2013).

The objective reasonableness of a particular seizure under the 4th amendment requires a careful balancing of the nature and quality of the intrusion on the individual's 4th amendment interests against the countervailing governmental interests at stake analyzed from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. If police officers are justified in firing at a suspect in order to end a severe threat to public safety, the officers need not stop shooting until the threat has ended. Plumhoff v. Rickard, 572 U.S. 765, 134 S. Ct. 2012, 188 L. Ed. 2d 1056 (2014).

Facial challenges to statutes authorizing warrantless searches under the 4th amendment are not categorically barred or especially disfavored. A facial challenge is an attack on a statute itself as opposed to a particular application. While such challenges are the most difficult to mount successfully, the U.S. Supreme Court has never held that these claims cannot be brought under any otherwise enforceable provision of the U.S. Constitution. City of Los Angeles v. Patel, 576 U.S. 409, 135 S. Ct. 2443, 192 L. Ed. 2d 435 (2015).

Search regimes where no warrant is ever required may be reasonable when special needs make the warrant and probable cause requirement impracticable, and when the primary purpose of the searches is distinguishable from the general interest in crime control. The U.S. Supreme Court has referred to this kind of search as an administrative search. In order for an administrative search to be constitutional, the subject of the search must be afforded an opportunity to obtain precompliance review before a neutral decisionmaker. City of Los Angeles v. Patel, 576 U.S. 409, 135 S. Ct. 2443, 192 L. Ed. 2d 435 (2015).

When an officer carries out a seizure that is reasonable, taking into account all relevant circumstances, there is no valid excessive force claim. A different 4th amendment violation cannot transform a later, reasonable use of force into an unreasonable seizure. County of Los Angeles v. Mendez, 581 U.S. 420, 137 S. Ct. 1539, 198 L. Ed. 2d 52 (2017).

The mere fact that a driver in lawful possession or control of a rental car is not listed on the rental agreement will not defeat the driver's otherwise reasonable expectation of privacy. Byrd v. United States, 584 U.S. ___, 138 S. Ct. 1518, 200 L. Ed. 2d 805 (2018).

A seizure requires the use of force with intent to restrain, with the appropriate inquiry being whether the challenged conduct objectively manifests an intent to restrain. The application of physical force to the body of a person with intent to restrain is a seizure, even if the force does not succeed in subduing the person. Torres v. Madrid, 592 U.S. ___, 141 S. Ct. 989, 209 L. Ed. 2d 190 (2021).

The "Reasonableness" of the Investigative Detention: An "Ad Hoc" Constitutional Test. Wiseman. 67 MLR 641 (1984).

The Exclusionary Rule and the 1983–1984 Term. Gammon. 68 MLR 1 (1984).

The Constitutionality of the Canine Sniff Search: From *Katz* to Dogs. FitzGerald. 68 MLR 57 (1984).

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DNA Extraction on Arrest: *Maryland v. King* and Wisconsin's New Extraction Law. Dupuis. Wis. Law. Sept. 2013.

CONSENT AND STANDING

The fact that consent to the search of a car was given while the defendant was in custody does not establish involuntariness. It was not improper for the police to tell the defendant that if a search did not produce stolen goods he would be released. Gautreaux v. State, 52 Wis. 2d 489, 190 N.W.2d 542.

When police opened a package in the possession of an express company without a warrant or the consent of the addressee, persons later arrested in possession of the package, other than the addressee, had no standing to challenge the evidence on the ground of illegal search. Defendants would have to establish a possessory interest in the package at the time of the search. State v. Christel, 61 Wis. 2d 143, 211 N.W.2d 801.

The defendant was qualified to challenge the admissibility of evidence taken from his wife, when he and his wife were in each other's presence when arrested for the same crime, a search of her person at that time would have been at a place where the defendant had a legitimate right to be; the object of the search, incident to the arrest for robbery could only be for weapons and incriminating evidence against him and his wife; and this situation carried over into a custodial search of the wife which was thereafter conducted at the police station where the search occurred. State v. Mabra, 61 Wis. 2d 613, 213 N.W.2d 545.

Sons of a murdered property owner did not, as such, have authority to consent to a search of the premises. Kelly v. State, 75 Wis. 2d 303, 249 N.W.2d 800.

A person living in a tent in the yard of a house had no authority to grant consent to a warrantless search of the house. A police officer's observation through a window of a cigarette being passed in the house did not constitute probable cause for a warrantless search of the house for marijuana. The "plain view" doctrine discussed. State v. McGovern, 77 Wis. 2d 203, 252 N.W.2d 365.

An estranged wife had no authority to consent to the warrantless search of property she owned jointly with her defendant husband but did not occupy at that time. State v. Verhagen, 86 Wis. 2d 262, 272 N.W.2d 105 (Ct. App. 1978).

The boyfriend of an apartment lessee who paid no rent or expenses and whose access to the apartment was at the whim of the lessee did not have even a limited reasonable expectation of privacy in the premises when away form the premises. State v. Fillyaw, 104 Wis. 2d 700, 312 N.W.2d 795 (1981).

The impoundment and subsequent warrantless inventory search of car, including a locked glove box, were not unconstitutional. Automatic standing is discussed. State v. Callaway, 106 Wis. 2d 503, 317 N.W.2d 428 (1982).

A defendant had no standing to contest the legality of search of a van because of a lack of dominion and control over the van. State v. Wisurmerski, 106 Wis. 2d 722, 317 N.W.2d 484 (1982).

When the defendant's mother admitted police into her home to talk to her son, the subsequent arrest of the son was valid. State v. Rodgers, 119 Wis. 2d 102, 349 N.W.2d 453 (1984).

When police reentered a home to recreate a crime 45 hours after consent to enter was given, evidence seized was properly suppressed. State v. Douglas, 123 Wis. 2d 13, 365 N.W.2d 580 (1985).

A person who borrows a car with the owner's permission has a reasonable expectation of privacy in the vehicle. State v. Dixon, 177 Wis. 2d 461, 501 N.W.2d 442 (1993).

In a consent search, voluntariness and freedom from coercion, not fully informed consent, must be shown. Language and cultural background are relevant in determining whether the police took advantage in gaining consent. State v. Xiong, 178 Wis. 2d 525, 504 N.W.2d 428 (Ct. App. 1993).

A warrantless entry by uniformed officers to make arrests after undercover agents gained permissive entrance to the premises was justified under the consent exception and no exigent circumstances were required. State v. Johnston, 184 Wis. 2d 794, 518 N.W.2d 759 (1994).

Evidence obtained in a consensual search of the defendant's car when the consent was given during an illegal search was admissible as the evidence was not "come at" by information learned in the interrogation. State v. Goetsch, 186 Wis. 2d 1, 519 N.W.2d 634 (Ct. App. 1994).

All occupants of a vehicle in a police−initiated stop are seized and have standing to challenge the lawfulness of the seizure. To establish lawfulness, the state must establish that the police possessed reasonable, articulable suspicion to seize someone in the vehicle. State v. Harris, 206 Wis. 2d 243, 557 N.W.2d 247 (1996), 95−1595.

Whether persons have "common authority" to consent to a search of a premises depends, not on property rights, but on the relationship between the consenting party and the premises. Co−residents have "common authority" to consent to a search, but relatives of residents and property owners do not. Consent of one who possesses common authority is binding against an absent resident, but is not against a nonconsenting party who is present. State v. Kieffer, 207 Wis. 2d 462, 558 N.W.2d 664 (Ct. App. 1996), 96−0008.

Affirmed 217 Wis. 2d 531, 577 N.W.2d 352 (1998), 96−0008.

See also State v. St. Germaine, 2007 WI App 214, 305 Wis. 2d 511, 740 N.W.2d 148, 06−2555.

Consent to a search must be knowledgeably and voluntarily given. When consent is not requested, it cannot be knowledgeably and voluntarily given. State v. Kiekhefer, 212 Wis. 2d 460, 569 N.W.2d 316 (Ct. App. 1997), 96−2052.

Suddenly placing a police officer at each side of a vehicle just prior to asking for consent to search cannot be said to create or to be intended to create a coercive situation. State v. Stankus, 220 Wis. 2d 232, 582 N.W.2d 486 (Ct. App. 1998), 97−2131.

A person with no property interest who may have entered the premises legitimately but did not have permission to remain to the time of a search is without standing to challenge the search. State v. McCray, 220 Wis. 2d 705, 583 N.W.2d 668 (Ct. App. 1998), 97−2746.

To have standing to challenge the pre−delivery seizure of a package not addressed to the defendant, the defendant has the burden of establishing some reasonable expectation of privacy in the package, which will be determined on a case−by−case basis. State v. Ramirez, 228 Wis. 2d 561, 598 N.W.2d 247 (Ct. App. 1999), 98−0996.

Non−objected to warrantless entry by police into living quarters is entry demanded under color of office granted in submission to authority rather than as an understanding and intentional waiver of a constitutional right. If consent is granted only in acquiescence to an unlawful assertion of authority, the consent is invalid. An initial refusal to permit a search when asked militates against a finding of voluntariness. State v. Munroe, 2001 WI App 104, 244 Wis. 2d 1, 630 N.W.2d 223, 00−0260.

When officers gained entry into a motel room for the stated, but false, reason of determining whether the occupant had violated an ordinance requiring the presentation of proper identification when renting a room, any license granted by acquiescence to their entry vanished when proper identification was presented, and the officers had no authority to conduct a general search. State v. Munroe, 2001 WI App 104, 244 Wis. 2d 1, 630 N.W.2d 223, 00−0260.

In light of the reduced expectation of privacy that applies to property in an automobile, the search of a vehicle passenger's jacket based upon the driver's consent to the search of the vehicle was reasonable. State v. Matejka, 2001 WI 5, 241 Wis. 2d 52, 621 N.W.2d 891, 99−0070.

A social guest who is not an overnight guest may have a reasonable expectation of privacy in premises giving standing to challenge a warrantless search if the guest's relationship to the property and host is firmly rooted. State v. Trecroci, 2001 WI App 126, 246 Wis. 2d 261, 630 N.W.2d 555, 00−1079.

Warrants for administrative or regulatory searches modify the conventional understanding of probable cause requirements for warrants as the essence of the search search is that there is no probable cause to believe a search will yield evidence of a violation. Refusal of consent is not a constitutional requirement for issuing the warrant, although it may be a statutory violation. Suppression only applies to constitutional violations. State v. Jackowski, 2001 WI App 187, 247 Wis. 2d 430, 633 N.W.2d 649, 00−2851.

A visual body cavity search is more intrusive than a strip search. It is not objectively reasonable for police to conclude that consent to a strip search includes consent to scrutiny of body cavities. State v. Wallace, 2002 WI App 61, 251 Wis. 2d 625, 642 N.W.2d 549, 00−3524.

A search authorized by consent is wholly valid unless that consent is given while an individual is illegally seized. The general rule is that a seizure has occurred when an officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen. Questioning alone does not a seizure make. That a defendant spontaneously and voluntarily responded to an officer's questions is not enough to transform an otherwise consensual exchange into an illegal seizure. State v. Williams, 2002 WI 94, 255 Wis. 2d 1, 646 N.W.2d 834, 01−0463.

There is no bright−line rule that a tenant in an unlocked apartment building with at least four units does not have a reasonable expectation of privacy in the common areas of the stairways, hallways, and basement. Whether there is a reasonable expectation of privacy is decided on a case−by−case basis. State v. Eskridge, 2002 WI App 158, 256 Wis. 2d 314, 647 N.W.2d 434, 01−2720.

A teenage child may have apparent common authority to consent to police entry into the family home justifying a warrantless entry. State v. Tomlinson, 2002 WI 91, 254 Wis. 2d 502, 648 N.W.2d 367, 00−3134.

Consent to a vehicle search, given following the conclusion of a traffic stop, when the police had given verbal permission for the defendant to leave but continued to ask questions, was valid. Applying a "reasonable person" test, there was no "seizure" at the time and consent to the search was not an invalid result of an illegal seizure. State v. Williams, 2002 WI 94, 253 Wis. 2d 99, 644 N.W.2d 919, 00−3065.

Detaining, in handcuffs, a person who had arrived at a motel room with the person who had rented the room pending the arrival of and during the execution of a search warrant for the hotel room was reasonable. Consent to a search of the person's living quarters on completion of the search, which resulted in the seizure of illegal drugs, when the person had been repeatedly told she was being detained but was not under arrest was voluntarily given and not the product of an illegal seizure. State v. Vorburger, 2002 WI 105, 255 Wis. 2d 537, 648 N.W.2d 829, 00−0971.

Questioning the defendant's 3−year−old son outside the defendant's presence did not exceed the scope of the defendant's consent to search his home when the child was left with a police officer without any restrictions and there was no evidence of trickery, deceit, or coercion. The questioning constituted on−the−scene questioning of a potential witness in an ongoing investigation. There was no applicable prohibition against speaking with the boy about whether a gun was in the house. State v. Ragsdale, 2004 WI App 178, 276 Wis. 2d 52, 687 N.W.2d 785, 03−2795.

For a search with no probable cause made after a traffic stop to be consensual, the consent must be given under circumstances where a reasonable person granting the consent would have believed that he or she was free to leave. Some verbal or physical demonstration by the officer, or some other equivalent facts, clearly conveying to the person that the traffic matter is concluded and the person should be on his or her way is necessary. Absent that, it is a legal fiction to conclude that a reasonable person would believe that he or she is free to depart the scene. State v. Jones, 2005 WI App 26, 278 Wis. 2d 774, 693 N.W.2d 104, 03−3216.

In a traffic stop context, where the test of consent to search is whether a reasonable person would feel free to disregard the police and go about his or her business, the fact that the person's driver's license or other official documents are retained by the officer is a key factor in assessing whether the person is seized and, therefore, whether consent is voluntary. State v. Luebeck, 2006 WI App 87, 292 Wis. 2d 748, 715 N.W.2d 639, 05−1013.

Orderly submission to law enforcement officers who, in effect, incorrectly represent that they have the authority to search and seize property, is not knowing, intelligent, and voluntary consent under the 4th amendment. When officers offered the defendant a fleeting glimpse of a subpoena signed by a judge, they suggested authority they did not possess that led the defendant to believe he could not refuse consent for the officers to search his room and seize his computer. State v. Giebel, 2006 WI App 239, 297 Wis. 2d 446, 724 N.W.2d 402, 06−0189. But see State v. Brar, 2017 WI 73, 376 Wis. 2d 685, 898 N.W.2d 499, 15−1261.

The holding of *Jones,* 2005 WI App 26, is inapplicable to consent to the search of a vehicle made after the defendant had been lawfully seized. State v. Hartwig, 2007 WI App 160, 302 Wis. 2d 678, 735 N.W.2d 597, 06−2804.

The defendant in this case did not have a legitimate expectation of privacy in a package intercepted by a delivery service and later searched. While the expectation of privacy when using an alias to send or receive mail is something society may accept as reasonable, the coupling of a false name and a false address, along with an unknown sender and a statement by the defendant that the package belonged to someone else did not demonstrate that the defendant had a reasonable expectation of privacy in the package. State v. Earl, 2009 WI App 99, 320 Wis. 2d 639, 770 N.W.2d 755, 08−1580.

In considering the totality of the circumstances surrounding whether consent was given voluntarily the court considered: 1) whether the police used deception, trickery, or misrepresentation; 2) whether the police threatened or physically intimidated the defendant or punished him or her by the deprivation of something like food or sleep; 3) whether the conditions attending the request to search were congenial, non−threatening, and cooperative, or the opposite; (4) how the defendant responded to the request to search; (5) what characteristics the defendant had as to age, intelligence, education, physical and emotional condition, and prior experience with the police; and (6) whether the police informed the defendant that he or she could refuse consent. State v. Artic, 2010 WI 83, 326 Wis. 2d 234, 784 N.W.2d 740, 08−0880.

Threatening to obtain a search warrant does not vitiate consent if "the expressed intention to obtain a warrant is genuine and not merely a pretext to induce submission. State v. Artic, 2010 WI 83, 326 Wis. 2d 234, 784 N.W.2d 740, 08−0880.

Voluntary consent is less likely when the defendant answers the door to find officers with guns drawn. However, the fact that an officer has a weapon drawn at the

beginning of an encounter does not prevent the situation from evolving into something non−threatening and relatively congenial. State v. Artic, 2010 WI 83, 326 Wis. 2d 234, 784 N.W.2d 740, 08−0880.

A defendant's consent to a search obtained following illegal police activity may be admissible. The court must consider the temporal proximity of the misconduct to the statements by the defendant, the presence of intervening circumstances, and the purpose and flagrancy of the misconduct. Circumstances may mitigate a short time span including congenial conditions. Meaningful intervening circumstances concerns whether the defendant acted of free will unaffected by the initial illegality. Purposefulness and flagrancy of the police conduct is particularly important because it goes to the heart of the exclusionary rule's objective of deterring unlawful police conduct. State v. Artic, 2010 WI 83, 326 Wis. 2d 234, 784 N.W.2d 740, 08−0880.

The rule regarding consent to search a shared dwelling in *Georgia v. Randolph*, 547 U.S. 103, which states that a warrantless search cannot be justified when a physically present resident expressly refuses consent, does not apply when a physically present resident is taken forcibly from the residence by law enforcement officers but remains in close physical proximity and refuses to consent after removal from the residence. When the defendant was nearby but not invited to take part in the threshold colloquy in which the defendant's co−tenant granted permission to search, the defendant did not fall within the rule stated in *Randolph* such that the search should have been barred and the evidence gained from it suppressed. State v. St. Martin, 2011 WI 44, 334 Wis. 2d 290, 800 N.W.2d 858, 09−1209.

Who may consent to the search of a home hinges not upon the law of property, but rests rather on mutual use of the property by persons generally having joint access or control for most purposes. There is no rigid rule that a weekend guest may not grant consent to search. Whether an individual has the constitutional authority to invite law enforcement into the home of another is determined on a case−by−case basis. State v. Sobczak, 2013 WI 52, 347 Wis. 2d 724, 833 N.W.2d 59, 10−3034.

Specific factors that weigh on whether an individual has the constitutional authority to invite law enforcement into the home of another include: 1) the relationship of the consenter to the defendant, not only in the familial sense, but also in terms of the social ties between the two; 2) the duration of the consenter's stay in the premises; 3) a defendant's decision to leave an individual in his or her home alone; 4) various other miscellaneous facts that may illuminate the depth of an individual's relationship to the premises, such as whether he or she has been given a key, keeps belongings in the home, or lists the residence as his or her address on a or driver's license. State v. Sobczak, 2013 WI 52, 347 Wis. 2d 724, 833 N.W.2d 59, 10−3034. See also State v. Torres, 2018 WI App 23, 381 Wis. 2d 268, 911 N.W.2d 388, 16−1398.

To validate the search of an object within a home on consent, the government must satisfy the same requirements as apply to consent to enter, namely, that the consenter had joint access or control of the object for most purposes. State v. Sobczak, 2013 WI 52, 347 Wis. 2d 724, 833 N.W.2d 59, 10−3034.

When consent to search a vehicle was given by the vehicle's driver, a passenger did not effectively withdraw the driver's consent to search a briefcase contained in the car when he asked "Got a warrant for that?" Police officers confronted with ambiguous statements, such as the passenger's in this case, are not under a duty to ask follow−up questions to clarify the ambiguity. State v. Wantland, 2014 WI 58, 355 Wis. 2d 135, 848 N.W.2d 810, 11−3007.

Involuntary consent is invalid, regardless of any prior illegality or attenuation therefrom. Attenuation analysis is not voluntariness analysis, and it is not meant to cure the involuntary waiver of rights. Rather, attenuation analysis examines whether voluntary consent is tainted by prior illegality. Attenuation analysis examines three factors to determine whether consent is sufficiently attenuated from illegal action to be removed from the taint of illegality: 1) the temporal proximity of the official misconduct and seizure of evidence; 2) the presence of intervening circumstances; and 3) the purpose and flagrancy of the official misconduct. State v. Hogan, 2015 WI 76, 364 Wis. 2d 167, 868 N.W.2d 124, 13−0430.

The attenuation test is the proper test to apply for analyzing voluntary consent to search a vehicle when that consent comes after the illegal extension of a traffic stop. Attenuation analysis may not be necessary in all cases; it is only appropriate where, as a threshold matter, courts determine that the challenged evidence is in some sense the product of illegal governmental activity. If the unlawful police conduct was not a "but−for" cause of the search, attenuation analysis is unnecessary because the consent is not tainted by the unlawful conduct in such a case. State v. Hogan, 2015 WI 76, 364 Wis. 2d 167, 868 N.W.2d 124, 13−0430.

After a traffic stop has ended, police may interact with a driver as they would with any citizen on the street. If a person is not seized, police may request consent to search even absent reasonable suspicion. State v. Hogan, 2015 WI 76, 364 Wis. 2d 167, 868 N.W.2d 124, 13−0430.

When after consenting to a blood draw, the defendant asked the officer if the officer needed to obtain a warrant to draw the defendant's blood and the officer shook his head no in response, the officer's response did not vitiate the voluntariness of the defendant's consent. The officer did not need a warrant because the defendant already had consented, and the officer was not obligated to explain further than he did. State v. Brar, 2017 WI 73, 376 Wis. 2d 685, 898 N.W.2d 499, 15−1261.

A third party may consent to a search of an individual's property when the third party shares "common authority" over that property. The same common authority standard that applies in the search context also determines whether a third party can consent to a seizure. Whether common authority exists depends on whether the third party has joint access to or control over the individual's property such that the individual has assumed the risk of the intrusion. In this case, the fact that the defendant had an affair, that he was living in the basement, and that his spouse planned to divorce him did not overcome the spouse's common authority over their marital property when the spouses continued to cohabitate in the marital home and had joint access to one another's living areas. State v. Abbott, 2020 WI App 25, 392 Wis. 2d 232, 944 N.W.2d 8, 19−0021.

In this case, law enforcement exceeded the scope of consent to search a single user account on a shared computer when they began their forensic examination of a computer's hard drive by examining the drive's recycle bin container, which aggregated the deleted files of all the computer's users, including the defendant's. When a person limits the person's consent to search a particular user account on an electronic device, a reasonable person would interpret that consent as being limited to only those files accessible from that account's user interface. State v. Jereczek, 2021 WI App 30, 398 Wis. 2d 226, 961 N.W.2d 70, 19−0826.

Passengers had no "legitimate expectation of privacy" in the glove box or under the seat of a car. Rakas v. Illinois, 439 U.S. 128 (1978).

A court may not suppress otherwise admissible evidence on the ground that it was seized unlawfully from a third party not before court. United States v. Payner, 447 U.S. 727 (1980).

Defendants charged with crimes of possession may only claim benefits of the exclusionary rule if their own 4th−amendment rights have in fact been violated. United States v. Salvucci, 448 U.S. 83 (1980).

When police entered a third party's house to execute an arrest warrant, evidence discovered during the search was inadmissible. Steagald v. United States, 451 U.S. 204 (1981).

A prisoner has no constitutionally protected reasonable expectation of privacy in his or her cell. Hudson v. Palmer, 468 U.S. 517 (1984).

The state need not prove that the defendant consenting to search knew of the right to withhold consent. Florida v. Rodriguez, 469 U.S. 1 (1984).

A warrantless entry to premises is permitted under the 4th amendment when entry is based upon third−party consent and officers reasonably believed the third party possessed authority to consent. Illinois v. Rodriguez, 497 U.S. 177, 111 L. Ed. 2d 148 (1990).

An officer's opening of a closed bag found on the floor of a suspect's car during a search of the car, made with suspect's consent was not unreasonable. Florida v. Jimeno, 500 U.S. 248, 114 L. Ed. 2d 297 (1991).

A defendant can urge suppression of evidence obtained in violation of constitutional protections only if that defendant's rights were violated. U.S. v. Padilla, 508 U.S. 954, 123 L. Ed. 2d 635 (1993).

The 4th amendment does not require that a seized person must be advised that he is free to go before his consent to a search can be recognized as voluntary. Ohio v. Robinette, 519 U.S. 33, 136 L. Ed. 2d 347 (1996).

A physically present inhabitant's express refusal of consent to a police search is dispositive as to him, regardless of the consent of a fellow occupant. If a potential defendant with self−interest in objecting is in fact at the door and objects, the co−tenant's permission does not suffice for a reasonable search, whereas the potential objector, nearby but not invited to take part in the threshold colloquy, loses out. Georgia v. Randolph, 547 U.S. 103, 164 L. Ed. 2d 208, 126 S. Ct. 1515 (2006).

When a police officer makes a traffic stop, the driver of the car and its passengers are seized within the meaning of the 4th amendment and so may challenge the constitutionality of the stop. Brendlin v. California, 551 U.S. 249, 127 S. Ct. 2400, 168 L. Ed. 2d 132 (2007).

Consent by one resident of jointly occupied premises is generally sufficient to justify a warrantless search. However, a physically present inhabitant's express refusal of consent to a police search of his or her home is dispositive as to him or her, regardless of the consent of a fellow occupant. An occupant who is absent due to a lawful detention or arrest stands in the same shoes as an occupant who is absent for any other reason. That the arrested occupant had made an objection to the search of the premises before his removal did not change the sufficiency of a still present occupant's subsequent consent. Fernandez v. California, 571 U.S. 292, 134 S. Ct. 1126, 188 L. Ed. 2d 25 (2014).

As a matter of federal law, an appellant cannot assert an alleged violation of his wife's 4th−amendment rights as a basis for suppression, at his trial, of evidence taken from his wife. Mabra v. Gray, 518 F.2d 512.

Zurcher: third party searches and freedom of the press. Cantrell. 62 MLR 35 (1978).

But What of Wisconsin's Exclusionary Rule? The Wisconsin Supreme Court Accepts Apparent Authority to Consent as Grounds for Warrantless Searches. Schmidt. 83 MLR 299.

State v. Stevens: Consent by deception in the context of garbage searches. 1987 WLR 191.

PROBABLE CAUSE AND WARRANTS

Probable cause meeting constitutional requirements for issuance of the search warrant of defendant's premises was not established by testimony of a police officer that a youth found in possession of amphetamines informed the officer that a shipment of marijuana was being delivered to the defendant's premises, when it was established that the officer had had no previous dealings with the informant and could not personally attest to the informant's reliability. The warrant was invalid. State ex rel. Furlong v. Waukesha County Court, 47 Wis. 2d 515, 177 N.W.2d 333.

Probable cause for arrest without a warrant under the 4th amendment of the U.S. constitution is applicable in this state. Tests for probable cause are discussed. A citizen informer is not subject to the requirement that the officer show prior reliability of his informant. State v. Paszek, 50 Wis. 2d 619, 184 N.W.2d 836.

Probable cause must exist prior to a search of body orifices. State v. Guy, 55 Wis. 2d 83, 197 N.W.2d 774.

An affidavit reciting that a reliable informant had reported seeing a large quantity of heroin in defendant's apartment was sufficient to support a search warrant. State v. Mansfield, 55 Wis. 2d 274, 198 N.W.2d 634.

Unauthorized out−of−court disclosures of private marital communications may not be used in a proceeding to obtain a search warrant. Muetze v. State, 73 Wis. 2d 117, 243 N.W.2d 393.

A search warrant designating an entire farmhouse occupied by the accused and "other persons unknown" was not invalid despite the multiple occupancy. State v. Suits, 73 Wis. 2d 352, 243 N.W.2d 206.

A warrant authorizing the search of the "entire first−floor premises" encompassed a balcony room that was part and parcel of first floor. Rainey v. State, 74 Wis. 2d 189, 246 N.W.2d 529.

A search warrant obtained on an affidavit containing misrepresentations by a police officer as to the reliability of an unnamed informant is invalid. When the search was conducted within a reasonable time following an arrest based on probable cause, the search will be sustained even though it was conducted in execution of invalid warrant. Schmidt v. State, 77 Wis. 2d 370, 253 N.W.2d 204.

Affidavits for search warrants need not be drafted with technical specificity nor demonstrate the quantum of probable cause required in a preliminary examination. The usual inferences that reasonable persons draw from evidence are permissible, and doubtful or marginal cases should be resolved by the preference to be accorded to warrants. State v. Starke, 81 Wis. 2d 399, 260 N.W.2d 739.

Probable cause for arrest, standing alone, does not justify taking a blood sample for a blood test without first obtaining a search warrant. To be admissible, the blood test must have been required by the exigencies of the situation, and the sample must have been drawn in a reasonable manner. State v. Bentley, 92 Wis. 2d 860, 286 N.W.2d 153 (Ct. App. 1979). See also State v. Kennedy, 2014 WI 132, 359 Wis. 2d 454, 856 N.W.2d 834, 12–0523.

A defect in a portion of a search warrant did not invalidate the entire search warrant. State v. Noll, 116 Wis. 2d 443, 343 N.W.2d 391 (1984).

A "no knock" warrant to search a drug dealer's house was invalid because of a lack of specific information to indicate the evidence would be destroyed otherwise. State v. Cleveland, 118 Wis. 2d 615, 348 N.W.2d 512 (1984).

At a "*Franks* hearing" challenging the veracity of a statement supporting a search warrant, the defendant must prove that a falsehood was intentional or with reckless disregard for truth and that the false statement was necessary to finding probable cause. State v. Anderson, 138 Wis. 2d 451, 406 N.W.2d 398 (1987).

Under the "independent source doctrine" the court examines whether an agent would have sought a warrant had it not been for an illegal entry, and if information obtained during the entry affected the decision to issue the warrant. State v. Lange, 158 Wis. 2d 609, 463 N.W.2d 390 (Ct. App. 1990).

A status check of a driver's license arising out of police exercise of the community care–taker function is not a stop and does not require reasonable suspicion of a crime. State v. Ellenbecker, 159 Wis. 2d 91, 464 N.W.2d 427 (Ct. App. 1990).

Seizure of a package delivered to a third party for limited investigative detention requires reasonable suspicion, not probable cause. State v. Gordon, 159 Wis. 2d 335, 464 N.W.2d 91 (Ct. App. 1990).

An evidentiary search of a person not named in a search warrant but present during the search of a residence reasonably suspected of being a drug house was reasonable. State v. Jeter, 160 Wis. 2d 333, 466 N.W.2d 211 (Ct. App. 1991).

A probable cause determination in the face of a staleness challenge depends upon the nature of the underlying circumstances, whether the activity is of a protracted or continuous nature, the nature of the criminal activity under investigation, and the nature of what is being sought. State v. Ehnert, 160 Wis. 2d 464, 466 N.W.2d 237 (Ct. App. 1991).

A warrant for the seizure of film authorized the seizure, removal, and development of the undeveloped film. State v. Petrone, 161 Wis. 2d 530, 468 N.W.2d 676 (1991).

Knowledge that a dealer operating an ongoing drug business was armed in his residence satisfied the requirements for a "no knock" search. A reasonable belief that the weapon will be used need not be shown. State v. Watkinson, 161 Wis. 2d 750, 468 N.W.2d 763 (Ct. App. 1991), State v. Williams, 168 Wis. 2d 970, 485 N.W.2d 42 (1992).

A warrantless search of an apartment for evidence of occupancy when the police reasonably believed that the tenant had vacated and the occupants were not legitimately on the premises was not unreasonable. The defendant had no reasonable expectation of privacy in the apartment or in property kept there. State v. Whitrock, 161 Wis. 2d 960, 468 N.W.2d 696 (1991).

An informant need not have a "track record" established with the police if the totality of the circumstances indicate probable cause for a search exists. State v. Hanson, 163 Wis. 2d 420, 471 N.W.2d 301 (Ct. App. 1991).

The severability rule under *Noll* applies when the description of the premises to be searched is overly broad. State v. Marten, 165 Wis. 2d 70, 477 N.W.2d 304 (Ct. App. 1991).

If old information contributes to an inference that probable cause exists at the time of the application for a warrant, its age is no taint. State v. Moley, 171 Wis. 2d 207, 490 N.W.2d 764 (Ct. App. 1992).

Police serving a warrant are not required to ring a doorbell before forcing entry. State v. Greene, 172 Wis. 2d 43, 491 N.W.2d 181 (Ct. App. 1992).

Use of a ruse to gain entry in the execution of warrant when "no–knock" was not authorized did not violate the announcement rule. Special authorization is not required for the use of a ruse. State v. Moss, 172 Wis. 2d 110, 492 N.W.2d 627 (1992).

Failure to comply with the announcement rule was allowable when officers reasonably believed further announcement was futile. State v. Berry, 174 Wis. 2d 28, 496 N.W.2d 746 (Ct. App. 1993).

Compliance with the announcement rule must be determined at time of execution. While advance request for "no–knock" authority is preferable if police at the time of execution have grounds, failure to seek authorization is not fatal. State v. Kerr, 174 Wis. 2d 55, 496 N.W.2d 742 (Ct. App. 1993).

The incorrect identification of a building's address in the warrant did not render the resulting search unreasonable when the search made was of the building identified by the informant, which was otherwise correctly identified in the warrant. State v. Nicholson, 174 Wis. 2d 542, 497 N.W.2d 791 (Ct. App. 1993).

A federal magistrate's decision at a 4th amendment suppression hearing was not binding on a state trial court when the state was not a party nor in privity with a party to the federal action and the federal case did not review errors in the proceeding. State v. Mechtel, 176 Wis. 2d 87, 499 N.W.2d 662 (1993).

An investigatory stop of an automobile based solely on the fact that the vehicle bore "license applied for" plates, and the reasonable inferences that could be drawn therefrom, was justified by reasonable suspicion. State v. Griffin, 183 Wis. 2d 327, 515 N.W.2d 535 (Ct. App. 1994).

For a violation of the requirement that a warrant be issued by a neutral and detached magistrate, actual bias and not the appearance of bias must be shown. State v. McBride, 187 Wis. 2d 408, 523 N.W.2d 106 (Ct. App. 1994).

An "anticipatory warrant" issued before the necessary events have occurred that will allow a constitutional search, is subject to the same probable cause determination as a conventional search warrant. State v. Falbo, 190 Wis. 2d 328, 526 N.W.2d 814 (Ct. App. 1994).

That a person was a passenger in a vehicle in which cocaine was found in the trunk was not of itself sufficient to establish probable cause to arrest the person for being a part of a conspiracy to possess or sell the cocaine. State v. Riddle, 192 Wis. 2d 470, 531 N.W.2d 408 (Ct. App. 1995).

A search warrant authorizing the search of certain premises and "all occupants" was not unconstitutional where there was probable cause to believe that persons on the premises were engaged in illegal activities. State v. Hayes, 196 Wis. 2d 753, 540 N.W.2d 1 (Ct. App. 1995), 94–3040.

A request to perform field sobriety tests does not convert an otherwise lawful investigatory stop into an arrest requiring probable cause. County of Dane v. Campshure, 204 Wis. 2d 27, 552 N.W.2d 876 (Ct. App. 1996), 96–0474.

Probable cause is not required to justify a search conducted on school grounds by a police officer at the request of and in conjunction with with school authorities. A lesser "reasonable grounds" standard applies. State v. Angelia D.B. 211 Wis. 2d 140, 564 N.W.2d 682 (1997), 95–3104.

A suspect's seeming reluctance to have the front of his boxer shorts patted at or below the waist did not give rise to probable cause to search inside the shorts when no specific suspicion of a crime was focused on the suspect and no weapon or contraband had been plainly felt in a *Terry* pat down search. State v. Ford, 211 Wis. 2d 741, 565 N.W.2d 286 (Ct. App. 1997), 96–2826.

It is not necessary that a warrant explicitly state that delivery of the sought after contraband must take place before the search is initiated when the requirement is sufficiently implied. It is not necessary to describe in the affidavit in support of the warrant the exact role the police will play in delivering the contraband. State v. Ruiz, 213 Wis. 2d 200, 570 N.W.2d 556 (Ct. App. 1997), 96–1610.

A no–knock search cannot be founded on generalized knowledge. Fruits of an invalid no–knock search must be suppressed. State v. Stevens, 213 Wis. 2d 324, 570 N.W.2d 593 (Ct. App. 1997), 97–0758.

The showing required to sustain an unannounced entry parallels the reasonable suspicion standard for justifying investigative stops. The police must have reasonable suspicions based on specific articulable facts that announcing their presence will endanger safety or present an opportunity to destroy evidence. State v. Larson, 215 Wis. 2d 155, 572 N.W.2d 127 (Ct. App. 1997), 95–1940.

There is no constitutional requirement that an anticipatory search warrant contain explicit conditional language limiting the execution of the warrant until after delivery of the contraband. State v. Meyer, 216 Wis. 2d 729, 576 N.W.2d 260 (1998), 96–2243.

To dispense with the rule of announcement in executing a warrant, particular facts must be shown in each case that support an officer's reasonable suspicion that exigent circumstances exist. An officer's experience and training are valid relevant considerations. State v. Meyer, 216 Wis. 2d 729, 576 N.W.2d 260 (1998), 96–2243.

Police are not prevented from ever using evidence gleaned from an illegal search in a subsequent and independent investigation. When the later investigation is not prompted by the information obtained in the earlier search, the information may be used. State v. Simmons, 220 Wis. 2d 775, 585 N.W.2d 165 (Ct. App. 1998), 97–1861.

The odor of a controlled substance provides probable cause to arrest when the odor is unmistakable and may be linked to a specific person under the circumstances of the discovery of the odor. The odor of marijuana emanating from a vehicle established probable cause to arrest the sole occupant of the vehicle. State v. Secrist, 224 Wis. 2d 201, 589 N.W.2d 387 (1999), 97–2476.

Police have authority under a valid search warrant to enter unoccupied premises if the search is otherwise reasonable under the circumstances. Knocking and announcing is not required. State v. Moslavac, 230 Wis. 2d 338, 602 N.W.2d 150 (Ct. App. 1999), 98–3037.

"Probable cause to believe" does not refer to a uniform degree of proof, but instead varies in degree at different stages of the proceedings. County of Jefferson v. Renz, 231 Wis. 2d 293, 603 N.W.2d 541 (1999), 97–3512.

The test for finding probable cause to issue a warrant is not whether the inference drawn from the supporting affidavit is the only reasonable inference. The test is whether the inference drawn is a reasonable one. State v. Ward, 2000 WI 3, 231 Wis. 2d 723, 604 N.W.2d 517, 97–2008.

Marijuana plants discovered while officers, although mistaken, believed they were executing a valid search warrant of an adjacent apartment were properly admitted into evidence. Because the officers were required to cease all searching when they discovered that they were not operating within the scope of the warrant, incriminating statements and evidence obtained thereafter were properly suppressed. A warrant obtained for the second apartment based on the discovery of the marijuana plants was based on untainted evidence, and additional evidence obtained thereunder was admissible. State v. Herrmann, 2000 WI App 38, 233 Wis. 2d 135, 608 N.W.2d 406, 99–0325.

Police with an arrest warrant are authorized to enter a home if they have probable cause to believe that the person named in the warrant lives there and is present, but not to enter a third–party's residence where the police believe the person to be a visitor. State v. Blanco, 2000 WI App 119, 237 Wis. 2d 395, 614 N.W.2d 512, 98–3153.

In searching a computer for items listed in a warrant, the police are entitled to examine all files to determine if their contents fall within the scope of the warrant. The first file containing evidence of other illegal activity is admissible under the plain view doctrine and is grounds for a warrant to search for more evidence of the second illegal activity. State v. Schroeder, 2000 WI App 128, 237 Wis. 2d 575, 613 N.W.2d 911, 99–1292.

Irrespective of whether the search warrant authorizes a "no–knock" entry, reasonableness is determined when the warrant is executed. State v. Davis, 2000 WI 270, 240 Wis. 2d 15, 622 N.W.2d 1, 99–2537.

A good faith exception to the exclusionary rule is adopted for when police officers act in objectively reasonable reliance upon a warrant that had been issued by a detached and neutral magistrate. For the exception to apply, the state must show that the process used in obtaining the search warrant included a significant investigation and a review by either a police officer trained and knowledgeable in the requirements of probable cause and reasonable suspicion or a knowledgeable government attorney. State v. Eason, 2001 WI 98, 245 Wis. 2d 206, 629 N.W.2d 625, 98–2595.

The constitutional validity of an unannounced entry in serving a warrant turns on whether the evidence introduced at the suppression hearing, including the facts

known to the police but not included in the warrant application, was sufficient to establish a reasonable suspicion that knocking and announcing, under the circumstances, would be dangerous or futile or would inhibit the effective investigation of the crime. State v. Henderson, 2001 WI 97, 245 Wis. 2d 345, 629 N.W.2d 613, 99–2296.

Whether tenants have a reasonable expectation of privacy in stairways and halls of rental property is to be determined by assessing each case on its individual facts and depends on whether the person has exhibited an actual subjective expectation of privacy in the area inspected and whether society is willing to recognize the expectation as reasonable. State v. Trecroci, 2001 WI App 126, 246 Wis. 2d 261, 630 N.W.2d 555, 00–1079.

There is a presumption that a warrantless search of a private residence is per se unreasonable. A warrantless search requires probable cause, not reasonable suspicion. Although flight from an officer may constitute reasonable suspicion, it does not rise to probable cause. For probable cause there must be a fair probability that contraband or evidence will be found in a particular place. State v. Rodriguez, 2001 WI App 206, 247 Wis. 2d 734, 634 N.W.2d 844, 00–2546.

Warrants for administrative or regulatory searches modify the conventional understanding of probable cause for warrants as the essence of the search is that there is no probable cause to believe a search will yield evidence of a violation. Refusal of consent is not a constitutional requirement for issuing the warrant, although it may be a statutory violation. Suppression only applies to constitutional violations. State v. Jackowski, 2001 WI App 187, 247 Wis. 2d 430, 633 N.W.2d 649, 00–2851.

The absence of an oath or affirmation supporting the issuance of a warrant is not a mere technicality or matter of formality. Absence of an oath subjects evidence seized under the defective warrant to suppression. State v. Tye, 2001 WI 124, 248 Wis. 2d 530, 636 N.W.2d 473, 99–3331.

If a telephone warrant application has not been recorded and there is no evidence of intentional or reckless misconduct on the part of law enforcement officers, a reconstructed application may serve as an equivalent of the record of the original application and can protect the defendant's right to a meaningful appeal and ability to challenge the admission of evidence. Courts should consider the time between the application and the reconstruction, the length of the reconstructed segment in relation to the entire warrant request, if there were any contemporaneous written documents used to reconstruct the record, the availability of witnesses used to reconstruct the record, and the complexity of the segment reconstructed. The issuing judge's participation may be appropriate. State v. Raflik, 2001 WI 129, 248 Wis. 2d 593, 636 N.W.2d 690, 00–1086.

Probable cause to arrest may be based on hearsay that is shown to be reliable and emanating from a credible source. Thus information from a confidential informant may supply probable cause if the police know the informant to be reliable. State v. McAttee, 2001 WI App 262, 248 Wis. 2d 865, 637 N.W.2d 774, 00–2803.

The timeliness of seeking a warrant depends upon the nature of the underlying circumstances and concepts. When the activity is of a protracted and continuous nature, the passage of time diminishes in significance. Factors like the nature of the criminal activity under investigation and the nature of what is being sought have a bearing on where the line between stale and fresh information should be drawn in a particular case. State v. Multaler, 2001 WI App 149, 246 Wis. 2d 752, 632 N.W.2d 89.
Affirmed, 2002 WI 35, 643 NW 2d 437, 252 Wis. 2d 54, 00–1846.

An affidavit in support of a search warrant is not a research paper or legal brief that demands citations for every proposition. An investigator's detailed listing of his sources of information and accompanying credentials, combined with his indication that his opinion was based upon his training and research provided a sufficient foundation for the opinion he gave in support of the warrant. State v. Multaler, 2002 WI 35, 252 Wis. 2d 54, 643 N.W.2d 437, 00–1846.

The use of an infrared sensing device to detect heat emanating from a residence constitutes a search requiring a warrant. State v. Lorager, 2002 WI App 5, 250 Wis. 2d 198, 640 N.W.2d 555, 00–3364.

See also Kyllo v. U.S. 533 U.S. 27, 150 L. Ed. 2d 94 (2001).

Under *Ellenbecker*, it was reasonable for an officer, who stopped a motorist whose vehicle and general appearance matched that of a criminal suspect, to make a report of the incident, even if the officer had already decided that the driver was not the suspect, and for that purpose it was reasonable to ask for the motorist's name and identification. Once the motorist stated that he had no identification, there was a reasonable ground for further detention. State v. Williams, 2002 WI App 306, 258 Wis. 2d 395, 655 N.W.2d 462, 02–0384.

An officer may perform an investigatory stop of a vehicle based on a reasonable suspicion of a non–criminal traffic violation. State v. Colstad, 2003 WI App 25, 260 Wis. 2d 406, 659 N.W.2d 394, 01–2988.

When the reasonableness of a no–knock entry is challenged, the state must present evidence of the circumstances at the time of warrant execution that would justify a no–knock entry. If the circumstances were described in the warrant application, the evidence might be testimony by an officer that nothing had come to the officer's attention to lead them to believe that circumstances had changed. If the warrant application is silent or lacking in regard to circumstances that might render an announced entry dangerous or futile, the state may still justify a no–knock entry by showing that the officers possessed the requisite reasonable suspicion at the time of entry. State v. Whiting, 2003 WI App 101, 264 Wis. 2d 722, 663 N.W.2d 299, 02–1721.

Otherwise innocent conduct can supply the required link in the chain to establish probable cause that a crime has or is about to be committed. Although an individual fact in a series may be innocent in itself, when considered as a whole, the facts may warrant further investigation. State v. Schaefer, 2003 WI App 164, 266 Wis. 2d 719, 668 N.W.2d 760, 01–2691.

The existence of probable cause in the context of information provided by an anonymous tipster is determined by a totality–of–the–circumstances analysis. As applied to assessing the reliability of an anonymous tip, a deficiency in one factor may be compensated for by some other indicia of reliability when considered in the context of the totality–of–the–circumstances. A recognized indicia of the reliability of an anonymous tip is police corroboration of details, particularly details involving predicted behavior. Probable cause may exist even if the predicted behavior corroborated by the police is, when viewed in isolation, innocent behavior. Police themselves need not observe suspicious behavior. State v. Sherry, 2004 WI App 207, 277 Wis. 2d 194, 690 N.W.2d 435, 03–1531.

That an officer arrested the defendant for a crime that does not exist, did not make the arrest illegal. The pertinent question is whether the arrest was supported by probable cause to believe the defendant committed a crime that does exist. State v. Repenshek, 2004 WI App 229, 277 Wis. 2d 780, 691 N.W.2d 780, 03–3089

Under *Leon,* 68 U.S. 897, an officer cannot be expected to question a magistrate's probable–cause determination or judgment that the form of the warrant is technically sufficient except when: 1) the magistrate in issuing a warrant was misled by information in an affidavit that the affiant knew was false or would have known was false except for a reckless disregard of the truth; 2) the issuing magistrate wholly abandoned his or her judicial role; 3) when an affidavit is so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable; or 4) when a warrant is so facially deficient that the executing officers cannot reasonably presume it to be valid. State v. Marquardt, 2005 WI 157, 286 Wis. 2d 204, 705 N.W.2d 878, 04–1609.

The inquiry into whether a warrant affidavit is "so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable," under *Leon*, must be different from the inquiry into whether the facts in the warrant application are "clearly insufficient to support a determination of probable cause." That the warrant application was insufficient to support the warrant–issuing judge's probable cause determination does not mean that the affidavit in support of the warrant was lacking in indicia of probable cause within the meaning of *Leon*. State v. Marquardt, 2005 WI 157, 286 Wis. 2d 204, 705 N.W.2d 878, 04–1609.

Eason added two requirements that must be met before the *Leon* good faith exception may apply. Under *Eason*, a "significant investigation" does not require a showing that the investigation yielded the probable cause that would have been necessary to support the search at issue. At the same time, a significant investigation for purposes of *Eason* refers to more than the number of officers or hours devoted to an investigation. State v. Marquardt, 2005 WI 157, 286 Wis. 2d 204, 705 N.W.2d 878, 04–1609.

The good faith exception under *Leon* is a doctrine that applies to police officers who execute a search warrant in the mistaken belief that it is valid. Good faith is not a doctrine that absolves the neutral and detached judge or magistrate from a careful, critical and independent analysis of the facts presented when exercising the responsibility of determining whether probable cause for a search warrant exists. State v. Sloan, 2007 WI App 146, 303 Wis. 2d 438, 736 N.W.2d 189, 06–1271.

Probable cause to believe that a person has committed a crime does not automatically give the police probable cause to search the person's house for evidence of that crime. State v. Sloan, 2007 WI App 146, 303 Wis. 2d 438, 736 N.W.2d 189, 06–1271.

The use of a credit card issued to the defendant to purchase a membership to websites containing child pornography, together with customer records confirming the defendant's home address, e–mail address, and credit card information, resulted in the inference that there was a fair probability that the defendant had received or downloaded images. Details provided on the use of computers by individuals involved in child pornography found in the affidavit supporting the search of the defendant's home strengthened this inference. State v. Gralinski, 2007 WI App 233, 306 Wis. 2d 101, 743 N.W.2d 448, 06–0929.

An officer's knowledge that a vehicle's owner's license is revoked will support reasonable suspicion for a traffic stop so long as the officer remains unaware of any facts that would suggest that the owner is not driving. State v. Newer, 2007 WI App 236, 306 Wis. 2d 193, 742 N.W.2d 923, 06–2388.

If a search is conducted in "flagrant disregard" of the limitations in the warrant, all items seized, even items within the scope of the warrant are suppressed. When the search consisted of moving items in plain view in order to document them, the circuit court correctly concluded that the police conduct, while troubling, did not require suppression of all evidence seized during the search. State v. Pender, 2008 WI App 47, 308 Wis. 2d 428, 748 N.W.2d 471, 07–1019.

If the location to be searched is not described with sufficient particularity to inform officers which unit in a multi–unit building they are to search, the particularity required by the 4th amendment has not been satisfied. To justify a search of the whole building, there must be probable cause in the supporting affidavit to search each unit in the building, or there must be probable cause to search the entire building. State v. Jackson, 2008 WI App 109, 313 Wis. 2d 162, 756 N.W.2d 623, 07–1362.

A warrant contingent upon law enforcement officers identifying the precise unit of 3 townhouse units in which the defendant resided lacked the specificity that the 4th amendment was designed to protect against. State v. King, 2008 WI App 129, 313 Wis. 2d 673, 758 N.W.2d 131, 07–1420.

An anticipatory search warrant is not appropriate when its execution is conditioned on verification of his address as opposed to being conditioned on certain evidence of a crime being located at a specified place at some point in the future. State v. King, 2008 WI App 129, 313 Wis. 2d 673, 758 N.W.2d 131, 07–1420.

Mistakes on the face of a warrant were a technical irregularity under s. 968.22 and the warrant met the 4th amendment standard of reasonableness when although the warrant identified the car to be searched incorrectly two times, the executing officer attached and incorporated a correct affidavit that correctly identified the car 3 times, describing the correct color, make, model, and style of the car along with the correct license plate, and the information was based on the executing officer's personal knowledge from prior encounters. State v. Rogers, 2008 WI App 176, 315 Wis. 2d 60, 762 N.W.2d 795, 07–1850.

A reviewing court must conclude that the totality of the circumstances demonstrates that the warrant–issuing commissioner had a substantial basis for concluding that there was a fair probability that a search of the specified premises would uncover evidence of wrongdoing. When a confidential informant told a law enforcement officer what someone else had told him, the veracity of each person in the chain was relevant. State v. Romero, 2009 WI 32, 317 Wis. 2d 12, 765 N.W.2d 756, 07–1139.

The *Eason* good faith exception to the exclusionary rule when a police officer relies in good faith upon a search warrant's validity was applicable when an officer's good faith belief that an open felony warrant existed was based on a computer search that revealed a commitment order the officer believed to be an arrest war-

rant. State v. Robinson, 2009 WI App 97, 320 Wis. 2d 689, 770 N.W.2d 721, 08–0266.

When an application for a warrant contains both tainted and untainted evidence, the warrant is valid if the untainted evidence is sufficient to support a finding of probable cause to issue the warrant. There is a two–pronged approach to determine if untainted evidence provides an independent source: 1) the court determines whether, absent the illegal entry, the officer would have sought the search warrant; and 2) it asks if information illegally acquired influenced the magistrate's decision to authorize the warrant. Absent an explicit finding by the trial court, a clear inference from the facts can compel the conclusion that law enforcement agents would have sought a warrant had they not obtained tainted evidence. State v. Carroll, 2010 WI 8, 322 Wis. 2d 299, 778 N.W.2d 1, 07–1378.

The good–faith exception to the exclusionary rule does not apply to a situation in which: 1) no facts existed that would justify an arrest without a warrant; 2) the civil arrest warrant issued by a circuit judge was void ab initio because it did not comply with any statute authorizing the court to issue a warrant and it was not supported by an oath or affirmation; and 3) the court issued the warrant without the benefit of verification of the facts or scrutiny of the procedure to ensure that the judge acted as a detached and neutral magistrate. Suppressing evidence obtained as a result of the unauthorized, defective warrant is necessary to preserve the integrity of the judicial process. State v. Hess, 2010 WI 82, 327 Wis. 2d 524, 785 N.W.2d 568, 08–2231. But see State v. Kerr, 2018 WI 87, 383 Wis. 2d 306, 913 N.W.2d 787, 16–2455.

An order authorizing law enforcement to install and monitor a GPS tracking device on defendant's vehicle constituted a valid warrant and the officers' execution of the warrant was reasonable when the GPS tracking device was attached to the vehicle while the car was parked in the defendant's driveway and the car was subsequently electronically monitored for a period of 35 days without the defendant's knowledge. State v. Sveum, 2010 WI 92, 328 Wis. 2d 369; 787 N.W.2d 317, 08–0658. See also State v. Pinder, 2018 WI 106, 384 Wis. 2d 416, 919 N.W.2d 568, 17–0208.

Generally, searches are subject to the "one warrant, one search" rule. However, a search conducted pursuant to a lawful warrant may last as long, and be as thorough, as reasonably necessary to fully execute the warrant. Courts have recognized an exception to the one warrant, one search rule when a subsequent entry and search are a reasonable continuation of the earlier one. The reasonable continuation rule has two requirements: 1) the subsequent entry must be a continuation of the earlier search; and 2) the decision to conduct a second entry to continue the search must be reasonable under the circumstances. State v. Avery, 2011 WI App 124, 337 Wis. 2d 351, 804 N.W.2d 216, 10–0411.

The technology used in conducting a GPS search did not exceed the scope of the warrant allowing GPS tracking of the defendant's vehicle. The affidavit and warrant's language contemplated installation of a GPS device that would track the vehicle's movements. That the device provided officers with real–time updates of those movements did not alter the kind of information to be obtained under the warrant or the nature of the intrusion allowed. Police efficiency does not equate with unconstitutionality. State v. Brereton, 2013 WI 17, 345 Wis. 2d 563, 826 N.W.2d 369, 10–1366.

The particularity requirement under the 4th amendment provides that a warrant must enable the searcher to reasonably ascertain and identify the things which are authorized to be seized. While a description of the object into which a tracking device was to be placed was a factor in satisfying the particularity requirement in *Sveum*, there is no reason why another way of identifying a cell phone, such as by its electronic serial number, cannot serve the same function as physically placing a tracking device on the defendant's property. State v. Tate, 2014 WI 89, 357 Wis. 2d 172, 849 N.W.2d 798, 12–0336.

The 4th amendment parameters of search and seizure law are not necessarily inapplicable to all searches for and seizures of electronic information. Law enforcement officers have long had to separate the documents as to which seizure was authorized from other documents. That necessity has not turned an otherwise valid warrant into a "general" warrant. The court saw no constitutional imperative that would change the result simply because the object of the search is electronic data from a specific electronic file, for a reasonably specific period of time, in the custody of a specific internet service provider. State v. Rindfleisch, 2014 WI App 121, 359 Wis. 2d 147, 857 N.W.2d 456, 13–0362.

Police may properly consider prior convictions in a probable cause determination. State v. Blatterman, 2015 WI 46, 362 Wis. 2d 138, 864 N.W.2d 26, 13–2107.

Whether probable cause exists to issue a warrant is an objective, not a subjective, test. Thus, a police officer's failure to tell the warrant–issuing court the officer's subjective viewpoint was irrelevant and was not a "critical omission" from the affidavit supporting the search warrant so as to constitute a *Franks* violation. State v. Kilgore, 2016 WI App 47, 370 Wis. 2d 198, 882 N.W.2d 493, 15–0997.

A tip from an electronic service provider (ESP) is properly viewed as one from an identified citizen informant, not an anonymous informant, which therefore establishes the personal reliability requirement in case law. Additionally, the affidavit in this case showed sufficient indicia of observational reliability of the ESP. State v. Silverstein, 2017 WI App 64, 378 Wis. 2d 42, 902 N.W.2d 550, 16–1464.

Suppression of evidence under the exclusionary rule is not appropriate when there is no police misconduct because the sole purpose of the exclusionary rule is to deter police misconduct. Neither judicial integrity nor judicial error is a standalone basis for suppression under the exclusionary rule. State v. Kerr, 2018 WI 87, 383 Wis. 2d 306, 913 N.W.2d 787, 16–2455.

A warrant for global positioning system (GPS) tracking is not issued pursuant to a statute, but instead is issued pursuant to the court's inherent authority, and thus must comply only with the 4th amendment to the U.S. Constitution and article I, section 11, of the Wisconsin Constitution. State v. Pinder, 2018 WI 106, 384 Wis. 2d 416, 919 N.W.2d 568, 17–0208.

An anonymous telephone tip that specified a vehicle was driven by an unlicensed person did not create articulable and reasonable suspicion of illegality justifying an investigatory stop of the auto and driver. 68 Atty. Gen. 347.

When a defendant makes a substantial preliminary showing that an affiant's false statement, knowingly or recklessly made, was the basis of the probable cause finding, a hearing must be held. Franks v. Delaware, 438 U.S. 154 (1978).

An "open–ended" search warrant was unconstitutional. Lo–Ji Sales, Inc. v. New York, 442 U.S. 319 (1979).

The "two–pronged" test of *Aguilar* and *Spinelli* is abandoned and replaced with a "totality of the circumstances" approach in finding probable cause based on informer's tips. Illinois v. Gates, 462 U.S. 213 (1983).

Under the "totality of circumstances" test, an informant's tip met probable cause standards. Massachusetts v. Upton, 466 U.S. 727 (1984).

The "good faith" exception to the exclusionary rule allowed the admission of evidence obtained by officers acting in objectively reasonable reliance on a search warrant, issued by a detached and neutral magistrate, later found to be unsupported by probable cause. U.S. v. Leon, 468 U.S. 897 (1984).

Probable cause is required to invoke the plain view doctrine. Arizona v. Hicks, 480 U.S. 321 (1987).

Evidence seized in reliance on a police record incorrectly indicating an outstanding arrest warrant was not subject to suppression when the error was made by court clerk personnel. Arizona v. Evans, 514 U.S. 1, 131 L. Ed. 2d 34 (1994).

There is no blanket exception to the knock and announce requirement for executing warrants. To justify a no–knock entry, a reasonable suspicion that knocking and announcing will be dangerous or futile or will inhibit the effective investigation of a crime must exist. Richards v. Wisconsin, 520 U.S. 385, 137 L. Ed. 2d 615 (1997).

When the three occupants of a vehicle in which drugs and cash were found in a legal search all failed to offer any information with respect to the ownership of the drugs or money, it was a reasonable inference that any or all three of the occupants had knowledge of, and exercised dominion and control over, the drugs. A reasonable officer could conclude that there was probable cause to believe one or more of the men possessed the drugs, either solely or jointly. Maryland v. Pringle, 540 U.S. 366, 124 S. Ct. 795, 157 L. Ed 2d 769 (2003).

A search warrant that did not describe the items to be seized at all was so obviously deficient that the search conducted pursuant to it was considered to be warrantless. Groh v. Ramirez, 540 U.S. 551, 124 S. Ct. 1284, 157 L. Ed 2d 1068 (2004).

Whether probable cause exists depends upon the reasonable conclusion to be drawn from the facts known to the arresting officer at the time of the arrest. An arresting officer's state of mind, except for the facts that he knows, is irrelevant to the existence of probable cause. A rule that the offense establishing probable cause must be closely related to, and based on the same conduct as, the offense identified by the arresting officer at the time of arrest is inconsistent with these principals. Devenpeck v. Alford, 543 U.S. 146, 160 L. Ed. 2d 537, 125 S. Ct. 588 (2004).

For a conditioned anticipatory warrant to comply with the 4th amendment's requirement of probable cause, two prerequisites of probability must be satisfied. It must be true not only that if the triggering condition occurs there is a fair probability that contraband or evidence of a crime will be found in a particular place, but also that there is probable cause to believe the triggering condition will occur. The triggering condition for an anticipatory search warrant need not be be set forth in the warrant itself. U.S. v. Grubbs, 547 U.S. 90, 164 L. Ed. 2d 195, 126 S. Ct. 1494 (2006).

Valid warrants will issue to search the innocent, and people unfortunately bear the cost. Officers executing search warrants on occasion enter a house when residents are engaged in private activity; and the resulting frustration, embarrassment, and humiliation may be real, as was true here. When officers execute a valid warrant and act in a reasonable manner to protect themselves from harm, however, the 4th amendment is not violated. Los Angeles County v. Rettele, 550 U.S. 609, 167 L. Ed. 2d 974, 127 S. Ct. 1989 (2007).

To determine if the "alert" of a drug–detection dog during a traffic stop provides probable cause to search a vehicle, the state need not present an exhaustive set of records. A probable–cause hearing focusing on a drug–sniffing dog's alert should proceed much like any other probable–cause hearing. The question — similar to every inquiry into probable cause — is whether all the facts surrounding a dog's alert, viewed through the lens of common sense, would make a reasonably prudent person think that a search would reveal contraband or evidence of a crime. A sniff is up to snuff when it meets that test. Florida v. Harris, 568 U.S. 237, 133 S. Ct. 1050, 185 L. Ed. 2d 61 (2013).

911 calls are not per se reliable. However, given the technological and regulatory developments in the 911 system, a reasonable officer could conclude that a false tipster would think twice before using such a system. A caller's use of the 911 system in this case was one of the relevant circumstances that justified the officer's reliance on the information reported in the 911 call. Navarette v. California, 572 U.S. 393, 134 S. Ct. 1683, 188 L. Ed. 2d 680 (2014).

A mistake of law can give rise to the reasonable suspicion necessary to uphold a seizure under the 4th amendment. In this case, an officer stopped a vehicle because one of its two brake lights was out, but a court later determined that a single working brake light was all the law required. Because the officer's mistake about the brake–light law was reasonable, the stop in this case was lawful. Heien v. North Carolina, 574 U.S. 54, 135 S. Ct. 530, 190 L. Ed. 2d 475 (2014).

Pretrial detention can violate the 4th amendment not only when it precedes, but also when it follows, the start of legal process in a criminal case. The 4th amendment prohibits government officials from detaining a person in the absence of probable cause. That can happen when the police hold someone without any reason before the formal onset of a criminal proceeding. But it also can occur when legal process itself goes wrong — when, for example, a judge's probable–cause determination is predicated solely on a police officer's false statements. Legal process does not expunge a 4th amendment claim when the process received by the defendant failed to establish what that amendment makes essential for pretrial detention — probable cause to believe the defendant committed a crime. Manuel v. Joliet, 580 U.S. 357, 137 S. Ct. 911, 197 L. Ed. 2d 312 (2017).

The totality of the circumstances test requires courts to consider the whole picture and to determine whether a reasonable officer could conclude—considering all of the surrounding circumstances, including the plausibility of the explanation itself—that there was a substantial chance of criminal activity. District of Columbia v. Wesby, 583 U.S. ___, 138 S. Ct. 577, 199 L. Ed. 2d 453 (2018).

WARRANTLESS SEARCH AND SEIZURE

An officer making an arrest at a suspect's home pursuant to a warrant, after the suspect opens the door, can arrest for a narcotics violation based on narcotics in plain sight in the room. Schill v. State, 50 Wis. 2d 473, 184 N.W.2d 858.

Police officers properly in an apartment where drugs were discovered may pat down the pockets of a stranger who walks in and may seize a large, hard object felt, in order to protect themselves. State v. Chambers, 55 Wis. 2d 289, 198 N.W.2d 377.

After stopping and frisking the defendant properly, discovering several cartridges, the police were justified in looking under the car seat and in the glove compartment for a gun. State v. Williamson, 58 Wis. 2d 514, 206 N.W.2d 613.

When a valid arrest is made without a warrant, the officer may conduct a limited search of the premises. Leroux v. State, 58 Wis. 2d 671, 207 N.W.2d 589.

When an officer, mistakenly believing in good faith that the occupants of a car had committed a crime, stopped the car and arrested the occupants, the arrest was illegal, but a shotgun in plain sight on the back seat could be seized and used in evidence. State v. Taylor, 60 Wis. 2d 506, 210 N.W.2d 873.

When officers stopped a car containing three men meeting the description of robbery suspects within seven minutes after the robbery and found a gun on one, they could properly search the car for other guns and money. State v. Russell, 60 Wis. 2d 712, 211 N.W.2d 637.

Given a valid arrest, a search is not limited to weapons or evidence of a crime, nor need it be directed to or related to the purpose of the arrest, because one who has contraband or evidence of a crime on his or her person travels at his or her own risk when he or she is validly arrested for any reason, hence the reasonableness of a search incident to the arrest no longer depends on the purpose of the search in relation to the object of the arrest. State v. Mabra, 61 Wis. 2d 613, 213 N.W.2d 545.

Under the "open fields" doctrine, evidence that a body was found 450 feet from the defendant's house during random digging done at the direction of the sheriff acting without a warrant was properly admitted into evidence. Conrad v. State, 63 Wis. 2d 616, 218 N.W.2d 252.

Seizure by police of a large quantity of marijuana from the defendant's 155−acre farm did not contravene their 4th−amendment rights. State v. Gedko, 63 Wis. 2d 644, 218 N.W.2d 249.

The search of the defendant's wallet after his arrest on unrelated charges that led to the discovery of a newspaper article about a crime that, after questioning, the defendant admitted to committing was proper in order to find weapons or contraband that might have been hidden there. State v. Mordeszewski, 68 Wis. 2d 649, 229 N.W.2d 642.

The seizure by police officers of a box of cartridges from under the edge of a couch on which the defendant was resting at the time of his arrest was proper under the plain−view doctrine, since if police have a prior justification to be present in a position to see an object in plain view and its discovery is inadvertent, the object may be seized, and the use of a flashlight by one of the officers did not defeat the inadvertence requirement. Sanders v. State, 69 Wis. 2d 242, 230 N.W.2d 845.

A warrantless search of 2 persons for concealed weapons was reasonable when an armed robbery with a sawed−off shotgun had been committed a short time before by two men, one of whom matched the description given for one of the robbers. Penister v. State, 74 Wis. 2d 94, 246 N.W.2d 115.

The doctrine of exigency is founded upon actions of the police that are considered reasonable. The element of reasonableness is supplied by a compelling need to assist the victim or apprehend those responsible, not the need to secure evidence. West v. State, 74 Wis. 2d 390, 246 N.W.2d 675.

A warrantless search by a probation officer was constitutionally permissible when probable cause existed for the officer to attempt to determine whether the probationer had violated the terms of probation. State v. Tarrell, 74 Wis. 2d 647, 247 N.W.2d 696.

The plain view doctrine does not apply if the observation is not made inadvertently or if the officer does not have the right to be in the place from which the observation is made. State v. Monahan, 76 Wis. 2d 387, 251 N.W.2d 421.

Warrantless searches of automobiles are discussed. Thompson v. State, 83 Wis. 2d 134, 265 N.W.2d 467 (1978).

The criteria used as justification for warrantless searches of students by teachers are discussed. Interest of L.L. v. Washington County Cir. Ct. 90 Wis. 2d 585, 280 N.W.2d 343 (Ct. App. 1979).

A warrantless entry under the emergency rule justified a subsequent entry that did not expand the scope or nature of the original entry. La Fournier v. State, 91 Wis. 2d 61, 280 N.W.2d 746 (1979).

An investigatory stop−and−frisk for the sole purpose of discovering a suspect's identity was lawful under the facts of the case. State v. Flynn, 92 Wis. 2d 427, 285 N.W.2d 710 (1979).

Furnishing police with the bank records of a depositor who had victimized the bank was not an unlawful search and seizure. State v. Gilbertson, 95 Wis. 2d 102, 288 N.W.2d 877 (Ct. App. 1980).

Evidence obtained during a mistaken arrest is admissible as long as the arresting officer acted in good faith and had reasonable articulable grounds to believe that the suspect was the intended arrestee. State v. Lee, 97 Wis. 2d 679, 294 N.W.2d 547 (Ct. App. 1980).

A warrantless entry into the defendant's home was validated by the emergency doctrine when the officer reasonably believed lives were threatened. State v. Kraimer, 99 Wis. 2d 306, 298 N.W.2d 568 (1980).

The warrantless search of a fisherman's truck by state conservation wardens under statutory inspection authority was presumptively reasonable. State v. Erickson, 101 Wis. 2d 224, 303 N.W.2d 850 (Ct. App. 1981).

A detained suspect's inadvertent exposure of contraband was not an unreasonable search. State v. Goebel, 103 Wis. 2d 203, 307 N.W.2d 915 (1981).

Under *Michigan v. Tyler,* the warrantless search of an entire building on the morning after a localized fire was reasonable as it was the continuation of the prior night's investigation that had been interrupted by heat and nighttime circumstances. State v. Monosso, 103 Wis. 2d 368, 308 N.W.2d 891 (Ct. App. 1981).

A warrantless entry into a home was validated by the emergency doctrine when an official's reasonable actions were motivated solely by the perceived need to render immediate aid or assistance, not by the need or desire to obtain evidence. State v. Boggess, 115 Wis. 2d 443, 340 N.W.2d 516 (1983).

Police having probable cause to believe a vehicle contains criminal evidence may search the vehicle without a warrant or exigent circumstances. State v. Tompkins, 144 Wis. 2d 116, 423 N.W.2d 823 (1988).

Fire fighting presents exigent circumstances justifying a warrantless entry. A fire fighter may contact police to inform them of the presence of illegal possessions in plain view. A subsequent warrantless search and seizure is proper. State v. Gonzalez, 147 Wis. 2d 165, 432 N.W.2d 651 (Ct. App. 1988).

A reasonable police inventory search is an exception to the warrant requirement. At issue is whether an inventory was a pretext for an investigative search. State v. Axelson, 149 Wis. 2d 339, 441 N.W.2d 259 (Ct. App. 1989).

When effecting a lawful custodial arrest of an individual in his home, a law enforcement officer may conduct a search of closed areas within the immediate area of the arrestee even though the search imposes an infringement on the arrestee's privacy interests. State v. Murdock, 155 Wis. 2d 217, 455 N.W.2d 618 (1990).

Under the circumstances presented, an officer properly conducted an inventory search resulting in the discovery of contraband in a purse left in a police car because the search was conducted pursuant to proper department policy. State v. Weide, 155 Wis. 2d 537, 455 N.W.2d 899 (1990).

Police corroboration of innocent details of an anonymous tip may give rise to reasonable suspicion to make a stop under the totality of circumstances. A suspect's actions need not be inherently suspicious in and of themselves. State v. Richardson, 156 Wis. 2d 128, 456 N.W.2d 830 (1990).

The validity of a "Good Samaritan" stop or entry requires that the officer had the motive only to assist and not to search for evidence, had a reasonable belief that the defendant needed help, and once the entry was made absent probable cause, that objective evidence existed giving rise to the investigation of criminal behavior. State v. Dunn, 158 Wis. 2d 138, 462 N.W.2d 538 (Ct. App. 1990).

The reasonableness of a search does not come into question unless a person had a reasonable privacy expectation. There is no reasonable expectation of privacy in TDD communications made from the dispatch area of a sheriff's department. State v. Rewolinski, 159 Wis. 2d 1, 464 N.W.2d 401 (1990).

A parolee's liberty is conditional. A judicially issued warrant is not required for the seizure of an alleged parole violator in his home. State v. Pittman, 159 Wis. 2d 764, 465 N.W.2d 245 (Ct. App. 1990).

The evidentiary search of a person not named in a search warrant, but present during the search of a residence reasonably suspected of being a drug house, was reasonable. State v. Jeter, 160 Wis. 2d 333, 466 N.W.2d 211 (Ct. App. 1991).

A warrantless search of an apartment for evidence of occupancy when the police reasonably believed the tenant had vacated and the occupants were not legitimately on the premises was not unreasonable. The defendant had no reasonable expectation of privacy in the apartment or in property kept there. State v. Whitrock, 161 Wis. 2d 960, 468 N.W.2d 696 (1991).

Blood may be drawn in a search incident to an arrest if police have reasonable suspicion that blood contains evidence of a crime. State v. Seibel, 163 Wis. 2d 164, 471 N.W.2d 226 (1991). But see Missouri v. McNeely, 569 U.S. 141, 133 S. Ct. 1552, 185 L. Ed. 2d 696 (2013); Birchfield v. North Dakota, 579 U.S. 438, 136 S. Ct. 2160, 195 L. Ed 2d 560 (2016).

When a convicted defendant is awaiting sentencing for a drug related offense and probation is a sentencing option, the judge may order, without a warrant, probable cause, or individualized suspicion, that the defendant submit to urinalysis to determine if drugs are present. State v. Guzman, 166 Wis. 2d 577, 480 N.W.2d 446 (1992).

A blood test not taken in compliance with the implied consent law is admissible if the taking of the sample meets 4th amendment reasonableness standards. Under *Schmerber*, 384 U.S. 757, the drawing of a blood sample against a person's will is reasonable when: 1) drawn incident to an arrest; 2) there is a clear indication that the desired evidence will be found in the blood sample; and 3) exigent circumstances exist. State v. Krause, 168 Wis. 2d 578, 484 N.W.2d 347 (Ct. App. 1992). But see Missouri v. McNeely, 569 U.S. 141, 133 S. Ct. 1552, 185 L. Ed. 2d 696 (2013); Birchfield v. North Dakota, 579 U.S. 438, 136 S. Ct. 2160, 195 L. Ed 2d 560 (2016).

The question of whether the forcible extraction of a blood sample is a reasonable search by 4th amendment standards is not limited to whether the force is necessary to accomplish a legitimate police objective. Instead, whether the force used is excessive is determined by an evaluation of whether the officers' actions are objectively reasonable in light of the facts and circumstances confronting the officers. The court judges the reasonableness of a questioned action by balancing its intrusion on the individual's 4th amendment interests against its promotion of legitimate governmental interests and from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. State v. Krause, 168 Wis. 2d 578, 484 N.W.2d 347 (Ct. App. 1992).

The exception allowing the warrantless search of automobiles is not extended to a camper trailer unhitched from a towing vehicle. State v. Durbin, 170 Wis. 2d 475, 489 N.W.2d 655 (Ct. App. 1992).

A warrantless search of a commercial premises without the owner's consent when a licensing ordinance provided that the licensed premises "shall be open to inspection at any time" was illegal. State v. Schwegler, 170 Wis. 2d 487, 490 N.W.2d 292 (Ct. App. 1992).

The frisk of a person not named in a search warrant during the execution of the warrant was reasonable when the occupants of the residence were very likely to be involved in drug trafficking. Drugs felt in a pocket during the frisk were lawfully seized when the officer had probable cause to believe there was a connection between what was felt and criminal activity. State v. Guy, 172 Wis. 2d 86, 492 N.W.2d 311 (1992).

A warrantless protective sweep of a residence incident to an arrest requires the police to have a reasonable suspicion based on articulable facts that the residence harbors an individual posing a danger to the officers. State v. Kruse, 175 Wis. 2d 89, 499 N.W.2d 185 (Ct. App. 1993).

The 6−factor analysis for use in determining the reasonableness of an investigatory stop is discussed. State v. King, 175 Wis. 2d 146, N.W.2d (Ct. App. 1993).

The rule that a judicial determination of probable cause to support a warrantless arrest must be made within 48 hours applies to Wisconsin. The failure to comply did not require suppression of evidence not obtained because of the delay where probable cause to arrest was present. State v. Koch, 175 Wis. 2d 684, 499 N.W.2d 153 (1993).

Students have no reasonable privacy expectation in lockers when a school adopts a written policy retaining ownership and possessory control of the lockers. Interest of Isiah B. 176 Wis. 2d 639, 500 N.W.2d 637 (1993).

An officer's step onto the threshold of the defendant's home constituted an entry subject to constitutional protection. State v. Johnson, 177 Wis. 2d 224, 501 N.W.2d 876 (Ct. App. 1993).

A defendant under lawful arrest has a diminished privacy interest in personal property inventoried by jail authorities and a warrantless search of the property when there is probable cause to believe it contains evidence is valid. State v. Jones, 181 Wis. 2d 194, 510 N.W.2d 784 (Ct. App. 1993).

See also State v. Betterly, 183 Wis. 2d 165, 515 N.W.2d 911 (Ct. App. 1994).

A warrantless entry by uniformed officers to make arrests after undercover agents gained permissive entrance to the premises was justified under the consent exception and no exigent circumstances were required. State v. Johnston, 184 Wis. 2d 794, 518 N.W.2d 759 (1994).

A non−parolee living with a parolee has a legitimate expectation of privacy in shared living quarters, but a warrantless search authorized as a condition of parole can reasonably extend to all areas in which the parolee and non−parolee enjoy common authority. Evidence found in such a search may be used against the non−parolee. State v. West, 185 Wis. 2d 68, 517 N.W.2d 482 (1994).

The failure to conduct a probable cause hearing within 48 hours of arrest is not a jurisdictional defect and not grounds for dismissal with prejudice or voiding of a subsequent conviction unless the delay prejudiced the defendant;'s right to present a defense. State v. Golden, 185 Wis. 2d 763, 519 N.W.2d 659 (Ct. App. 1994).

A determination that an area was within a defendant's immediate control at the time of arrest does not give police authority to generally search the premises. Only a limited search is justified. State v. Angiolo, 186 Wis. 2d 488, N.W.2d 923 (Ct. App. 1994).

The plain view exception applies if the following criteria are met: 1) the officer has prior justification for being present; 2) the evidence is in plain view and its discovery inadvertent; and 3) the seized item and facts known by the officer at the time of seizure provide probable cause to believe there is a connection between a crime and the evidence. State v. Angiolo, 186 Wis. 2d 488, N.W.2d 923 (Ct. App. 1994).

Unlike private homes, warrantless inspections of commercial premises are not necessarily unreasonable. A warrantless inspection of a dairy farm under authority of ss. 93.08, 93.15 (2), 97.12 (1) and related administrative rules made without prior notice and without the owner being present was not unconstitutional. Because the administrative rules govern operations, equipment, and processes not typically conducted in residential areas, the rules and statutes sufficiently preclude making warrantless searches of residences. Lundeen v. Dept. of Agriculture, 189 Wis. 2d 255, 525 N.W.2d 758 (1994).

An arrest warrant was not legal authority to enter and search the home of a third party based on an officer's simple belief that the subject of the warrant might be there. The mere fact that the subject could leave was not an exigent circumstance justifying the warrantless search when the warrant was a pick−up warrant for failure to pay a traffic fine. State v. Kiper, 193 Wis. 2d 69, 532 N.W.2d 698 (1995).

Suppression of evidence is not required when a law enforcement officer obtains evidence outside his or her jurisdiction. Any jurisdictional transgression violates the appropriate jurisdiction's authority, not the defendant's rights. State v. Mieritz, 193 Wis. 2d 571, 534 N.W.2d 632 (Ct. App. 1995).

A warrantless search of a vehicle was constitutional when the defendant fled the vehicle to avoid arrest. The defendant did not have a reasonable expectation of privacy in the vehicle. State v. Roberts, 196 Wis. 2d 445, 538 N.W.2d 825 (Ct. App. 1995), 94−2583.

To find a pat−down search to be reasonable requires the officer to have a reasonable suspicion that a suspect is armed, looking at the totality of the circumstances. The officer's perception of the area as a high−crime area, the time of day, and the suspect's nervousness are all factors that may be considered. State v. Morgan, 197 Wis. 2d 200, 539 N.W.2d 887 (1995), 93−2089.

A probation officer may conduct a warrantless search. That the underlying conviction is subsequently overturned does not retroactively invalidate the search. State v. Angiolo, 207 Wis. 2d 561, 558 N.W.2d 701 (Ct. App. 1996), 96−0099.

An initial traffic stop is not unlawfully extended by asking the defendant if he has drugs or weapons and requesting permission to search. When there is justification for the initial stop, it is the extension of the stop beyond the point reasonably justified by the stop and not the type of questions asked that render a stop unconstitutional. State v. Gaulrapp, 207 Wis. 2d 600, 558 N.W.2d 696 (Ct. App. 1996), 96−1094.

An officer has the right to remain at an arrested person's elbow at all times. When an officer accompanied a juvenile in his custody into the juvenile's house, leaving the juvenile's "elbow" to enter a bedroom where incriminating evidence was found, monitoring of the juvenile stopped and an unconstitutional search occurred. State v. Dull, 211 Wis. 2d 652, 565 N.W.2d 575 (Ct. App. 1997), 96−1744.

A threat to the safety of the suspect or others is an exigent circumstance justifying the warrantless entry of a residence. The mere presence of firearms does not create exigent circumstances. When conducting the unannounced warrantless entry creates the potential danger, that conduct cannot justify the warrantless entry. State v. Kiekhefer, 212 Wis. 2d 460, 569 N.W.2d 316 (Ct. App. 1997), 96−2052.

The likelihood that evidence will be destroyed is an exigent circumstance justifying the warrantless entry of a residence. The mere presence of contraband does not create exigent circumstances. State v. Kiekhefer, 212 Wis. 2d 460, 569 N.W.2d 316 (Ct. App. 1997), 96−2052.

Detaining a person at his home and transporting him about one mile to the scene of an accident in which he was involved was an investigative stop and not an arrest, moved the person within the vicinity of the stop within the meaning of s. 968.24, and was a reasonable part of an ongoing accident investigation. State v. Quartana, 213 Wis. 2d 440, 570 N.W.2d 618 (Ct. App. 1997), 97−0695.

The warrantless search of the defendant's purse when it was being returned to her while still in custody was authorized when the search would have been authorized at the time of the arrest and when the return of the purse could have given the defendant access to a weapon or evidence. State v. Wade, 215 Wis. 2d 684, 573 N.W.2d 228 (Ct. App. 1998), 97−0193.

When a third party lacks actual common authority to consent to a search of a defendant's residence, the police may rely on the third party's apparent authority, if that reliance is reasonable. There is no presumption of common authority to consent to a search and the police must make sufficient inquiry to establish apparent authority. State v. Kieffer, 217 Wis. 2d 531, 577 N.W.2d 352 (1998), 96−0008.

A warrantless entry may be justified when police engage in a bona fide community caretaker activity, although the ultimate test is reasonableness, considering the degree of public interest and exigency of the situation, the circumstances surrounding the search, whether an automobile is involved, and whether there are alternatives to entry. State v. Paterson, 220 Wis. 2d 526, 583 N.W.2d 190 (Ct. App. 1998), 97−2066. See also State v. Ferguson, 2001 WI App 102, 244 Wis. 2d 17, 629 N.W.2d 788, 00−0038; State v. Ziedonis, 2005 WI App 249, 287 Wis. 2d 831, 707 N.W.2d 565, 04−2888. But see Caniglia v. Strom, 593 U.S. ___, 141 S. Ct. 1596, 209 L. Ed. 2d 604 (2021).

Reasonable suspicion required in a *Terry* investigative search is a common sense test of what under the circumstances a reasonable police officer would reasonably suspect in light of his or her experience. Police in an area known for drug dealing were justified to stop a driver when at nearly the same time they observed a woman approach then turn from the driver's parked car when she seemed to notice the police and the driver immediately exited the parking lot he was in. State v. Amos, 220 Wis. 2d 793, 584 N.W.2d 170 (Ct. App. 1998), 97−3044.

There is an expectation of privacy in commercial property that is applicable to administrative inspections. Because administrative inspections are not supported by probable cause, they will not be reasonable if, instead of being conducted to enforce a regulatory scheme, they are conducted as a pretext to obtain evidence of criminal activity. State v. Mendoza, 220 Wis. 2d 803, 584 N.W.2d 174 (Ct. App. 1998), 97−0952. Reversed on other grounds. 227 Wis. 2d 838, 596 N.W.2d 736 (1999), 97−0952.

There is no reasonable expectation of privacy in a hospital emergency or operating room. An officer who was present, with the consent of hospital staff, in an operating room during an operation and collected, as evidence, cocaine removed from an unconscious defendant's intestine did not conduct a search and did not make an unreasonable search. State v. Thompson, 222 Wis. 2d 179, 585 N.W.2d 905 (Ct. App. 1998), 97−2744.

A warrant authorizing the search of a particularly described premises may permit the search of vehicles owned or controlled by the owner of, and found on, the premises. State v. O'Brien, 223 Wis. 2d 303, 588 N.W.2d 8 (1999), 96−3028.

The "emergency doctrine" justifies a warrantless search when an officer is actually motivated by a perceived need to render aid and a reasonable person under the circumstances would have thought an emergency existed. State v. Richter, 224 Wis. 2d 814, 592 N.W.2d 310 (Ct. App. 1999), 98−1332.

Reasonable suspicion justifying an investigative stop may be based on an anonymous tip that does not predict future behavior. The key concern is the tipster's veracity. Officers' corroboration of readily observable information supports a finding that because the tipster was correct about innocent activities, he or she is probably correct about the ultimate fact of criminal activity. State v. Williams, 225 Wis. 2d 159, 591 N.W.2d 823 (1999), 96−1821.

A traffic stop must be based on probable cause, not reasonable suspicion. If the facts support a violation only under a legal misinterpretation, no violation has occurred, and by definition there can be no probable cause that a violation has occurred. State v. Longcore, 226 Wis. 2d 1, 594 N.W.2d 412 (Ct. App. 1999), 98−2792.

Being in a high crime area, making brief contact with a car, and hanging around a neighborhood, each standing alone would not create reasonable suspicion justifying a *Terry* stop. When these events occurred in sequence and were considered with the officers training and experience, the reputation of the neighborhood, and the time of day, there was enough to create reasonable suspicion. State v. Allen, 226 Wis. 2d 66, 593 N.W.2d 504 (Ct. App. 1999), 98−1690.

A picture of a mushroom on the defendant's wallet, his appearance of nervousness, and the lateness of the hour were insufficient factors to extend a stop. State v. Betow, 226 Wis. 2d 90, 593 N.W.2d 499 (Ct. App. 1999), 98−2525.
See also State v. Gammons, 2001 WI App 36, 241 Wis. 2d 296, 625 N.W.2d 623, 00−0377.
See also State v. Arias, 2008 WI 84, 311 Wis. 2d 358, 752 N.W.2d 748, 06−0974.

The owner of a commercial property has a reasonable expectation of privacy in those areas immediately surrounding the property only if affirmative steps have been taken to exclude the public. State v. Yakes, 226 Wis. 2d 425, 595 N.W.2d 108 (Ct. App. 1999), 98−0470.

A home's backyard and back door threshold were within the home's curtilage; an officer's warrantless entry was unlawful and evidence seized as a result of the entry was subject to suppression. State v. Wilson, 229 Wis. 2d 256, 600 N.W.2d 14 (Ct. App. 1999), 98−3131.

When the 2 other occupants of a vehicle had already been searched without any drugs being found, a search of the third occupant based solely on the odor of marijuana was made with probable cause and was reasonable. State v. Mata, 230 Wis. 2d 567, 602 N.W.2d 158 (Ct. App. 1999), 98−2895.

A probation officer may search a probationer's residence without a warrant if the officer has reasonable grounds to believe the terms of probation are being violated, but the officer may not conduct a warrantless search as a subterfuge to further a criminal investigation to help the police evade the usual warrant and probable cause requirements. State v. Hajicek, 230 Wis. 2d 697, 602 N.W.2d 93 (Ct. App. 1999), 98−3485.

The risk that evidence will be destroyed is an exigent circumstance that may justify a warrantless search. When suspects are aware of the presence of the police, that risk increases. The seriousness of the offense as determined by the overall penalty structure for all potentially chargeable offenses also affects whether exigent circumstances justify a warrantless search. State v. Hughes, 2000 WI 24, 233 Wis. 2d 280, 607 N.W.2d 621, 97−1121.

Police officers do not need to choose between completing a protective frisk and handcuffing a suspect in a field investigation. They may do both. State v. McGill, 2000 WI 38, 234 Wis. 2d 560, 609 N.W.2d 795, 98–1409.

A frisk of a motor vehicle passenger that occurred 25 minutes after the initial stop that was a precautionary measure, not based on the conduct or attributes of the person frisked, was unreasonable. State v. Mohr, 2000 WI App 111, 235 Wis. 2d 220, 613 N.W.2d 186, 99–2226.

There are 4 well–recognized categories of exigent circumstances that have been held to authorize a law enforcement officer's warrantless entry into a home: 1) hot pursuit of a suspect, 2) a threat to the safety of a suspect or others, 3) a risk that evidence will be destroyed, and 4) a likelihood that the suspect will flee. The state bears the burden of proving the existence of exigent circumstances. State v. Richter, 2000 WI 58, 235 Wis. 2d 524, 612 N.W.2d 29, 98–1332.

"Hot pursuit," defined as immediate or continuous pursuit of a suspect from a crime scene is an exigent circumstance justifying a warrantless search. An officer is not required to personally observe the crime or fleeing suspect. State v. Richter, 2000 WI 58, 235 Wis. 2d 524, 612 N.W.2d 29, 98–1332.

When a vehicle passenger has been seized pursuant to a lawful traffic stop, the seizure does not become unreasonable because an officer asks the passenger for identification. The passenger is free to refuse to answer, and refusal will not justify prosecution nor give rise to reasonable suspicion of wrongdoing. However, if the passenger chooses to answer falsely, the passenger can be charged with obstruction. State v. Griffith, 2000 WI 72, 236 Wis. 2d 48, 613 N.W.2d 72, 98–0931.

The property of a passenger in a motor vehicle may be searched when the police have validly arrested the driver but do not have a reasonable basis to detain or probable cause to arrest the passenger. State v. Pallone, 2000 WI 77, 236 Wis. 2d 162, 613 N.W.2d 568, 98–0896.

The search of a crawl space in a ceiling, which was located in an area where police had heard much activity, was large enough to hide a person, and was secured by screws that had to be removed with a screwdriver, was a reasonable "protective sweep" to search for persons who would pose a threat to the police as they executed an arrest warrant for a murder suspect. State v. Blanco, 2000 WI App 119, 237 Wis. 2d 395, 614 N.W.2d 512, 98–3153.

A police officer performing a *Terry* stop and requesting identification could perform a limited search for identifying papers when the information received by the officer was not confirmed by police records, the intrusion on the suspect was minimal, the officer observed that the suspect's pockets were bulging, and the officer had experience with persons who claimed to have no identification when in fact they did. State v. Black, 2000 WI App 175, 238 Wis. 2d 203, 617 N.W.2d 210, 99–1686.

The *Paterson* community caretaker exception justified a warrantless entry during an emergency detention of a mentally ill person who was threatening suicide. A protective sweep of the premises while acting as a community caretaker was reasonable. State v. Horngren, 2000 WI App 177, 238 Wis. 2d 347, 617 N.W.2d 508, 99–2065. But see Caniglia v. Strom, 593 U.S. ___, 141 S. Ct. 1596, 209 L. Ed. 2d 604 (2021).

A warrantless blood draw is permissible when: 1) the blood is taken to obtain evidence of intoxication from a person lawfully arrested; 2) there is a clear indication evidence of intoxication will be produced; 3) the method used is reasonable and performed in a reasonable manner; and 4) the arrestee presents no reasonable objection. State v. Thorstad, 2000 WI App 199, 238 Wis. 2d 666, 618 N.W.2d 240, 99–1765. But see Birchfield v. North Dakota, 579 U.S. 438, 136 S. Ct. 2160, 195 L. Ed 2d 560 (2016).

That a driver stopped at a stop sign for a few seconds longer than normal, that it was late in the evening, and that there was little traffic did not give rise to a reasonable suspicion that the driver was committing an unlawful act. State v. Fields, 2000 WI App 218, 239 Wis. 2d 38, 619 N.W.2d 279, 00–0694.

A warrantless entry need not be subjectively motivated solely by a perceived need to render aid and assistance in order for the "emergency doctrine" to apply. A dual motivation of investigating a potential crime and rendering aid and assistance may be present. State v. Rome, 2000 WI App 243, 239 Wis. 2d 491, 620 N.W.2d 225, 00–0796.

Whether a search is a probation search, which may be conducted without a warrant, or a police search, which may not, is a question of constitutional fact to be reviewed in a 2–step review of historical and constitutional fact. A determination of reasonableness of the search must also be made. A search is reasonable if the probation officer has reasonable grounds to believe that the probationer has contraband. Cooperation with police officers does not change a probation search into a police search. State v. Hajicek, 2001 WI 3, 240 Wis. 2d 349, 620 N.W.2d 781, 98–3485.

In light of the reduced expectation of privacy that applies to property in an automobile, the search of a vehicle passenger's jacket based upon the driver's consent to the search of the vehicle was reasonable. State v. Matejka, 2001 WI 5, 241 Wis. 2d 52, 621 N.W.2d 891, 99–0070.

Before the government may invade the sanctity of the home, it must demonstrate exigent circumstances that overcome the presumption of unreasonableness that attaches to all warrantless home entries. Reluctance to find an exigency is especially appropriate when the underlying offense for which there is probable cause to arrest is relatively minor. State v. Kryzaniak, 2001 WI App 44, 241 Wis. 2d 358, 624 N.W.2d 389, 00–1149.

Under *Florida v. J.L,* an anonymous tip giving rise to reasonable suspicion must bear indicia of reliability. That the tipster's anonymity is placed at risk indicates that the informant is genuinely concerned and not a fallacious prankster. Corroborated aspects of the tip also lend credibility. The corroborated actions of the suspect must be inherently criminal in and of themselves. State v. Williams, 2001 WI 21, 241 Wis. 2d 631, 623 N.W.2d 106, 96–1821.

An anonymous tip regarding erratic driving from another driver calling from a cell phone contained sufficient indicia of reliability to justify an investigative stop when the informant was exposed to possible identification, and therefore possible arrest if the tip proved false; the tip reported contemporaneous and verifiable observations regarding the driving, location, and vehicle; and the officer verified many of the details in the tip. That the tip reasonably suggested intoxicated driving created an exigency strongly in favor of immediate police investigation without the necessity that the officer personally observe erratic driving. State v. Rutzinski, 2001 WI 22, 241 Wis. 2d 729, 623 N.W.2d 516, 98–3541.

The state constitution does not provide greater protection under the automobile exception for warrantless searches than the 4th amendment. The warrantless search of a vehicle is allowed when there is probable cause to search the vehicle and the vehicle is mobile. The exception apples to vehicles that are not in public places. There is no requirement that obtaining a warrant be impracticable. State v. Marquardt, 2001 WI App 219, 247 Wis. 2d 765, 635 N.W.2d 188, 01–0065.

Whether exigent circumstances existed justifying a warrantless entry to prevent destruction of evidence after the defendant saw, and retreated from, a plain–clothes officer was not a question of whether the defendant knew that the detective was a police officer, but whether it was reasonable for the officer to believe that he had been identified and that the suspect would destroy evidence as a consequence. State v. Garrett, 2001 WI App 240, 248 Wis. 2d 61, 635 N.W.2d 615, 00–3183.

For the warrantless search of an area made incident to the making of an arrest to be justified as a protective sweep to protect the safety of police officers where the area searched was not in the immediate vicinity of where the arrest was made, there must be articulable facts that would warrant a reasonably prudent officer to believe that the area harbored an individual posing a danger to the officers. State v. Garrett, 2001 WI App 240, 248 Wis. 2d 61, 635 N.W.2d 615, 00–3183.

When a caller identifies himself or herself by name, placing his or her anonymity at risk, and the totality of the circumstances establishes a reasonable suspicion that criminal activity may be afoot, the police may execute a lawful investigative stop. Whether the caller gave correct identifying information or the police ultimately could have verified the information, the caller, by providing the information, risked that his or her identity would be discovered and cannot be considered anonymous. State v. Sisk, 2001 WI App 182, 247 Wis. 2d 443, 634 N.W.2d 877, 00–2614.

The need to transport a person in a police vehicle is not an exigency that justifies a search for weapons. More specific and articulable facts must be shown to support a *Terry* frisk. While a routine pat–down of a person before a police officer places the person in a squad car is wholly reasonable, evidence gleaned from the search will only be admissible if there are particularized issues of safety concerns about the defendant. State v. Hart, 2001 WI App 283, 249 Wis. 2d 329, 639 N.W.2d 213, 00–1444.

Although no traffic violation occurred, a traffic stop to make contact with the defendant was reasonable when police had reasonable suspicion that the defendant had previously been involved in a crime and the defendant had intentionally avoided police attempts to engage her in voluntary conversation. State v. Olson, 2001 WI App 284, 249 N.W.2d 391, 639 N.W.21d 207, 01–0433.

It was reasonable to conduct a *Terry* search of a person who knocked on the door of a house while it was being searched for drugs pursuant to a warrant. State v. Kolp, 2002 WI App 17, 250 Wis. 2d 296, 640 N.W.2d 551, 01–0549.

A warrantless blood draw by a physician in a jail setting may be unreasonable if it invites an unjustified element of personal risk of pain and infection. Absent evidence of those risks, a blood draw under those circumstances was reasonable. State v. Daggett, 2002 WI App 32, 250 Wis. 2d 112, 640 N.W.2d 546, 01–1417.

Terry applies to confrontations between the police and citizens in public places only. For private residences and hotels, in the absence of a warrant, the police must have probable cause and exigent circumstances or consent to justify an entry. Reasonable suspicion is not a prerequisite to an officer's seeking consent to enter a private dwelling. If the police have lawfully entered a dwelling with valid consent and have a reasonable suspicion that a suspect is armed, a *Terry* pat down for weapons is permissible. State v. Stout, 2002 WI App 41, 250 Wis. 2d 768, 641 N.W.2d 474, 01–0904.

A warrantless search of a home is presumptively unreasonable, but exigent circumstances that militate against delay in getting a warrant can justify immediate entry and search. Whether the officers acted reasonably in entering the house without a warrant is measured against what a reasonable police officer would reasonably believe under the circumstances. State v. Londo, 2002 WI App 90, 252 Wis. 2d 731, 643 N.W.2d 869, 01–1015.

Canine sniffs are not searches within the meaning of the 4th amendment, and police are not required to have probable cause or reasonable suspicion before walking a dog around a vehicle for the purpose of detecting drugs in the vehicle's interior. A dog's alert on an object provides probable cause to search that object, provided that the dog is trained in narcotics detection and has demonstrated a sufficient level of reliability in detecting drugs in the past and the officer with the dog is familiar with how it reacted when it smelled contraband. State v. Miller, 2002 WI App 150, 256 Wis. 2d 80, 647 N.W.2d 348, 01–1993.

A reasonable probation search is lawful even if premised, in part, on information obtained in violation of the 4th amendment by law enforcement. State v. Wheat, 2002 WI App 153, 256 Wis. 2d 270, 647 N.W.2d 441, 01–2224.

Evidence from a warrantless nonconsensual blood draw is admissible when: 1) the blood is drawn to obtain evidence of intoxication from a person lawfully arrested for drunk–driving; 2) there is a clear indication that the blood draw will produce evidence of intoxication; 3) the method used to take the blood sample is reasonable and is performed reasonably; and 4) the arrestee presents no reasonable objection to the blood draw. In the absence of an arrest, probable cause to believe blood currently contains evidence of a drunk–driving–related violation satisfies the first and second prongs. State v. Erickson, 2003 WI App 43, 260 Wis. 2d 279, 659 N.W.2d 407, 01–3367. But see Birchfield v. North Dakota, 579 U.S. 438, 136 S. Ct. 2160, 195 L. Ed 2d 560 (2016).

When an unlocked vehicle was not 1) involved in an accident; 2) interrupting the flow of traffic; 3) disabled or damaged; 4) violating parking ordinances; or 5) in any way jeopardizing the public safety or the efficient movement of vehicular traffic, it was unreasonable to impound and tow the vehicle to ensure that the vehicle and any property inside it would not be stolen when there were reasonable alternatives to protect the vehicle. Evidence seized in an "inventory search" of the vehicle was inadmissible. State v. Clark, 2003 WI App 121, 265 Wis. 2d 557, 666 N.W.2d 112, 02–2195.

Before the government may invade the sanctity of the home without a warrant, the government must demonstrate not only probable cause but also exigent circumstances that overcome the presumption of unreasonableness. When a police officer placed his foot in a doorway to prevent the defendant from closing the door, the act constituted an entry into the home. A warrantless home arrest cannot be upheld simply because evidence of the suspect's blood alcohol level might have dissipated

while the police obtained a warrant. State v. Larson, 2003 WI App 150, 266 Wis. 2d 236, 668 N.W.2d 338, 02–2881.

The propriety of a warrantless search of a person's garbage outside the persons' home comes under a two–part test: 1) whether the individual by his or her conduct has exhibited an actual, subjective expectation of privacy, and 2) whether that expectation is justifiable in that it is one which society will recognize as reasonable. Consideration of curtilage or open fields appropriately falls within an expectation–of–privacy analysis and is not a separate factor. The defendant did not have a reasonable expectation of privacy in garbage placed in a dumpster not set out for collection located down a private driveway marked "Private Property." State v. Sigarroa, 2004 WI App 16, 269 Wis. 2d 234, 674 N.W.2d 894, 03–0703.

When the police are lawfully on the suspect's premises by virtue of a valid search warrant, they may make a warrantless arrest of the suspect prior to the search if the arrest is supported by probable cause. State v. Cash, 2004 WI App 63, 271 Wis. 2d 451, 677 N.W.2d 709, 03–1614.

A law enforcement officer acted reasonably when during a routine traffic stop he requested the passengers, as well as the driver, to exit the vehicle and individually asked them questions outside the scope of the initial traffic stop after officer had become aware of specific and articulable facts giving rise to the reasonable suspicion that a crime had been, was being, or was about to be committed. State v. Malone, 2004 WI 108, 274 Wis. 2d 540, 683 N.W.2d 1, 02–2216.

To perform a protective search for weapons, an officer must have reasonable suspicion that a person may be armed and dangerous. A court may consider an officer's belief that his, her, or another's safety is threatened in finding reasonable suspicion, but such a belief is not a prerequisite to a valid search. There is no per se rule justifying a search any time an individual places his or her hands in his or her pockets contrary to police orders. The defendant's hand movements must be considered under the totality of the circumstances of the case. State v. Kyles, 2004 WI 15, 269 Wis. 2d 1, 675 N.W.2d 449, 02–1540.

Whether a warrantless home entry is justified based on the need to render assistance or prevent harm is judged by an objective test of whether a police officer under the circumstances known to the officer at the time of entry reasonably believes that delay in procuring a warrant would gravely endanger life. In addition to the circumstances known to the police at the time of entry, a court may consider the subjective beliefs of police officers involved, but only insofar as such evidence assists the court in determining objective reasonableness. State v. Leutenegger, 2004 WI App 127, 275 Wis. 2d 512, 685 N.W.2d 536, 03–0133.

Although a known citizen informer did not observe the defendant drive his truck in a manner consistent with someone who was under the influence of an intoxicant, the tip was reliable when it was based on the informer's first–hand observation that he defendant was drunk and was independently verified by the arresting officer. State v. Powers, 2004 WI App 143, 275 Wis. 2d 456, 685 N.W.2d 869, 03–2450.

The anonymous caller in this case provided predictive information that, if true, demonstrated a special familiarity with the defendant's affairs that the general public would have had no way of knowing. When the officer verified this predictive information, it was reasonable for the officer to believe that a person with access to such information also had access to reliable information about the defendant's illegal activities providing reasonable suspicion to stop the defendant's vehicle. State v. Sherry, 2004 WI App 207, 277 Wis. 2d 194, 690 N.W.2d 435, 03–1531.

Under *Hodari D.*, 499 U.S. at 629, a person who did not submit to an officer's show of police authority was not seized within the meaning of the 4th amendment. Until a submission occurs, *Hodari D.* holds that a person is not seized for purposes of the 4th amendment and therefore the person may not assert a 4th amendment violation that evidence resulting from the encounter with the police was the fruit of an illegal seizure. State v. Young, 2004 WI App 227, 277 Wis. 2d 715, 690 N.W.2d 866, 03–2968.
Affirmed. 2006 WI 98, 294 Wis. 2d 1, 717 N.W.2d 729, 03–2968.

Blood may be drawn in a search incident to an arrest for a non–drunk–driving offense if the police reasonably suspect that the defendant's blood contains evidence of a crime. State v. Repenshek, 2004 WI App 229, 277 Wis. 2d 780, 691 N.W.2d 780, 03–3089. But see Missouri v. McNeely, 569 U.S. 141, 133 S. Ct. 1552, 185 L. Ed. 2d 696 (2013); Birchfield v. North Dakota, 579 U.S. 438, 136 S. Ct. 2160, 195 L. Ed 2d 560 (2016).

An arrest immediately following a search, along with the probable cause to arrest before the search, causes the search to be lawful. A search was not unlawful because the crime arrested for immediately after the search was different than the crime for which the officer had probable cause to arrest before the search. As long as there was probable cause to arrest before the search, no additional protection from government intrusion is afforded by requiring that persons be arrested for and charged with the same crime as that for which probable cause initially existed. Whether the officer subjectively intended to arrest for the first crime is not the relevant inquiry. The relevant inquiry is whether the officer was aware of sufficient objective facts to establish probable cause to arrest before the search was conducted and whether an actual arrest was made contemporaneously with the search. State v. Sykes, 2005 WI 48, 279 Wis. 2d 742, 695 N.W.2d 277, 03–1234.

Under *Terry*, an officer is entitled not just to a patdown but to an effective patdown in which he or she can reasonably ascertain whether the subject has a weapon; where an effective patdown is not possible, the officer may take other action reasonably necessary to discover a weapon. When an officer could not tell whether a suspect had any objects hidden in his waistband because of the suspect's bulky frame and heavy clothing it was reasonable for the officer to shake the suspect's waistband by his belt loops in order to loosen any possible weapons. State v. Triplett, 2005 WI App 255, 288 Wis. 2d 505, 707 N.W.2d 881, 04–2032.

The 4th amendment neither forbids nor permits all bodily intrusions. The amendment's function is to constrain against intrusions that are not justified in the circumstances, or are made in an improper manner. Whether the warrantless administration of laxatives done to assist the police in recovering suspected swallowed heroin was a reasonable search required evaluating 3 factors: 1) the extent to which the procedure may threaten the safety or health of the individual; 2) the extent of the intrusion upon the individual's dignitary interests in personal privacy and bodily integrity; and 3) the community's interest in fairly and accurately determining guilt or innocence. State v. Payano–Roman, 2006 WI 47, 290 Wis. 2d 380, 714 N.W.2d 548, 04–1029.

Deciding when a seizure occurs is important because the moment of a seizure limits what facts a court may consider in determining the existence of reasonable suspicion for that seizure. The *Mendenhall,* 446 U.S. 544, test applies when the subject of police attention is either subdued by force or submits to a show of authority. Where, however, a person flees in response to a show of authority, *Hodari D.,* 499 U.S. 279, governs when the seizure occurs. The *Hodari D.* test does not supersede the *Mendenhall* test, it supplements it. State v. Young, 2006 WI 98, 294 Wis. 2d 1, 717 N.W.2d 729, 03–2968.

An anonymous tip, whose indicia of reliability was debatable, along with behavior observed by the officer at the scene and deemed suspicious provided reasonable suspicion to justify a *Terry* stop. *Terry* holds that the police are not required to rule out the possibility of innocent behavior before initiating a *Terry* stop. Suspicious conduct by its very nature is ambiguous, and the principle function of the investigative stop is to quickly resolve that ambiguity. State v. Patton, 2006 WI App 235, 297 Wis. 2d 415, 724 N.W.2d 347, 05–3084.

There is a difference between police informers, who usually themselves are criminals, and citizen informers that calls for different means of assessing credibility. A citizen informant's reliability is subject to a much less stringent standard. Citizens who purport to have witnessed a crime are viewed as reliable, and police are allowed to act accordingly although other indicia of reliability have not yet been established. That an informant does not give some indication of how he or she knows about the suspicious or criminal activity reported bears significantly on the reliability of the information. State v. Kolk, 2006 WI App 261, 298 Wis. 2d 99, 726 N.W.2d 337, 06–0031.

To have a 4th amendment claim an individual must have standing. Standing exists when an individual has a reasonable expectation of privacy; which requires meeting a two–prong test: 1) whether the individual's conduct exhibited an actual, subjective, expectation of privacy in the area searched and the item seized; and 2) if the individual had the requisite expectation of privacy, whether the expectation of privacy was legitimate or justifiable. State v. Bruski, 2007 WI 25, 299 Wis. 2d 177, 727 N.W.2d 503, 05–1516.

In considering whether an individual's expectation of privacy was legitimate or justifiable, the following may be relevant: 1) whether the accused had a property interest in the premises; 2) whether the accused was lawfully on the premises; 3) whether the accused had complete dominion and control and the right to exclude others; 4) whether the accused took precautions customarily taken by those seeking privacy; 5) whether the property was put to some private use; and 6) whether the claim of privacy was consistent with historical notions of privacy. State v. Bruski, 2007 WI 25, 299 Wis. 2d 177, 727 N.W.2d 503, 05–1516.

Whether an individual may have a reasonable expectation of privacy in personal property found inside a vehicle that he or she does not have a reasonable expectation of privacy in is not governed by a bright–line rule. Principles pertinent to whether there was a reasonable expectation of privacy are that: 1) personal property found in vehicles is treated differently than personal property found in dwellings, there being a lesser expectation of privacy in vehicles; 2) neither ownership nor possession of an item alone establishes a reasonable expectation of privacy; 3) an individual's expectation of privacy in the space, rather than concepts of property law, is critical. State v. Bruski, 2007 WI 25, 299 Wis. 2d 177, 727 N.W.2d 503, 05–1516.

When the defendant was only suspected of driving a vehicle with a suspended registration for an emissions violation and failing to signal for a turn, violations in no way linked to criminal activity or weapons possession, and when the only purported basis for a protective search was a single, partially obscured movement of the defendant in his vehicle that the officers observed from their squad car, the behavior observed by the officers was not sufficient to justify a protective search of Johnson's person and his car. State v. Johnson, 2007 WI 32, 299 Wis. 2d 675, 729 N.W.2d 182, 05–0573.

Weaving within a single traffic lane does not alone give rise to the reasonable suspicion necessary to conduct an investigative stop of a vehicle. The reasonableness of a stop must be determined based on the totality of the facts and circumstances. State v. Post, 2007 WI 60, 301 Wis. 2d 1, 733 N.W.2d 634, 05–2778.

A private party's discovery, and subsequent disclosure to law enforcement, of contraband is not prohibited by the 4th amendment when there is no reasonable expectation of privacy in dealings with the private party. One does not generally have a reasonable expectation of privacy when delivering property to a private shipping company, particularly when the shipping company posts a sign reserving its right to inspect parcels left with it for shipping. State v. Sloan, 2007 WI App 146, 303 Wis. 2d 438, 736 N.W.2d 189, 06–1271.

An employee of a private company is not acting on behalf of the government and is free to disclose a package and material to law enforcement. Law enforcement, without a warrant, can properly replicate the search the employee has already conducted. By otherwise replicating the private–party search, police did not exceed the scope of the private search by conducting a field test for drugs. State v. Sloan, 2007 WI App 146, 303 Wis. 2d 438, 736 N.W.2d 189, 06–1271.

The emergency doctrine permits officers investigating a kidnapping case to conduct a warrantless search if the officers possess an objectively reasonable belief that the particular search will result in finding the victim or evidence leading to the victim's location. Police need not delay rescue where they reasonably believe that a kidnap victim is being held and a search of the premises will lead to the victim or to information about the victim's whereabouts; time is of the essence. State v. Larsen, 2007 WI App 147, 302 Wis. 2d 718, 736 N.W.2d 211, 06–1396.

One common factor in some cases in which courts have concluded that the officers did not have a justifiable basis for conducting a protective sweep has been that the protective search takes place after the traffic investigation has been completed. A protective sweep was justified when there were specific facts that demonstrated that the officers' primary concern was indeed weapons and safety and the protective search was the first thing the officers did, and was not an afterthought. State v. Alexander, 2008 WI App 9, 307 Wis. 2d 323, 744 N.W.2d 909, 07–0403.

The fact that an officer told the defendant that she was under arrest did not necessarily establish an arrest when immediately after making that statement the officer told the defendant that she would be issued a citation and then would be free to go. Although the statements are contradictory, the assurance that the defendant would be issued a citation and released would lead a reasonable person to believe he or she was not in custody. Under those circumstances a search of the defendant was not incident to a lawful arrest and, as such, unlawful. State v. Marten–Hoye, 2008 WI App 19, 307 Wis. 2d 671, 746 N.W.2d 498, 06–1104.

The potential availability of an innocent explanation does not prohibit an investigative stop. If any reasonable inference of wrongful conduct can be objectively discerned, notwithstanding the existence of innocent inferences that could be drawn, officers have the right to temporarily detain an individual for the purpose of inquiry. State v. Limon, 2008 WI App 77, 312 Wis. 2d 174, 751 N.W.2d 877, 07–1578.

Although *Terry* provides only for an officer to conduct a carefully limited search of the outer clothing in an attempt to discover weapons that might be used to assault the officer, under the circumstances of this case, the search was properly broadened to encompass the opening of the defendant's purse, which was essentially an extension of her person where the purse was accessible by her. State v. Limon, 2008 WI App 77, 312 Wis. 2d 174, 751 N.W.2d 877, 07–1578.

Because of the limited intrusion resulting from a dog sniff for narcotics and the personal interests that Art. I, s. 11 were meant to protect, a dog sniff around the outside perimeter of a vehicle located in a public place is not a search under the Wisconsin Constitution. The 78 seconds during which the dog sniff occurred was not an unreasonable incremental intrusion upon the defendant's liberty. State v. Arias, 2008 WI 84, 311 Wis. 2d 358, 752 N.W.2d 748, 06–0974.

The "search incident to arrest" exception to the 4th amendment warrant requirement holds that a lawful arrest creates a situation justifying a contemporaneous, warrantless search of the arrestee's person and the area within his or her immediate control. It is reasonable to search an area near the arrestee, but not an area so broad as to be unrelated to the protective purposes of the search. Although a bedroom might be considered within the defendant's immediate presence or control the search of a bedroom was not a search incident to arrest after the defendant had been removed from the home as the defendant could not have gained possession of a weapon or destructible evidence. State v. Sanders, 2008 WI 85, 311 Wis. 2d 257, 752 N.W.2d 713, 06–2060.

Reasonable suspicion was not obviated by the fact that 15 minutes passed between the time of a stop and a protective search when the defendant was kept under continuous surveillance. The passage of time can be a factor in the totality of circumstances, but it is not likely to be a determinative factor in establishing or eliminating reasonable suspicion for a frisk. State v. Sumner, 2008 WI 94, 312 Wis. 2d 292, 752 N.W.2d 783, 06–0102.

The standing of a guest to challenge a search is measured by the guest's relationship to the property and the host. When a person claims guest status, the analysis examines the evidence in light of: 1) whether the guest's use of the premises was for a purely commercial purpose; 2) the duration of the guest's stay; and 3) the nature of the guest's relationship to the host. The defendant did not have standing when there was little evidence of the duration or closeness of the defendant's friendship with the property owner, the defendant did not have a long−term relationship to the place and not an overnight guest, and at the time of the search, used it largely for a commercial purpose. State v. Fox, 2008 WI App 136, 314 Wis. 2d 84, 758 N.W.2d 790, 07–0685.

The defendant did not have standing to assert a 4th amendment violation based on an officer unlocking the door of the public restroom the defendant occupied. The defendant's expectation of privacy was not reasonable when, while his initial use of the restroom was for its intended purpose, he continued to have the private use of the locked restroom for at least 25 minutes without responding to knocking and while dozing off. State v. Neitzel, 2008 WI App 143, 314 Wis. 2d 209, 758 N.W.2d 159, 07–2346.

An entry into a home was illegal when police, after seizing contraband from the defendant and seeing others on cell phones, acted on a hunch that someone would destroy evidence at the defendant's residence and entered the residence without a warrant upon the silence of the defendant's elderly mother and made a protective sweep without seizing any contraband. However, the illegality was attenuated by knowledge that contraband was seized after two hours had passed from the entry, no search for contraband took place during the entry, and the eventual search of the residence was pursuant to a valid search warrant. State v. Rogers, 2008 WI App 176, 315 Wis. 2d 60, 762 N.W.2d 795, 07–1850.

Government involvement in a search is not measured by the primary occupation of the actor, but by the capacity in which the actor acts at the time in question. An off−duty officer acting in a private capacity in making a search does not implicate the 4th amendment. When an officer opened mail that contained evidence of criminal activity that was incorrectly addressed to a person other than herself at her home address, her action was that of a private citizen. State v. Cole, 2008 WI App 178, 315 Wis. 2d 75, 762 N.W.2d 711, 07–2472.
See also State v. Berggren, 2009 WI App 82, 320 Wis. 2d 209, 769 N.W.2d 110, 08–0786.

Based on the reasoning in *Pallone* and under the facts of this case, the police could search the personal belongings of a passenger that were found outside a motor vehicle incident to the arrest of the driver. State v. Denk, 2008 WI 130, 315 Wis. 2d 5, 758 N.W.2d 775, 06–1744.

A security guard's seizure, detention, and search of the defendant was not a government action that permitted the invocation of the exclusionary rule, because unless state action is involved, a defendant detained by another citizen has no right to suppress the fruits of the citizen's search. Although a citizen may detain another citizen for a misdemeanor committed in the citizen's presence and amounting to a breach of the peace, the court left for another day whether a citizen is privileged to detain another whom he or she sees breaching the peace by doing something that is not a crime, but an offense subject to a forfeiture. State v. Butler, 2009 WI App 52, 317 Wis. 2d 515, 768 N.W.2d 46, 08–1178.

During a traffic stop, a police officer may make inquiries to obtain information confirming or dispelling the officer's suspicions concerning weapons or other dangerous articles. The response that a person provides to an officer's inquiry, including the absence of or refusal to provide a response, may provide information that is relevant to whether a protective search is reasonable, and is therefore a factor to be considered alongside other factors that together comprise the totality of the circumstances. In this case, failure to provide an explanation effectively transformed what the defendant maintains was an innocent movement into a specific, articulable fact supporting a reasonable suspicion that the defendant posed a threat to the officers' safety. State v. Bridges, 2009 WI App 66, 319 Wis. 2d 217, 767 N.W.2d 593, 08–1207.

The holding of *Angelia D.B.* that searches on school grounds must be supported by reasonable suspicion extends to searches in school parking lots. A school search is legal when it satisfies a two−prong test: 1) the search must be justified at its inception; and 2) reasonably related in scope to the circumstances which justified the interference in the first place. A school official has the responsibility to keep students safe on school grounds. The search here was justified at its inception because school officials were put on alert that the defendant was in possession of drugs that day and school officials must act on such a tip. When searches of the defendant's person, backpack, and locker were cleared, the search was reasonable in scope when the next step for school officials was to search the defendant's car. State v. Schloegel, 2009 WI App 85, 319 Wis. 2d 741, 769 N.W.2d 130, 08–1310.

When officers found themselves in the middle of an unstable situation — having to decide whether to stand guard over the open door to an apartment potentially occupied by armed individuals prepared to attack them while they took the time necessary to obtain a warrant, or instead to retreat and risk the destruction of evidence, along with a continuing risk of attack — the circumstances posed the sort of special risks that required the officers to act immediately and to forego obtaining a warrant and constituted exigent circumstances justifying warrantless entry. State v. Lee, 2009 WI App 96, 320 Wis. 2d 536, 771 N.W.2d 373, 07–2976.

Unlike in *Johnson*, 2007 WI 32, where the defendant's head and shoulder movement did not give reasonable suspicion to conduct a search of the person and car, here, the defendant after being stopped in his vehicle made 3 to 5 furtive−type movements that the trial court found were attempts to hide something. While the number of acts by itself may not be determinative of a reasonable basis, the persistence in the gesture is a specific, articulable measure of a strong intent to hide something from the police officer who made the stop. Further, when the defendant said the object seemingly being hidden was candy, it was reasonable to doubt the truthfulness of that response and it created another articulable suspicion to support the inference that the defendant was trying to hide a gun. State v. Bailey, 2009 WI App 140, 321 Wis. 2d 350, 773 N.W.2d 488, 08–3153.

The defendant, not the police, created the exigency in this case that resulted in a warrantless search when, after seeing the police outside his residence, the defendant retreated into the residence and shut the door after the police ordered him to stop. Those actions created the exigency of the risk that evidence would be destroyed. It was not necessary to delve into the appropriateness of the officers' determination after a controlled drug buy to conduct a "knock and talk" contact with the defendant or whether a knock and talk creates an exigency because in this case, a knock and talk was never actually accomplished. State v. Phillips, 2009 WI App 179, 322 Wis. 2d 576, 778 N.W.2d 157, 09–0249.

In a community caretaker context, when under the totality of the circumstances an objectively reasonable basis for the community caretaker function is shown, that determination is not negated by the officer's subjective law enforcement concerns. An officer may have law enforcement concerns even when the officer has an objectively reasonable basis for performing a community caretaker function. State v. Kramer, 2009 WI 14, 315 Wis. 2d 414, 759 N.W.2d 598, 07–1834.
See also, State v. Gracia, 2013 WI 15, 345 Wis. 2d 488, 826 N.W.2d 87, 11–0813.
See also State v. Maddix, 2013 WI App 64, 348 Wis. 2d 179, 831 N.W.2d 778, 12–1632.

A three−step test is used to evaluate the reasonableness of a seizure made under the community caretaker exception: 1) that a seizure within the meaning of the 4th amendment has occurred; 2) whether the police conduct was bona fide community caretaker activity; and 3) whether the public need and interest outweighed the intrusion upon the privacy of the individual. A bona fide community caretaker activity is one that is divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute. State v. Kramer, 2009 WI 14, 315 Wis. 2d 414, 759 N.W.2d 598, 07–1834.

Even if no probable cause exists, a police officer may conduct a traffic stop when, under the totality of the circumstances, he or she has grounds to reasonably suspect that a crime or traffic violation has been or will be committed. The officer must be able to point to specific and articulable facts that, taken together with rational inferences from those facts, reasonably warrant the intrusion of the stop. The crucial question is whether the facts would warrant a reasonable police officer, in light of his or her training and experience, to suspect that the individual has committed, was committing, or is about to commit a crime. While any one fact, standing alone, might well be insufficient for reasonable suspicion, as facts accumulate, reasonable inferences about the cumulative effect can be drawn. State v. Popke, 2009 WI 37, 317 Wis. 2d 118, 765 N.W.2d 569, 08–0446.

The extent to which law enforcement is permitted to rely on exigent circumstances for a warrantless entry of a home has a relationship to the seriousness of the offense. When the underlying offense for which there is probable cause to arrest is relatively minor, courts should be very hesitant to find exigent circumstances. In determining the extent to which the underlying offense may support's finding of exigency, the critical factor is the penalty that may attach. Courts, in evaluating whether a warrantless entry is justified by exigent circumstances, should consider whether the underlying offense is a jailable or nonjailable offense, rather than whether the legislature has labeled that offense a felony or a misdemeanor. State v. Ferguson, 2009 WI 50, 317 Wis. 2d 586, 767 N.W2d 187, 07–2095.

An officer's demand that a suspect drop an object that the officer believes could be a weapon can be likened to a frisk or pat−down. The approach in Wisconsin for determining whether a pat−down is valid has been one of reasonableness. State v. Carroll, 2010 WI 8, 322 Wis. 2d 299, 778 N.W.2d 1, 07–1378.

Law enforcement agents are justified in seizing and continuing to hold a container if: 1) there is probable cause to believe that it contains evidence of a crime; and 2) if exigencies of the circumstances demand it. Analogizing a cell phone containing pictures to a container was appropriate. An officer who legally viewed an image of the defendant with marijuana in plain view on an open cell phone and who testified that he knew, based on his training and experience, that drug traffickers frequently personalize their cell phones with images of themselves with items acquired through drug activity, had probable cause to believe that the phone contained evidence of illegal drug activity. State v. Carroll, 2010 WI 8, 322 Wis. 2d 299, 778 N.W.2d 1, 07–1378.

When an officer had probable cause to seize a cell phone that he reasonably believed was a tool used in drug trafficking, exigent circumstances permitted the officer to answer an incoming call. The test for whether exigent circumstances are present focuses on whether the officer reasonably believes that the delay necessary to obtain a warrant, under the circumstances, threatens the destruction of evidence. The fleeting nature of a phone call is apparent; if it is not picked up, the opportunity to gather evidence is likely to be lost, as there is no guarantee or likelihood that the

caller would leave a voice mail or otherwise preserve the evidence. State v. Carroll, 2010 WI 8, 322 Wis. 2d 299, 778 N.W.2d 1, 07–1378.

Under the collective knowledge doctrine, an investigating officer with knowledge of facts amounting to reasonable suspicion may direct a second officer without such knowledge to stop and detain a suspect. At the same time, in a collective knowledge situation, if a defendant moves to suppress, the prosecutor must prove the collective knowledge that supports the stop. Proof is not supplied by the mere testimony of one officer that he relied on the unspecified knowledge of another officer. Such testimony provides no basis for the court to assess the validity of the police suspicion. The testimony contains no specific, articulable facts to which the court can apply the reasonable suspicion standard. State v. Pickens, 2010 WI App 5, 323 Wis. 2d 226, 779 N.W.2d 1, 08–1514.

When a temporary detention is justified, the court will still examine the circumstances of the detention to determine whether the investigative means used in a continued seizure are the least intrusive means reasonably available to verify or dispel the officer's suspicion and whether it lasted no longer than was necessary to effectuate the purpose of the stop. It was an unreasonable seizure when a suspect was handcuffed based on the bare fact that the officer knew the suspect was suspected in a prior shooting when no specific, articulable facts were presented to support that position under the collective knowledge doctrine. State v. Pickens, 2010 WI App 5, 323 Wis. 2d 226, 779 N.W.2d 1, 08–1514.

Although a person sharing a hotel room was found to have apparent authority over the room authorizing her to consent to a search of the room, she did not have actual or apparent authority over the inside of the safe when the safe was locked, she could not open the safe, and she did not even know it was in the room. Even if the scope of her consent to search the room included the safe, the search of the safe was unreasonable if she had no authority to grant that consent. State v. Pickens, 2010 WI App 5, 323 Wis. 2d 226, 779 N.W.2d 1, 08–1514.

In a search incident to an arrest, an officer may only search that area within the "immediate control" of the arrestee. In a no–arrest case, the possibility of access to weapons in the vehicle always exists since the driver or passenger will be allowed to return to the vehicle when the interrogation is completed. Because the defendant was not under arrest, the officers had an immediate safety interest in verifying that that the defendant did not have a gun or other weapon under his immediate control. Therefore, the search of the defendant's vehicle console was not prohibited. State v. Williams, 2010 WI App 39, 323 Wis. 2d 460, 781 N.W.2d 495, 09–0501.

Soldal, 506 U.S. 56, recognized that there could be a seizure of property in violation of the 4th amendment even though the seizure was not preceded or accompanied by a search. *Soldal* also specifically recognized that a valid consent permits a lawful 4th amendment seizure. Here computers owned by one tenant were legally seized when another tenant, who had permission to use those computers, specifically gave the detective the right to "conduct a complete search of [m]y premises, and all property found therein, located at" the apartment and to take the computers away for further analysis. State v. Ramage, 2010 WI App 77, 325 Wis. 2d 483, 784 N.W.2d 746, 09–0784.

The holding of *Arizona v. Gant*, 556 U.S. 332, that *Belton* does not authorize a vehicle search incident to a recent occupant's arrest after the arrestee has been secured and cannot access the interior of the vehicle is adopted as the proper interpretation of the Wisconsin Constitution's protection against unreasonable searches and seizures. State v. Dearborn, 2010 WI 84, 327 Wis. 2d 252, 786 N.W.2d 97, 07–1894.

In light of *Arizona v. Gant*, 556 U.S. 332, the broad rule adopted in *Fry*, 131 Wis. 2d 153, is no longer good law. *Belton* does not authorize a vehicle search incident to a recent occupant's arrest after the arrestee has been secured and cannot access the interior of the vehicle. State v. Bauer, 2010 WI App 93, 327 Wis. 2d 765, 787 N.W.2d 412, 09–1367.

Police cannot conduct warrantless searches pursuant to a probation apprehension request. Warrantless searches conducted by police, as opposed to probation agents, are prohibited. State v. Bauer, 2010 WI App 93, 327 Wis. 2d 765, 787 N.W.2d 412, 09–1367.

A "knock and talk" interview at a private residence that has lost its consensual nature and has effectively become an in–home seizure or constructive entry may trigger 4th amendment scrutiny. When the situation is such that a person would not wish to leave his or her location, such as his or her home, the appropriate inquiry is whether a reasonable person would feel free to decline the officers' requests or otherwise terminate the encounter. City of Sheboygan v. Cesar, 2010 WI App 170, 330 Wis. 2d 760, 796 N.W.2d 429, 09–3049.

The test for exigent circumstances justifying a warrantless seizure is an objective one: whether a police officer under the circumstances known to the officer at the time reasonably believes that delay in procuring a warrant would gravely endanger life or risk destruction of evidence or greatly enhance the likelihood of the suspect's escape. An arrest was lawful when the urgency reasonably perceived by the officers was compelling and the danger they reasonably perceived for themselves and others if they did not move quickly was substantial. State v. Ayala, 2011 WI App 6, 331 Wis. 2d 171, 793 N.W.2d 511, 09–2690.

An officer's exercise of the bona fide community caretaker function must be reasonable as determined by the court by balancing the public interest or need that is furthered by the officers' conduct against the degree and nature of the intrusion on the citizen's constitutional interest. The stronger the public need and the more minimal the intrusion upon an individual's liberty, the more likely the police conduct will be held to be reasonable. Four factors are considered: 1) the extent of the public's interest; 2) the attendant circumstances surrounding the search; 3) whether the search or seizure took place in an automobile; and 4) the alternatives that were available to the action taken. State v. Ultsch, 2011 WI App 17, 331 Wis. 2d 242, 793 N.W.2d 505, 10–0895. But see Caniglia v. Strom, 593 U.S. ___, 141 S. Ct. 1596, 209 L. Ed. 2d 604 (2021).

Under the totality of the circumstances, the trooper's observation of the defendant's furtive movements and visible nervousness, a record of arrests for violent crimes, and a drug delivery arrest that had occurred nearby a short time before the stop constituted specific and articulable facts that, taken together with the rational inferences from those facts, created reasonable suspicion and justified a protective search for the officer's safety. State v. Buchanan, 2011 WI 49, 334 Wis. 2d 379, 799 N.W.2d 775, 09–2934.

As a general matter, it is unacceptable for a member of the public to enter a home's attached garage uninvited regardless of whether an overhead or entry door is open. Thus, generally, an attached garage will never be impliedly open to public, i.e., police entry. There may be an exception to that general rule if, in a given circumstance, it reasonably appears that entry into the attached garage is the least intrusive means of attempting contact with persons inside the home. State v. Davis, 2011 WI App 74, 333 Wis. 2d 490, 798 N.W.2d 902, 10–2191.

Randolph held that in co–habitation cases, if both parties are present, a search is unlawful when one consents but the other expressly refuses to consent. *Randolph* did not apply when one co–habitant consented and the other did not object. State v. Pirtle, 2011 WI App 89, 334 Wis. 2d 211, 799 N.W.2d 492, 10–1363.

Under circumstances where: 1) a man in a high–crime area; 2) late at night; 3) wearing a ski mask that covered his face below his eyes; 4) wearing a hoodie; 5) had an ambiguous but "unusual"–appearing encounter with a woman walking by herself, the police reasonably and based on their experience could objectively see that further investigation was warranted to ensure that criminal activity was not afoot. State v. Matthews, 2011 WI App 92, 334 Wis. 2d 455, 799 N.W.2d 911, 10–1712.

It was reasonable for the officers to conclude that the leaseholder of a property had the authority to consent to them proceeding up the property's stairs to look for another tenant who was not present to either consent or refuse consent when: 1) a third non–leaseholder tenant refused to consent; 2) the officers were aware that the tenant granting consent was the leaseholder of the property; and 3) the person refusing consent had not previously lived there and had left the room to wake up the subject of the police inquiry after the officers arrived. State v. Lathan, 2011 WI App 104, 335 Wis. 2d 234, 801 N.W.2d 772, 10–1228.

Under *Arizona v. Johnson*, 555 U.S. 323, a lawful roadside stop "ordinarily" begins when a vehicle is pulled over for a traffic violation and ends when the police no longer have further need to control the scene, at which time the driver and passengers are free to leave. *Johnson* does not create a bright–line rule that police always have the authority to detain passengers for the duration of a roadside stop. *Johnson* leaves the door open for exceptions to the general rule that passengers are reasonably detained for the duration of a stop. Nonetheless, the stop in this case was reasonable under the totality of the circumstances. State v. Salonen, 2011 WI App 157, 338 Wis. 2d 104, 808 N.W.2d 162, 10–2504.

The plain view doctrine did not justify opening opaque cylinders that were in plain view, but the contents were not, and the containers, as indicated by their size or shape, could hold a weapon. State v. Sutton, 2012 WI App 7, 338 Wis. 2d 338, 808 N.W.2d 411, 11–0036.

If a third party has mutual use of a property and joint access or control for most purposes, then the third party may consent to a search of the property regardless of whether he or she owns the property. While a mere guest in a home may not ordinarily consent to a search of the premises, the analysis is different when the guest is more than a casual visitor but instead has the run of the house. A weekend house guest who was permitted to stay in the home by herself and had the authority to receive people into the home had the authority to permit an officer to enter. Similarly, when the defendant gave his guest permission to use his computer, the guest had the authority to consent to the officer's search and seizure of that item. State v. Sutton, 2012 WI App 7, 338 Wis. 2d 338, 808 N.W.2d 411, 11–0036.

The possible use of a premises for an illicit commercial enterprise does not necessarily trump an otherwise legitimate expectation of privacy in the premises. State v. Guard, 2012 WI App 8, 338 Wis. 2d 385, 808 N.W.2d 718, 11–0072.

When police have probable cause to arrest before an unlawful entry and warrantless arrest from a defendant's home, this violation of *Payton*, 445 U.S. 573, does not require the suppression of evidence obtained from a defendant outside of the home. This rule applies when the only illegal police conduct is an unlawful entry and arrest in violation of *Payton*, not when the evidence may be tied to an unlawful search by police. State v. Felix, 2012 WI 36, 339 Wis. 2d 670, 811 N.W.2d 775, 10–0346.

Under the totality of the circumstances police acted reasonably when they conducted an investigatory stop of the vehicle that the defendant was driving based on reasonable suspicion "that criminal activity may be afoot." The police had the requisite reasonable suspicion primarily based on the reliability of their final informant and the information provided by him when the information was supported by the prior tips to police. While the initial tips were of limited reliability, the final informant and his tips had significant indicia of reliability because the informant provided self–identifying information that made him more reliable than a truly anonymous informant and the final informant provided details and accurate future predictions that police were able to corroborate. State v. Miller, 2012 WI 61, 341 Wis. 2d 307, 815 N.W.2d 349, 10–0557.

Under *Jacobsen*, 466 U.S. at 115–17, an individual can retain a legitimate expectation of privacy after a private individual conducts a search. However, additional invasions of that individual's privacy by a government agent must be tested by the degree to which they exceeded the scope of the private search. The officer's search in this case did not exceed the original search by the private individual who after discovering and reviewing child pornography, placed it in a duffel bag and invited the officer to view the contents of the bag. State v. Cameron, 2012 WI App 93, 344 Wis. 2d 101, 820 N.W.2d 433, 11–1368.

There is no bright–line rule mandating that courts exercise caution in supporting a *Terry* stop whenever the stop is for a "minor crime." State v. Rissley, 2012 WI App 112, 344 Wis. 2d 422, 824 N.W.2d 853, 11–1789.

Guzy, 139 Wis. 2d at 663, forged a list of factors to be considered in determining reasonable suspicion that a person or vehicle was the one connected to a reported crime: 1) the particularity of the description of the offender or the vehicle in which he or she fled; 2) the size of the area in which the offender might be found, as indicated by such facts as the elapsed time since the crime occurred; 3) the number of persons about in that area; 4) the known or probable direction of the offender's flight; 5) observed activity by the particular person stopped; and 6) knowledge or suspicion that the person or vehicle stopped has been involved in other criminality of the type presently under investigation. State v. Rissley, 2012 WI App 112, 344 Wis. 2d 422, 824 N.W.2d 853, 11–1789.

The administration of a preliminary breath test by a police officer, at the request and on behalf of a probation agent during a probation meeting in the probation office, for probation purposes and for no independent police purpose, was a probation search, not a police search, and was lawful. State v. Devries, 2012 WI App 119, 344 Wis. 2d 726, 824 N.W.2d 913, 10–0429.

The test applied in determining whether an officer has sufficient reasonable suspicion under *Terry* is objective — "would the facts available to the officer at the moment of the seizure or the search 'warrant a man of reasonable caution' in the belief that the action taken was appropriate?" Backing away from a police officer is not sufficient objective evidence supporting a reasonable suspicion that criminal activity is afoot or that a person is a threat. A person approached by a law−enforcement officer need not answer any question put to him or her, may decline to listen to the questions, and may go on his or her way. Naming a movement that would accompany any walking away adds nothing to the calculus except a false patina of objectivity. State v. Pugh, 2013 WI App 12, 345 Wis. 2d 832, 826 N.W.2d 418, 12−0481.

Under the totality of the circumstances of this case, when a person came down the staircase between a building's upper unit and a common entrance and opened the door for the police, identified herself, expressly stated that she lived in the upper unit, granted consent to search both verbally and in writing, and acted as though she had access to the landlord by pretending to call him or her, that person had apparent authority to consent to the warrantless search of the upper unit and the police were reasonable in reaching the same conclusion. State v. Wheeler, 2013 WI App 53, 347 Wis. 2d 426, 830 N.W.2d 278, 12−1291.

A seizure following a "dog sniff" is subject to the *Terry* test — that a seizure is reasonable only if it is justified at its inception and is "reasonably related in scope to the circumstances which justified the interference in the first place." Here, unlike in *Arias*, the dog sniff attendant to defendant's seizure occurred after the initial stop had been completed and undisputed facts established that the reasons justifying the initial stop ceased to exist. The continued detention of the defendant to conduct the dog sniff was not reasonably related in scope to the circumstances justifying the stop. State v. House, 2013 WI App 111, 350 Wis. 2d 478, 837 N.W.2d 645, 12−2414.

Permitting *Terry* stops of a person observed momentarily patting the outside of his or her clothing when the only additional facts are that the person is in a high crime area and has seen a cruising police car would expand the individualized "reasonable suspicion" requirement so far so as to negate it. State v. Gordon, 2014 WI App 44, 353 Wis. 2d 468, 846 N.W.2d 483, 13−1878.

When an officer parks near a person's vehicle, gets out, and knocks on the person's window, the officer has not necessarily displayed sufficient authority to cause a reasonable person to feel that he or she was not free to leave. While a person is not automatically seized by a knock on the window, or even a supplementary request, the seizure inquiry looks at the totality of the circumstances to determine whether the officer has effected a detention. County of Grant v. Vogt, 2014 WI 76, 356 Wis. 2d 343, 850 N.W.2d 253, 12−1812.

The trial court's denial of the defendant's suppression motion arguing that the warrantless obtaining of of his cell phone's location data from his cell phone provider violated his 4th amendment rights was upheld by a divided court. State v. Subdiaz−Osorio, 2014 WI 87, 357 Wis. 2d 41, 849 N.W.2d 748, 10−3016.

Ordinary citizens, even citizens who are subject to diminished privacy interests because they have been detained, have a legitimate expectation of privacy in the contents of their electronic devices. This interest, however, is undercut when the electronic device in question is contraband. In this case, the defendant was prohibited from using a computer. It was irrelevant whether specific images were prohibited by the defendant's probationary terms or otherwise illegal to possess; the use of computers was itself prohibited, and the agent had reasonable grounds to believe the defendant had impermissibly used them. Thus, the probation search of the contents of the defendant's computers did not violate the 4th amendment or Article I, Section 11. State v. Purtell, 2014 WI 101, 358 Wis. 2d 212, 851 N.W.2d 417, 12−1307.

While exigent circumstances may justify entry, the fact that entry has already been made does not necessarily invalidate reliance on the exigent circumstances doctrine. In this case, the officer had already stepped into the apartment when the exigent circumstances arose. Whether or not the apartment occupants' behavior constituted consent to the officer's entry, so long as the officer was standing in the vicinity of the occupants when she received the information that they might possess a backpack with loaded weapons in it, her search for and seizure of the backpack was, at that moment, justified by exigent circumstances. State v. Kirby, 2014 WI App 74, 355 Wis. 2d 423, 851 N.W.2d 796, 13−0896.

Fourth amendment jurisprudence has evolved into two seemingly different, but somewhat interrelated, methods of identifying protectable interests relating to the home. One focuses on a person's expectation of privacy, where a person has exhibited an actual expectation of privacy that society is prepared to recognize as reasonable. The other, known as the intrusion or trespass test, focuses on whether government agents engaged in an unauthorized physical penetration into a constitutionally protected area. Officers in this case conducted an illegal search by trespassing on the defendants' property when they, without permission, went onto the porch of the defendants' trailer to peer into a window, had no other reason for being in those areas, and acknowledged that they could not have seen what they saw within the trailer if they had not been standing in the yard or on the porch. State v. Popp, 2014 WI App 100, 357 Wis. 2d 696, 855 N.W.2d 471, 13−1916.

In light of *Missouri v. McNeely*, the holding in *State v. Bohling*, 173 Wis. 2d 529, that the rapid dissipation of alcohol alone constitutes an exigent circumstance sufficient for law enforcement officers to order a warrantless investigatory blood draw, is no longer an accurate interpretation of the 4th amendment's protection against unreasonable searches and seizures. The rapid dissipation of alcohol alone no longer constitutes a per se exigent circumstance. Exigent circumstances, sufficient to justify a warrantless investigatory blood draw of a drunk−driving suspect, are to be determined on a case−by−case totality of the circumstances analysis. State v. Kennedy, 2014 WI 132, 359 Wis. 2d 454, 856 N.W.2d 834, 12−0523.

Under the facts and circumstances of this case, the deputy reasonably responded to an accident, secured the scene, investigated the matter, and ultimately was left with a very narrow time frame in which the defendant's blood could be drawn so as to produce reliable evidence of intoxication. This sort of "now or never" moment is the epitome of an exigent circumstance justifying a warrantless blood draw. State v. Tullberg, 2014 WI 134, 359 Wis. 2d 421, 857 N.W.2d 120, 12−1593.

An arrest need not precede a warrantless blood draw. When there is probable cause for a blood draw there also is probable cause to arrest for operating while intoxicated. An arrest is not a prerequisite to a warrantless blood draw justified by probable cause and exigent circumstances. State v. Tullberg, 2014 WI 134, 359 Wis. 2d 421, 857 N.W.2d 120, 12−1593.

The exigent circumstance exception does not require that officers observe actual destruction of evidence taking place before making entry. Officers do not impermissibly create exigent circumstances merely by knocking on a door and announcing themselves as police. State v. Parisi, 2014 WI App 129, 359 Wis. 2d 255, 857 N.W.2d 472, 14−0474.

Officers' approach to a defendant at gunpoint, use of handcuffs, and detention of the defendant in a squad car are not sufficient to transform an investigatory detention into an arrest. However, upon transportation of the defendant from the site of the stop to a hospital 10 miles away, a reasonable person in the defendant's position would have believed that he or she was in custody due to an arrest because the transportation was involuntary and the defendant had experienced a significant level of force and restraint since the initial stop. State v. Blatterman, 2015 WI 46, 362 Wis. 2d 138, 864 N.W.2d 26, 13−2107.

When a person who is temporarily detained for investigation pursuant to a *Terry* stop is then moved to another location, courts conduct a two−part inquiry: First, was the person moved within the vicinity of the stop? Second, was the purpose in moving the person within the vicinity reasonable? Ten miles is too distant a transportation to be within the vicinity so long as the temporary detention is supported by no more than a reasonable suspicion. In order for the transporting of a defendant to a hospital that was not in the vicinity of the stop to have been lawful, it must have been supported by probable cause to arrest or by a reasonable exercise of the community caretaker function. State v. Blatterman, 2015 WI 46, 362 Wis. 2d 138, 864 N.W.2d 26, 13−2107.

Nervousness, anxiety, and tremors are consistent with methamphetamine use. These characteristics may also have innocent explanations. That innocent explanations may exist for observed behavior does not preclude a finding of reasonable suspicion, but as a practical matter, police cannot expect to conduct field sobriety tests on every motorist who is shaking and nervous when stopped by an officer. State v. Hogan, 2015 WI 76, 364 Wis. 2d 167, 868 N.W.2d 124, 13−0430.

Reasonable suspicion that a traffic law has been or is being violated is sufficient to justify all traffic stops. An objectively reasonable mistake of law by a police officer can form the basis for reasonable suspicion to conduct a traffic stop. State v. Houghton, 2015 WI 79 364 Wis. 2d 234, 868 N.W.2d 143, 13−1581.

The defendant had no reasonable expectation of privacy in text messages that he had sent to and were stored in another person's cell phone. Once the defendant sent the messages, he had no control over whether the recipient saved them, deleted them, forwarded them to others or shared their content in any way. This lack of control over what is done with the text message and lack of any right to exclude others from reading it are key in the determination that the defendant did not have an objectively reasonable expectation of privacy in the text messages stored in the other person's phone. State v. Tentoni, 2015 WI App 77, 365 Wis. 2d 211, 871 N.W.2d 285, 14−2387.

The statement in *Popke,* 2009 WI 37, that "a police officer may . . . conduct a traffic stop when, under the totality of the circumstances, he or she has grounds to reasonably suspect that a crime or traffic violation has been or will be committed," did not purport to circumscribe the universe of possible scenarios within which traffic stops permissibly may occur, or to make such limits contingent on whether the legislature has titled a particular law a "traffic regulation." A reasonable suspicion that a violation of the littering statute, s. 287.81, a non−traffic civil forfeiture offense, had occurred justified a brief and limited traffic stop. The more onerous standard of probable cause would also therefore justify a traffic stop. State v. Iverson, 2015 WI 101, 365 Wis. 2d 302, 871 N.W.2d 661, 14−0515.

In *Jardines*, 569 U.S. 1 (2013), the U.S. Supreme Court confirmed that the curtilage of a person's home remains a constitutionally protected area without consideration of whether a reasonable expectation of privacy exists. The Wisconsin Supreme Court has adopted 4 factors set forth in *Dunn*, 480 U.S. 294 (1987), relevant to conducting an analysis of whether an area constitutes curtilage of a home: 1) the proximity of the area claimed to be curtilage to the home; 2) whether the area is included within an enclosure surrounding the home; 3) the nature of the uses to which the area is put; and 4) the steps taken by the resident to protect the area from observation by people passing by. These factors did not weigh in favor of curtilage designation when applied to the parking garage located beneath the defendant's apartment building. State v. Dumstrey, 2016 WI 3, 366 Wis. 2d 64, 873 N.W.2d 502, 13−0857.

There was no reasonable expectation of privacy in the defendant's parking garage located beneath a 30−unit apartment building such that it warranted 4th amendment protection against warrantless entry for arrest. The relevant test is: 1) whether the person exhibits an actual, subjective expectation of privacy in the area; and 2) whether society is willing to recognize such an expectation as reasonable. In making this determination a 6−factor test is applied. State v. Dumstrey, 2016 WI 3, 366 Wis. 2d 64, 873 N.W.2d 502, 13−0857.

The 4th amendment does not inflexibly require that officers be concerned about specific, known individuals in order to be acting as community caretakers. State v. Matalonis, 2016 WI 7, 366 Wis. 2d 443, 875 N.W.2d 567, 14−0108. But see Caniglia v. Strom, 593 U.S. ___, 141 S. Ct. 1596, 209 L. Ed. 2d 604 (2021).

A warrantless blood sample may be justified even when an inferior form of evidence may be available. The fact that morphine remains in the body for several hours after the ingestion of heroin does not mean that it would be unreasonable for an officer to believe that taking the time to obtain a search warrant in this case risked destruction of evidence of heroin use. That the defendant never used a car in this case did not elevate his privacy interests to such heights as to render any warrantless blood draw under exigent circumstances unreasonable. State v. Parisi, 2016 WI 10, 367 Wis. 2d 1, 875 N.W. 2d 619, 14−1267.

A blood draw from the defendant under s. 343.305 while the defendant was unconscious was permissible under the 4th amendment under the exigent circumstances doctrine when a deputy had probable cause to arrest the defendant for operating a vehicle with a prohibited alcohol concentration. State v. Howes, 2017 WI 18, 373 Wis. 2d 468, 893 N.W.2d 812, 14−1870.

Under *Purtell,* when a condition of probation prohibits the possession of a certain item, and the subject of the search knowingly breaks that condition, in most situations a probation agent would presumably have reasonable grounds to search the contents of the item. *Purtell* tells us that as long as there are "reasonable

grounds" to believe a probationer has contraband, a probation agent will almost always have the right to search the contraband itself without a warrant. State v. Keller, 2017 WI App 19, 374 Wis. 2d 325, 893 N.W.2d 276, 16–0500.

When a probation agent lawfully seized a contraband computer from a probationer but did not have the ability to examine the contents of the contraband and requested the assistance of an analyst at the division of criminal investigation, independent from any law enforcement investigation, so as to examine the contents of the computer, based upon the rationale set forth in *Purtell* and *Devries*, the search was not a police search. State v. Keller, 2017 WI App 19, 374 Wis. 2d 325, 893 N.W.2d 276, 16–0500.

In cases involving warrantless community caretaker impoundments, the fundamental question is the reasonableness of the seizure. The absence of standard criteria does not by default render a warrantless community caretaker impoundment unconstitutional under the 4th amendment reasonableness standard, nor does an officer's lack of adherence to standard criteria, if they exist, automatically render such impoundments unconstitutional. Under the reasonableness standard, an officer's discretion to impound a car is sufficiently cabined by the requirement that the decision to impound be based, at least in part, on a reasonable community caretaking concern and not exclusively on the suspicion of criminal activity. State v. Asboth, 2017 WI 76, 376 Wis. 2d 644, 898 N.W.2d 541, 15–2052.

The danger inherent to traffic stops authorizes an officer to take certain negligibly burdensome precautions in order to complete his or her mission safely. When after writing traffic citations, the officer returned to the defendant's car and asked him to submit to a search, this request did not extend the stop beyond its permissible duration. Because the request related to officer safety and was negligibly burdensome, it was part of the traffic stop's mission, and so did not cause an extension. Whatever additional time the actual search consumed, or the burden it imposed, was irrelevant so long as the defendant consented to it. State v. Floyd, 2017 WI 78, 377 Wis. 2d 394, 898 N.W.2d 560, 15–1294. See also State v. Brown, 2020 WI 63, 392 Wis. 2d 454, 945 N.W.2d 584, 17–0774.

A court is not bound by an officer's subjective reasons for a search. That a search was going to happen pursuant to law enforcement agency policy is not controlling. Rather, the question is whether the search itself was constitutionally permissible as an objective matter. The officer in this case had reasonable suspicion to search for weapons. One who reacts to a question by quieting down, becoming deflated, and responding demurely does so for a reason. A reasonably prudent officer seeing this response to a question about weapons would be suspicious and wonder if the answer was truthful. An abnormal nervousness or unusual response to interaction with law enforcement is a relevant factor in whether a person is armed and dangerous. State v. Nesbit, 2017 WI App 58, 378 Wis. 2d 65, 902 N.W.2d 266, 16–0224.

In *Hughes*, 233 Wis. 2d 280, the supreme court held that exigent circumstances exist where there is a strong odor of marijuana emanating from a residence and occupants simply become aware of police outside the door. An officer could reasonably believe that a juvenile who is attempting to flee from a residence when officers are on the property and the odor of burning marijuana is in the air is more likely to also attempt to prevent evidence from being discovered by the police, including through the destruction of such evidence. State v. Torres, 2017 WI App 60, 378 Wis. 2d 201, 902 N.W.2d 543, 16–1061.

Under *City of Indianapolis v. Edmond*, 531 U.S. 32, generally, a search or seizure will be deemed unreasonable "in the absence of individualized suspicion of wrongdoing." However, there are limited circumstances when special law enforcement concerns justify highway stops without individualized suspicion, such as when a suspicionless search is designed to serve special needs, beyond the normal need for law enforcement. The factors for determining reasonableness are the gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty. If the public interest aspects of the first 2 factors are not outweighed by the 4th amendment protections represented by the third factor, the protections offered by the 4th amendment are not violated. State v. Scott, 2017 WI App 74, 378 Wis. 2d 578, 904 N.W.2d 125, 16–1742.

Because a traffic stop's mission includes the ordinary inquiries, such as checking a driver's license, an officer who lawfully stops a vehicle should be able to complete that mission even if the reason for the traffic stop ended during the officer's walk to the stopped vehicle. Ordinary inquiries incident to the traffic stop include: checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance. State v. Smith, 2018 WI 2, 379 Wis. 2d 86, 905 N.W.2d 353, 15–0756.

A police officer's act of opening a vehicle's passenger door in order to effectively communicate with a driver otherwise inaccessible due to the malfunctioning driver's door and window when the defendant appeared to be cooperating and moving toward the passenger seat, and seemed to be trying to open the passenger door, did not constitute an unreasonable search. The officer's actions, viewed objectively, would warrant a person of reasonable caution to believe the action taken was appropriate. State v. Smith, 2018 WI 2, 379 Wis. 2d 86, 905 N.W.2d 353, 15–0756.

Despite the defendant passing field sobriety tests and the officer apparently concluding that the defendant was not impaired due to alcohol, the officer, quite reasonably, believed there was "something else going on," though he did not know if it was a medical issue or a drug issue. From the totality of the circumstances, a reasonable inference of wrongful conduct—that the defendant had driven while under the influence of a drug or drugs—could be objectively discerned, and thus the officer had the right to continue the temporary detention of the defendant for further investigation. State v. Rose, 2018 WI App 5, 379 Wis. 2d 663, 907 N.W.2d 463, 16–2257.

Under *Payton*, 445 U.S. 573 (1980), police may enter a residence pursuant to an arrest warrant if the facts and circumstances present the police with a reasonable belief that: 1) the subject of the arrest warrant resides in the home; and 2) the subject of the arrest warrant is present in the home at the time entry is effected. State v. Delap, 2018 WI 64, 382 Wis. 2d 92, 913 N.W.2d 175, 16–2196.

A search occurs when a convicted recidivist sex offender who has completed his or her sentence is required to attach a monitoring device to his or her body to track his or her movements. The reasonableness of a search depends upon the totality of the circumstances, including the nature and purpose of the search and the extent to which the search intrudes upon reasonable privacy expectations. Under the totality of the circumstances, given the diminished nature of a defendant's privacy interest and the state's particularly strong interest in reducing recidivism through the information collected by the tracking device, the global positioning system tracking requirement for convicted sex offenders is reasonable under the 4th amendment. Kaufman v. Walker, 2018 WI App 37, 382 Wis. 2d 774, 915 N.W.2d 193, 17–0085.

The 4th amendment's special needs doctrine applies to s. 301.48. The global positioning system (GPS) tracking program effectively serves the recognized special needs of deterring future crimes and gathering information needed to solve them. The state's interest in accomplishing these special needs in the context of sex crimes outweighs sex offenders' diminished privacy expectations. Kaufman v. Walker, 2018 WI App 37, 382 Wis. 2d 774, 915 N.W.2d 193, 17–0085.

Under *Birchfield*, 579 U.S. 438, 136 S. Ct. 2160, it is impermissible to impose criminal penalties for refusing to submit to a warrantless blood draw. A lengthier jail sentence is a criminal penalty. Therefore, the circuit court in this case violated *Birchfield* by explicitly subjecting the defendant to a more severe criminal penalty because the defendant refused to provide a blood sample absent a warrant. State v. Dalton, 2018 WI 85, 383 Wis. 2d 147, 914 N.W.2d 120, 16–2483.

The expectation of privacy in digital files is governed by the same standards as the expectation of privacy in physical property. There is no reasonable expectation of privacy in digital files that are publicly shared on a peer–to–peer network, including where law enforcement used non–publicly available software and geolocation services based on a publicly available IP address to discover the files and locate the defendant. State v. Baric, 2018 WI App 63, 384 Wis. 2d 359, 919 N.W.2d 221, 17–0185.

Whether consent is verbal or inferred from one's actions, consent must be unequivocal and specific. Leading an officer to the threshold of an apartment and then entering the apartment and closing the door does not imply consent for the officer to enter the apartment. The standard for measuring the scope of a suspect's consent under the 4th amendment is that of objective reasonableness—what the typical reasonable person would have understood by the exchange between the officer and the suspect. State v. Reed, 2018 WI 109, 384 Wis. 2d 469, 920 N.W.2d 56, 16–1609.

Generalized concerns for safety and risk of flight are not enough to give rise to exigent circumstances. The test is whether there are objective facts known to the officer that would reasonably lead him to believe that the delay caused by obtaining a warrant would gravely endanger life or greatly enhance the likelihood of the subject's escape. State v. Reed, 2018 WI 109, 384 Wis. 2d 469, 920 N.W.2d 56, 16–1609.

The 4th amendment tolerates certain investigations that are outside the scope of the mission of a traffic stop, so long as the investigations do not measurably extend the duration of the stop. When the officer questioned the defendant on whether the defendant had a valid concealed carry permit, although the questioning and a permit check were outside the mission of the traffic stop, they did not violate the 4th amendment because they did not measurably extend the duration of the stop and were conducted concurrently with mission–related activities. State v. Wright, 2019 WI 45, 386 Wis. 2d 495, 926 N.W.2d 157, 17–2006. See also State v. Brown, 2020 WI 63, 392 Wis. 2d 454, 945 N.W.2d 584, 17–0774.

An anonymous informant is considered reliable if police are able to corroborate details in the informant's tip. In this case, the record contained no information indicating the informant's identity or whether the informant had provided reliable information to police in the past, but, because the tips were corroborated, the court did not discount them entirely in its analysis. Accordingly, the corroborated tips of the unnamed informant in this case could be considered in the analysis of the totality of the circumstances, giving them such weight as they were due. State v. Anderson, 2019 WI 97, 389 Wis. 2d 106, 935 N.W.2d 285, 17–1104.

An immediate and continuous pursuit was a hot pursuit satisfying the 4th amendment exception to the warrant requirement. The measured speed at which the pursuit occurred in no way lessened its "hot" nature. State v. Ionescu, 2019 WI App 68, 389 Wis. 2d 586, 937 N.W.2d 90, 18–1620.

The reasonableness approach, and not the categorical approach, is the correct interpretation of *Gant*, 556 U.S. 332 (2009). When the totality of the circumstances objectively demonstrated that the officer had reasonable suspicion that a bag in the passenger compartment of the vehicle might contain relevant evidence of operating while intoxicated (OWI), the search was permissible under the 4th amendment. State v. Coffee, 2020 WI 53, 391 Wis. 2d 831, 943 N.W.2d 845, 18–1209.

In this case, the deputies were not performing a bona fide community caretaker function when they seized the defendant's vehicle without a warrant. The defendant was parked on the side of a road after having been stopped for speeding, was alone in the vehicle, and had been driving with a suspended operator's license. Although the defendant told the deputies who were issuing the traffic citations that he could have a licensed driver retrieve the vehicle, the deputies told him department policy required them to take the vehicle to an impound lot. A standardized policy may provide some evidence that the police performed their community caretaker role reasonably, but it cannot establish the predicate—that they were acting as community caretakers. Because the seizure in this case violated the 4th amendment, so did the ensuing inventory search. State v. Brooks, 2020 WI 60, 392 Wis. 2d 402, 944 N.W.2d 832, 18–1774.

The U.S. Supreme Court in *Mitchell*, 588 U.S. ___, 139 S. Ct. 2525 (2019), indicated that a court's exigent–circumstances analysis should consider whether law enforcement could have taken steps en route to a medical facility without significantly increasing the delay in procuring the blood sample. A court is not at liberty to begin the exigency analysis for a warrantless blood draw at a point following a suspect's refusal to provide a blood sample when the U.S. Supreme Court has indicated the analysis begins earlier. State v. Hay, 2020 WI App 35, 392 Wis. 2d 845, 946 N.W.2d 190, 18–2240.

Following *Mitchell*, 588 U.S. ___, 139 S. Ct. 2525 (2019), the four factors that the state bears the burden to show that exigent circumstances justified a warrantless blood draw are: 1) law enforcement has probable cause to believe that the driver has committed a "drunk–driving offense"; 2) the driver is, at pertinent times, unconscious or in a stupor; 3) the driver's unconscious state or stupor requires that he or she be taken to a hospital or similar facility; and 4) the driver is taken to the hospital or similar facility before law enforcement has a "reasonable opportunity" to administer a standard evidentiary breath test. The burden is on the defendant to show that the defendant's blood would not have been drawn if police had not been seeking blood alcohol concentration information and to show that law enforcement could not have reasonably judged that a warrant application would interfere with

other pressing needs or duties. State v. Richards, 2020 WI App 48, 393 Wis. 2d 772, 948 N.W.2d 359, 17–0043.

Because the natural dissipation of alcohol over time presents a risk that evidence will be destroyed, the passage of time may help support an exigent circumstances determination in a given case. Here, there had already been a significant delay, which occurred through no fault of the police. An objectively reasonable officer would have been concerned that additional delay to obtain a warrant, beyond the five hours that had already elapsed, would have further undermined the probative value of a test, possibly even rendering it inadmissible if an expert was not able to support its probative value. State v. Dieter, 2020 WI App 49, 393 Wis. 2d 796, 948 N.W.2d 431, 18–2269.

The reasonable suspicion test for executing a traffic stop is not an exercise in evaluating individual details in isolation. It is the whole picture, evaluated together, that serves as the proper analytical framework. State v. Genous, 2021 WI 50, 397 Wis. 2d 293, 961 N.W.2d 41, 19–0435.

A reasonable person being repetitively questioned while the officer retains the person's driver's license would not feel free to drive away and thereby terminate the encounter. In this case, it was the officer's conduct of retaining the driver's licenses, while repeatedly asking questions that the defendant and her passenger had already answered, that coerced the defendant to remain in the jurisdiction. Also, the officer's questioning was intended to require them to remain in the jurisdiction so that time would pass and a drug−sniff dog would appear to sniff for drugs. Accordingly, the defendant was seized during the second round of repetitive questions while the officer retained the defendant's driver's license. State v. VanBeek, 2021 WI 51, 397 Wis. 2d 311, 960 N.W.2d 32, 19–0447.

The *T.L.O.*, 469 U.S. 325 (1985), "reasonableness under all the circumstances" standard applies to searches of people and their property located on school grounds even if they are not students of the school where the search occurs. State v. Vang, 2021 WI App 28, 398 Wis. 2d 311, 960 N.W.2d 434, 18–1730.

Although the time it takes to ask a question is measurable, the fact that an inquiry is made does not, in and of itself, create the type of unreasonable burden to make an extension of a traffic stop unlawful for 4th amendment purposes. That notion is true whether the question occurs in the "middle" of a stop versus at the very end of one. State v. Crone, 2021 WI App 29, 398 Wis. 2d 244, 961 N.W.2d 97, 18–1764.

Checking for bond conditions is not an ordinary inquiry incidental to the mission of a traffic stop. Officers may check bond conditions while simultaneously performing other mission−related tasks, but they may not prolong a stop to inquire into a motorist's bond conditions without reasonable suspicion that the motorist is violating a bond condition. State v. Davis, 2021 WI App 65, 399 Wis. 2d 354, 965 N.W.2d 84, 20–0731.

The supreme court has stated that, based on the reasonable suspicion of the offense of operating while intoxicated, an officer may request a driver to perform various field sobriety tests. That statement does not require that an officer observe facts suggesting intoxication when administering field sobriety tests upon reasonable suspicion of operating with a prohibited alcohol concentration. State v. Adell, 2021 WI App 72, 399 Wis. 2d 399, 966 N.W.2d 115, 20–2135.

If, during a valid traffic stop, an officer becomes aware of additional suspicious factors that are sufficient to give rise to an articulable suspicion that the person has committed or is committing an offense or offenses separate and distinct from the acts that prompted the officer's intervention in the first place, the stop may be extended and a new investigation begun. The validity of the extension is tested in the same manner, and under the same criteria, as the initial stop. In this case, the deputy lawfully extended the traffic stop because the totality of the facts as they unfolded established reasonable suspicion to investigate the offense of operating with a prohibited alcohol concentration, and the deputy lawfully administered field sobriety tests in furtherance of that investigation because those tests would be likely to support or dispel the deputy's suspicion. State v. Adell, 2021 WI App 72, 399 Wis. 2d 399, 966 N.W.2d 115, 20–2135.

The emergency aid exception to the warrant requirement does not require that officers personally observe indications of an ongoing medical emergency. Reliable and corroborated information from an informant may justify a warrantless search of a home under the emergency aid exception. State v. Ware, 2021 WI App 83, 400 Wis. 2d 118, 968 N.W.2d 752, 20–1559.

Courts apply a two−part test in determining whether the emergency aid exception applies: under the totality of the circumstances, a reasonable person would believe that 1) there is an immediate need to provide aid or assistance to a person due to actual or threatened physical injury; and 2) immediate entry into an area in which a person has a reasonable expectation of privacy is necessary in order to provide that aid or assistance. State v. Ware, 2021 WI App 83, 400 Wis. 2d 118, 968 N.W.2d 752, 20–1559.

A warrantless, non−exigent, felony arrest in public was constitutional despite the opportunity to obtain a warrant. United States v. Watson, 423 U.S. 411, 96 S. Ct. 820, 46 L. Ed. 2d 598 (1976).

When a driver was stopped because of expired license plates, a police order to get out of the car was reasonable and a subsequent "pat down" based on an observed bulge under the driver's jacket resulted in the legal seizure of an unlicensed revolver. Pennsylvania v. Mimms, 434 U.S. 106, 98 S. Ct. 330, 54 L. Ed. 2d 331 (1977).

A burning building clearly presents an exigency rendering a warrantless entry reasonable, and fire officials need no warrant to remain in a building for a reasonable time to investigate the cause of the fire after it is extinguished. Michigan v. Tyler, 436 U.S. 499, 98 S. Ct. 1942, 56 L. Ed. 2d 486 (1978).

The warrantless installation of a pen register, that recorded telephone numbers called but not the contents of the calls, did not violate the 4th amendment. Smith v. Maryland, 442 U.S. 735, 99 S. Ct. 2577, 61 L. Ed. 2d 220 (1979).

A warrantless search of a suitcase in the trunk of a taxi was unconstitutional. Arkansas v. Sanders, 442 U.S. 753, 99 S. Ct. 2586, 61 L. Ed. 2d 235 (1979).

Police may not make a warrantless, nonconsensual entry into a suspect's home in order to make a routine felony arrest. Payton v. New York, 445 U.S. 573, 100 S. Ct. 1371, 63 L. Ed. 2d 639 (1980).

That police had lawful possession of pornographic film boxes did not give them authority to search their contents. Walter v. United States, 447 U.S. 649, 100 S. Ct. 2395, 65 L. Ed. 2d 410 (1980).

An officer who accompanied an arrestee to the arrestee's residence to obtain identification properly seized contraband in plain view. Washington v. Chrisman, 455 U.S. 1, 102 S. Ct. 812, 70 L. Ed. 2d 778 (1982).

Officers who have legitimately stopped an automobile and who have probable cause to believe contraband is concealed somewhere within it may conduct a warrantless search of the vehicle as thorough as could be authorized by warrant. United States v. Ross, 456 U.S. 798, 102 S. Ct. 2157, 72 L. Ed. 2d 572 (1982).

When an officer, after stopping a defendant's car at a routine driver's license checkpoint, saw a tied−off party balloon in plain sight, the officer had probable cause to believe the balloon contained an illicit substance. Hence, a warrantless seizure of the balloon was legal. Texas v. Brown, 460 U.S. 730, 103 S. Ct. 1535, 75 L. Ed. 2d 502 (1983).

A warrantless search by arson investigators of the defendant's fire−damaged home that was not a continuation of an earlier search was unconstitutional. Michigan v. Clifford, 464 U.S. 287, 104 S. Ct. 641, 78 L. Ed. 2d 477 (1984).

When a damaged shipping package was examined by company employees who discovered white powder, a subsequent warrantless field test by police was constitutional. United States v. Jacobsen, 466 U.S. 109, 104 S. Ct. 1652, 80 L. Ed. 2d 85 (1984).

Discussing the "open fields" doctrine. Oliver v. United States, 466 U.S. 170, 104 S. Ct. 1735, 80 L. Ed. 2d 214 (1984).

The warrantless, nighttime entry of the defendant's home for arrest for a civil, nonjailable traffic offense was not justified under the "hot pursuit" doctrine or the preservation of evidence doctrine. Welsh v. Wisconsin, 466 U.S. 740, 104 S. Ct. 2091, 80 L. Ed. 2d 732 (1984).

School officials need not obtain a warrant before searching a student. The legality of the search depends on the reasonableness, under all circumstances, of the search. New Jersey v. T.L.O., 469 U.S. 325, 105 S. Ct. 733, 83 L. Ed. 2d 720 (1985).

When officers were entitled to seize packages in a vehicle and could have searched them immediately without a warrant, a warrantless search of the packages three days later was reasonable. United States v. Johns, 469 U.S. 478, 105 S. Ct. 881, 83 L. Ed. 2d 890 (1985).

The vehicle exception for warrantless searches applies to motor homes. California v. Carney, 471 U.S. 386, 105 S. Ct. 2066, 85 L. Ed. 2d 406 (1985).

The good faith exception to the exclusionary rule applies when an officer reasonably relies upon a statute allowing a warrantless administrative search that was subsequently ruled unconstitutional. Illinois v. Krull, 480 U.S. 340, 107 S. Ct. 1160, 94 L. Ed. 2d 364 (1987).

A protective sweep of a residence in conjunction with an arrest is permissible if police reasonably believe that the area harbors an individual posing a danger to officers or others. Maryland v. Buie, 494 U.S. 325, 110 S. Ct. 1093, 108 L. Ed. 2d 276 (1990).

Inadvertence is not a necessary condition to a "plain view" seizure. Horton v. California, 496 U.S. 128, 110 S. Ct. 2301, 110 L. Ed. 2d 112 (1990).

For a seizure of a person to occur, there must either be an application of force, however slight, or when force is absent, submission to an officer's "show of authority." California v. Hodari D., 499 U.S. 621, 111 S. Ct. 1547, 113 L. Ed. 2d 690 (1991).

A determination of probable cause made within 48 hours of a warrantless arrest generally meets the promptness requirement. If a hearing is held more than 48 hours following the arrest, the burden shifts to the government to demonstrate an emergency or extraordinary circumstances. County of Riverside v. McLaughlin, 500 U.S. 44, 111 S. Ct. 1661, 114 L. Ed. 2d 49 (1991).

There shall be one rule governing all automobile searches. The police may search the car and all containers within it without a warrant when they have probable cause to believe contraband or evidence is contained in either. California v. Acevedo, 500 U.S. 565, 111 S. Ct. 1982, 114 L. Ed. 2d 619 (1991).

If during a lawful weapons pat down an officer feels an object whose contours or mass makes its identity immediately apparent, there has been no invasion of privacy beyond that already authorized. Minnesota v. Dickerson, 508 U.S. 366, 113 S. Ct. 2130, 124 L. Ed. 2d 334 (1993).

An officer making a traffic stop may order passengers to get out of the vehicle pending the completion of the stop. Maryland v. Wilson, 519 U.S. 408, 117 S. Ct. 882, 137 L. Ed. 2d 41 (1997).

Persons observed through a window in a home where they were not overnight guests but were present for a short period to engage in a primarily commercial illegal drug transaction, had no expectation of privacy in the home and the observation of those persons was not a constitutionally prohibited search. Minnesota v. Carter, 525 U.S. 83, 119 S. Ct. 469, 142 L. Ed. 2d 373 (1998).

The issuance of a traffic citation without an arrest did not authorize a full search of the vehicle. Knowles v. Iowa, 525 U.S. 113, 119 S. Ct. 484, 142 L. Ed. 2d 492 (1998).

When there is probable cause to search a vehicle for contraband, officers may examine containers in the vehicle without a showing of individualized probable cause for each container. The container may be searched whether or not its owner is present as a passenger, or otherwise, because it may contain contraband that the officers reasonably believe is in the car. Wyoming v. Houghton, 526 U.S. 295, 119 S. Ct. 1297, 143 L. Ed. 2d 408 (1999).

Police need not obtain a warrant before seizing an automobile from a public place when there is probable cause to believe that the vehicle is forfeitable contraband. Florida v. White, 526 U.S. 559, 119 S. Ct. 1555, 143 L. Ed. 2d 748 (1999).

The exception to the requirement of a warrant for automobiles does not require a separate finding of exigency, in addition to a finding of probable cause. Maryland v. Dyson, 527 U.S. 465, 119 S. Ct. 2013, 144 L. Ed. 2d 442 (1999).

When there is probable cause to search a motor vehicle, the search is not unreasonable if the search is based on facts that would justify the issuance of a warrant, although a warrant was not obtained. No separate finding of exigent circumstances is required. Maryland v. Dyson, 527 U.S. 465, 119 S. Ct. 2013, 144 L. Ed. 2d 442 (1999).

There is no murder scene exception to the warrant requirement. Flippo v. West Virginia, 528 U.S. 11, 120 S. Ct. 7, 145 L. Ed. 2d 16 (1999).

Nervous, evasive behavior is a pertinent factor in determining reasonable suspicion. Headlong flight is the consummate act of evasion. Illinois v. Wardlow, 528 U.S. 119, 120 S. Ct. 673, 145 L. Ed. 2d 570 (2000).

An anonymous tip that a person is carrying a gun, without more, is insufficient to justify a police officer's stop and frisk of a person. The tip must bear indicia of reliability. Reasonable suspicion requires that a tip be reliable in its assertion of criminal activity, not just in its tendency to identify a person. Florida v. J.L., 529 U.S. 266, 120 S. Ct. 1375, 146 L. Ed. 2d 254 (2000).

Stopping vehicles at highway checkpoints without any individualized suspicion to interdict illegal drugs was an unreasonable seizure under the 4th amendment because the primary purpose was to uncover evidence of ordinary criminal wrongdoing, unlike checkpoints to check for drunk driving or illegal immigrants. City of Indianapolis v. Edmond, 531 U.S. 32, 121 S. Ct. 447, 148 L. Ed. 2d 333 (2000).

The police acted reasonably when, with probable cause to believe that the defendant had hidden drugs in his home, they prevented the man from entering the home for about two hours until a search warrant could be obtained. Illinois v. McArthur, 531 U.S. 326, 121 S. Ct. 946, 148 L. Ed. 2d 838 (2001).

A state hospital could not test maternity patients for cocaine and then turn the results over to law enforcement authorities without patient consent. The interest of using the threat of criminal sanctions to deter pregnant women from using cocaine does not justify a departure from the rule that a nonconsensual search is unconstitutional if not authorized by a warrant. Ferguson v. City of Charleston, 532 U.S. 67, 121 S. Ct. 1281, 149 L. Ed. 2d 205 (2001).

If an officer has probable cause to believe a person has committed even a very minor criminal offense that does not breach the peace, the officer may, without violating the 4th amendment, arrest the offender without the need to balance the circumstances involved in the particular situation. Atwater v. City of Lago Vista, 532 U.S. 318, 121 S. Ct. 1536, 149 L. Ed. 2d 549 (2001).

Obtaining, by sense–enhancing technology like infrared imaging, information regarding the interior of a home that could otherwise not be obtained without physical intrusion into a constitutionally protected area is a search presumptively unreasonable without a warrant. Kyllo v. United States, 533 U.S. 27, 121 S. Ct. 2038, 150 L. Ed. 2d 94 (2001).

A warrantless search of a probationer's residence founded on reasonable suspicion of criminal activity and authorized as a condition of probation was reasonable. Such a search is not restricted to monitoring whether the probationer is complying with probation restrictions. United States v. Knights, 534 U.S. 112, 122 S. Ct. 587, 151 L. Ed. 2d 497 (2001).

Police officers may approach bus riders at random to ask questions and to request consent to search luggage without advising the passengers of their right to not cooperate. United States v. Drayton, 536 U.S. 194, 122 S. Ct. 2105, 153 L. Ed. 2d 242 (2002).

A school district policy of requiring all participants in competitive extracurricular activities to submit to drug testing was a reasonable means of furthering the district's interest in preventing drug use among students and was not an unreasonable search. Board of Education of Independent School District No. 92 v. Earls, 536 U.S. 822, 122 S. Ct. 2559, 153 L. Ed. 2d 735 (2002).

A highway checkpoint where police stopped motorists to ask them for information about a recent hit–and–run was reasonable. The arrest of a drunk driver arrested when his vehicle swerved nearly hitting an officer at the checkpoint was constitutional. Illinois v. Lidster, 540 U.S. 419, 124 S. Ct. 885, 157 L. Ed. 2d 843 (2004).

When a police officer has made a lawful custodial arrest of an occupant of an automobile, the 4th amendment allows the officer to search the passenger compartment of that vehicle as a contemporaneous incident of arrest whether the officer makes contact with the occupant while the occupant is inside the vehicle, or when the officer first makes contact with the arrestee after the latter has exited the vehicle. Thornton v. United States, 541 U.S. 615, 124 S. Ct. 2127, 158 L. Ed. 2d 905 (2004).

The principles of *Terry*, 392 U.S. 1 (1968), permit a state to require a suspect to disclose his or her name in the course of a *Terry* stop and allow imposing criminal penalties for failing to do so. Hiibel v. Sixth Judicial District Court, 542 U.S. 177, 124 S. Ct. 2451, 159 L. Ed 2d 292 (2004).

The 4th amendment does not require reasonable, articulable suspicion to justify using a drug–detection dog to sniff a vehicle during a legitimate traffic stop. The use of a well–trained narcotics–detection dog that does not expose noncontraband items that otherwise would remain hidden from public view during a lawful traffic stop, generally does not implicate legitimate privacy interests. Illinois v. Caballes, 543 U.S. 405, 125 S. Ct. 834, 160 L. Ed. 2d 842 (2004).

Police may enter a home without a warrant when they have an objectively reasonable basis for believing that an occupant is seriously injured or imminently threatened with such injury. An action is reasonable under the 4th amendment, regardless of the individual officer's state of mind, as long as the circumstances, viewed objectively, justify the action. Brigham City v. Stuart, 547 U.S. 398, 126 S. Ct. 1943, 164 L. Ed. 2d 650 (2006).

The 4th amendment does not prohibit a police officer from conducting a suspicionless search of a parolee. Samson v. California, 547 U.S. 843, 126 S. Ct. 2193, 165 L. Ed. 2d 250 (2006).

Warrantless arrests for crimes committed in the presence of an arresting officer are reasonable under the U.S. Constitution, and while states are free to regulate such arrests however they desire, state restrictions do not alter the 4th amendment's protections. Virginia v. Moore, 553 U.S. 164, 128 S. Ct. 1598, 170 L. Ed. 2d 559 (2008).

In a traffic–stop setting, the first *Terry*, 392 U.S. 1 (1968), condition—a lawful investigatory stop—is met whenever it is lawful for police to detain an automobile and its occupants pending inquiry into a vehicular violation. The police need not have, in addition, cause to believe any occupant of the vehicle is involved in criminal activity. To justify a patdown of the driver or a passenger during a traffic stop, however, the police must harbor reasonable suspicion that the person subjected to the frisk is armed and dangerous. Arizona v. Johnson, 555 U.S. 323, 129 S. Ct. 781, 172 L. Ed. 2d 694 (2009).

Belton, 453 U.S. 454 (1981), does not authorize a vehicle search incident to a recent occupant's arrest after the arrestee has been secured and cannot access the interior of the vehicle. Police are authorized to search a vehicle incident to a recent occupant's arrest only when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search. Consistent with *Thornton,* 541 U.S. 615 (2004), circumstances unique to the automobile context justify a search incident to arrest when it is reasonable to believe that evidence of the offense of arrest might be found in the vehicle. Arizona v. Gant, 556 U.S. 332, 129 S. Ct. 1710, 173 L. Ed. 2d 485 (2009).

The *T.L.O.*, 469 U.S. 325 (1985), concern to limit a school search to a reasonable scope requires reasonable suspicion of danger or a resort to hiding evidence of wrongdoing in underwear before a searcher can reasonably make the quantum leap from a search of outer clothes and backpacks to exposure of intimate parts. The meaning of such a search, and the degradation its subject may reasonably feel, place a search that intrusive in a category of its own demanding its own specific suspicions. Safford Unified School District No. 1 v. Redding, 557 U.S. 364, 129 S. Ct. 2633, 174 L. Ed. 2d 354 (2009).

A government employer had the right, under the circumstances of the case, to read text messages sent and received on a pager the employer owned and issued to an employee. The privacy of the messages was not protected by the ban on "unreasonable searches and seizures" found in the 4th amendment. Because the search was motivated by a legitimate work related purpose, and because it was not excessive in scope, the search was reasonable. Ontario v. Quon, 560 U.S. 746, 130 S. Ct. 2619, 177 L. Ed. 2d 216 (2010).

Warrantless searches are allowed when the circumstances make it reasonable, within the meaning of the 4th amendment, to dispense with the warrant requirement. The exigent circumstances rule justifies a warrantless search when the conduct of the police preceding the exigency is reasonable in the same sense. When the police do not create the exigency by engaging or threatening to engage in conduct that violates the 4th amendment, warrantless entry to prevent the destruction of evidence is reasonable and thus allowed. Kentucky v. King, 563 U.S. 452, 131 S. Ct. 1849, 179 L. Ed. 2d 865 (2011).

The government's installation of a global–positioning–system (GPS) device on a target's vehicle, and its use of that device to monitor the vehicle's movements, constitutes a "search." United States v. Jones, 565 U.S. 400, 132 S. Ct. 945, 181 L. Ed. 2d 911 (2012).

Whether an official protected by qualified immunity may be held personally liable for an allegedly unlawful official action generally turns on the objective legal reasonableness of the action, assessed in light of the legal rules that were clearly established at the time the action was taken. When an alleged 4th amendment violation involves a search or seizure pursuant to a warrant, the fact that a neutral magistrate has issued a warrant is the clearest indication that the officers acted in an objectively reasonable manner. There is a narrow exception allowing suit when it is obvious that no reasonably competent officer would have concluded that a warrant should issue. Messerschmidt v. Millender, 565 U.S. 535, 132 S. Ct. 1235, 182 L. Ed. 2d 47 (2012).

Generally, every detainee who will be admitted to the general jail population may be required to undergo a close visual inspection while undressed. Undoubted security imperatives involved in jail supervision override the assertion that some detainees must be exempt from these invasive procedures absent reasonable suspicion of a concealed weapon or other contraband. Deference must be given to the officials in charge of the jail unless there is substantial evidence demonstrating their response to the situation is exaggerated. Florence v. Board of Chosen Freeholders of County of Burlington, 566 U.S. 318, 132 S. Ct. 1510, 182 L. Ed. 2d 566 (2012).

The categorical authority to detain incident to the execution of a search warrant must be limited to the immediate vicinity of the premises to be searched. A spatial constraint defined by the immediate vicinity of the premises to be searched is therefore required for detentions incident to the execution of a search warrant. Limiting the rule in *Summers*, 452 U.S. 692 (1981), to the area in which an occupant poses a real threat to the safe and efficient execution of a search warrant ensures that the scope of the detention incident to a search is confined to its underlying justification. Once an occupant is beyond the immediate vicinity of the premises to be searched, the search–related law enforcement interests are diminished and the intrusiveness of the detention is more severe. Bailey v. United States, 568 U.S. 186, 133 S. Ct. 1031, 185 L. Ed. 2d 19 (2013).

Using a drug–sniffing dog on a homeowner's porch to investigate the contents of the home is a "search" within the meaning of the 4th amendment. A police officer not armed with a warrant may approach a home and knock, precisely because that is no more than any private citizen might do. But introducing a trained police dog to explore the area around the home in hopes of discovering incriminating evidence is something else. There is no customary invitation to do that. Florida v. Jardines, 569 U.S. 1, 133 S. Ct. 1409, 185 L. Ed. 2d 495 (2013).

Natural metabolization of alcohol in the bloodstream does not present a per se exigency that justifies an exception to the warrant requirement for nonconsensual blood testing in all drunk–driving cases. Consistent with general 4th amendment principles, exigency in this context must be determined case by case based on the totality of the circumstances. Missouri v. McNeely, 569 U.S. 141, 133 S. Ct. 1552, 185 L. Ed. 2d 696 (2013).

Police officers must generally secure a warrant before conducting a search of the information on a cell phone seized from an individual who has been arrested. Law enforcement officers remain free to examine the physical aspects of a phone to ensure that it will not be used as a weapon. Once an officer has secured a phone and eliminated any potential physical threats, however, data on the phone can endanger no one. Riley v. California, 573 U.S. 373, 134 S. Ct. 2473, 189 L. Ed. 2d 430 (2014).

In light of *Jones*, 565 U.S. 400 (2012), and *Jardines*, 569 U.S. 1 (2013), it follows that a state conducts a search when it attaches a device to a person's body, without consent, for the purpose of tracking that individual's movements. That conclusion, however, does not decide the ultimate question of the program's constitutionality. The 4th amendment prohibits only unreasonable searches. Grady v. North Carolina, 575 U.S. 306, 135 S. Ct. 1368, 191 L. Ed. 2d 459 (2015).

A police stop exceeding the time needed to handle the matter for which the stop was made violates the constitution's shield against unreasonable seizures. A seizure justified only by a police–observed traffic violation, therefore, becomes unlawful if it is prolonged beyond the time reasonably required to complete the mission of issuing a ticket for the violation. Rodriguez v. United States, 575 U.S. 348, 135 S. Ct. 1609, 191 L. Ed. 2d 492 (2015).

The attenuation doctrine applies when an officer makes an unconstitutional investigatory stop; learns during that stop that the suspect is subject to a valid arrest warrant; and proceeds to arrest the suspect and seize incriminating evidence during

a search incident to that arrest. The evidence the officer seized as part of the search incident to arrest is admissible because the officer's discovery of the arrest warrant attenuated the connection between the unlawful stop and the evidence seized incident to arrest. Utah v. Strieff, 579 U.S. 232, 136 S. Ct. 2056, 195 L. Ed. 2d 400 (2016).

A breath test, but not a blood test, may be administered as a search incident to a lawful arrest for drunk driving. As in all cases involving reasonable searches incident to arrest, a warrant is not needed in this situation. The 4th amendment permits warrantless breath tests incident to arrests for drunk driving. The impact of breath tests on privacy is slight, and the need for blood alcohol content testing is great. Blood tests are significantly more intrusive, and their reasonableness must be judged in light of the availability of the less invasive alternative of a breath test. Birchfield v. North Dakota, 579 U.S. 438, 136 S. Ct. 2160, 195 L. Ed 2d 560 (2016).

The automobile exception to the 4th amendment does not permit a police officer, uninvited and without a warrant, to enter the curtilage of a home in order to search a vehicle parked therein. Collins v. Virginia, 584 U.S. ___, 138 S. Ct. 1663, 201 L. Ed. 2d 9 (2018).

Individuals have a reasonable expectation of privacy in the whole of their physical movements, and an individual maintains a legitimate expectation of privacy in the record of the individual's physical movements as captured through cell–site location information. The government conducts a search under the 4th amendment when the government accesses historical cell phone records that provide a comprehensive chronicle of a user's past movements. Carpenter v. United States, 585 U.S. ___, 138 S. Ct. 2206, 201 L. Ed. 2d 507 (2018).

Under the third–party doctrine, a person has no legitimate expectation of privacy in information the person voluntarily turns over to third parties. However, given the unique nature of cellphone location records, the fact that the information is held by a third party does not by itself overcome a user's claim to 4th amendment protection. Whether the government employs its own surveillance technology or leverages the technology of a wireless carrier, an individual maintains a legitimate expectation of privacy in the record of the individual's physical movements as captured through cell–site location information, and a warrant is required in the rare case where a suspect has a legitimate privacy interest in records held by a third party. Carpenter v. United States, 585 U.S. ___, 138 S. Ct. 2206, 201 L. Ed. 2d 507 (2018).

A police officer did not violate the 4th amendment by initiating an investigative traffic stop after running a vehicle's license plate and learning that the registered owner had a revoked driver's license when the officer lacked information negating an inference that the owner was the driver of the vehicle. Kansas v. Glover, 589 U.S. ___, 140 S. Ct. 1183, 206 L. Ed. 2d 412 (2020).

"Community caretaking" duties do not create a standalone doctrine that justifies warrantless searches and seizures in the home. Caniglia v. Strom, 593 U.S. ___, 141 S. Ct. 1596, 209 L. Ed. 2d 604 (2021).

The need to pursue a misdemeanant does not trigger a categorical rule allowing home entry, even absent a law enforcement emergency. When the nature of the crime, the nature of the flight, and surrounding facts present no such exigency, officers must respect the sanctity of the home—which means that they must get a warrant. Lange v. California, 594 U.S. ___, 141 S. Ct. 2011, 210 L. Ed. 2d 486 (2021).

Within the meaning of the 4th amendment, domestic animals are effects and the killing of a companion dog constitutes a seizure, which is constitutional only if reasonable. Viilo v. Eyre, 547 F.3d 707 (2008).

Given how slight is the incremental loss of privacy from having to wear an anklet monitor, and how valuable to society the information collected by the monitor is, s. 301.48 does not violate the 4th amendment. The terms of supervised release, probation, and parole often authorize searches by probation officers without the officers' having to obtain warrants. Such warrantless searches do not violate the 4th amendment as long as they are reasonable. Such monitoring of sex offenders is permissible if it satisfies the reasonableness test applied in parolee and special–needs cases. Wisconsin's ankle monitoring of the defendant is reasonable. Belleau v. Wall, 811 F.3d 929 (2016).

For protective searches for weapons, area searches are permissible only when they have the level of suspicion identified in *Terry*, 392 U.S. 1 (1968). Under *Terry*, an officer may conduct a protective search for weapons of an individual's person and the area within the individual's control if a reasonably prudent person in the circumstances would be warranted in the belief that the person's safety or that of others was in danger. In this case, officers suspected the defendant had placed a gun on the threshold of the front door behind the screen door, and, based on the totality of the circumstances, opening the screen door fell within the bounds of a constitutional search. United States v. Richmond, 924 F.3d 404 (2019).

In this case, because the walkway was part of the curtilage of the house and was not clearly accessible to the public, when police officers used it to enter the backyard, they violated the 4th amendment. Although they were in the process of securing the perimeter, which they contend was a legitimate law enforcement objective, the broad catch–call of "legitimate law enforcement objective" is not an exception to the 4th amendment's curtilage rule. Reardon v. Schossow, 416 F. Supp. 3d 793 (2019).

But What of Wisconsin's Exclusionary Rule? The Wisconsin Supreme Court Accepts Apparent Authority to Consent as Grounds for Warrantless Searches. Schmidt. 83 MLR 299 (1999).

State v. Seibel: Wisconsin Police Now Need Only a Reasonable Suspicion to Search a Suspect's Blood Incident to an Arrest. Armstrong. 1993 WLR 563.

The Private–Search Doctrine Does Not Exist. McJunkin. 2018 WLR 971.

Law Enforcement in the American Security State. Said. 2019 WLR 819.

OWI Blood Draws: An Uncertain Road Ahead. Anderegg. Wis. Law. Nov. 2017.

Attainder; ex post facto; contracts. SECTION 12. No bill of attainder, ex post facto law, nor any law impairing the obligation of contracts, shall ever be passed, and no conviction shall work corruption of blood or forfeiture of estate.

Section 45.37 (9), Stats. 1963, constituted a contract as to the property an applicant for admission to the Grand Army Home had to surrender, and to apply a later amendment would be unconstitutional. Estate of Nottingham, 46 Wis. 2d 580, 175 N.W.2d 640.

Although the obligation of a contract is not an absolute right but one that may yield to the compelling interest of the public, the public purpose served by a law mandating rent reductions due to property tax relief is not so vital so as to permit such an impairment of contract. State ex rel. Bldg. Owners v. Adamany, 64 Wis. 2d 280, 219 N.W.2d 274.

Retroactive application of s. 57.06, 1987 stats. [now s. 304.06], as amended in 1973, increasing the period to be served by state prison inmates imposed an additional penalty and violated the prohibition against ex post facto legislation. State ex rel. Mueller v. Powers, 64 Wis. 2d 643, 221 N.W.2d 692.

The legislative preclusion against the State Medical Society's divesting itself of control of ch. 148, disability plans did not constitute any impairment of the society's charter because: 1) the grant of ch. 148 powers is permissive and voluntarily exercised by the society; 2) the ch. 148 grant is in the nature of a franchise rather than a contract and cannot be viewed as unalterable or it would constitute a delegation of inalienable legislative power; and 3) the constitutional interdiction against statutes impairing contracts does not prevent the state from exercising its police powers for the common good. State Medical Society v. Comm. of Insurance, 70 Wis. 2d 144, 233 N.W.2d 470.

When a probation statute was amended after a crime was committed but before the accused pled guilty and was placed on probation, application of the amended statute to probation revocation proceedings offended the ex post facto clause. State v. White, 97 Wis. 2d 517, 294 N.W.2d 36 (Ct. App. 1979).

A challenge to legislation must prove: 1) the legislation impairs an existing contractual relationship; 2) the impairment is substantial; and 3) if substantial, the impairment is not justified by the purpose of the legislation. Reserve Life Ins. Co. v. La Follette, 108 Wis. 2d 637, 323 N.W.2d 173 (Ct. App. 1982).

A mortgage contract entered into in 1977 and controlled by the 1971 statutes, which provided for a redemption period of 12 months upon foreclosure, could not be altered by a 1978 legislative enactment that reduced the redemption period to 6 months. An act that in any degree modifies the obligation of the contract by attempting to relieve the one party from any duty by the contract assumed is repugnant to the constitutional prohibition. Burke v. E. L. C. Investors, Inc. 110 Wis. 2d 406, 329 N.W.2d 259 (Ct. App. 1982).

The ex post facto prohibition applies to judicial pronouncements as well as legislative acts. The question to be addressed is whether the new law criminalizes conduct that was innocent when committed. State v. Kurzawa, 180 Wis. 2d 502, 509 N.W.2d 712 (1993).

Legislation creating penalty enhancers resulting from convictions prior to the effective date does not run afoul of the ex post facto clause. State v. Schuman, 186 Wis. 2d 213, 520 N.W.2d 107 (Ct. App. 1994).

An ex post facto law is one that punishes as a crime an act previously committed, that: 1) was innocent when done; 2) makes more burdensome the punishment for a crime, after its commission; or 3) deprives one charged with a crime of any defense available at the time the act was committed. State v. Thiel, 188 Wis. 2d 695, 524 N.W.2d 641 (1994).

Retroactive application of a new statute of limitations, enacted at a time when the old limitations period has not yet run, does not violate the ex post facto clause. State v. Haines, 2003 WI 39, 261 Wis. 2d 139, 661 N.W.2d 72, 01–1311.

In any challenge to a law on double jeopardy and ex post facto grounds, the threshold question is whether the ordinance is punitive, as both clauses apply only to punitive laws. Courts employ a two–part "intent–effects" test to answer whether a law applied retroactively is punitive and, therefore, an unconstitutional violation of the Double Jeopardy and Ex Post Facto Clauses. If the intent was to impose punishment, the law is considered punitive and the inquiry ends there. If the intent was to impose a civil and nonpunitive regulatory scheme, the court must determine whether the effects of the sanctions imposed by the law are so punitive as to render them criminal. City of South Milwaukee v. Kester, 2013 WI App 50, 347 Wis. 2d 334, 830 N.W.2d 710, 12–0724.

In evaluating a claim brought under the contract clause, the court first considers whether the contested state legislation has operated as a substantial impairment of a contractual relationship. This inquiry has three components: 1) whether there is a contractual relationship; 2) whether a change in law impairs that contractual relationship; and 3) whether the impairment is substantial. If the legislative act constitutes a substantial impairment to a contractual relationship, it will still be upheld if a significant and legitimate public purpose for the legislation exists. If a significant and legitimate purpose exists for the challenged legislation, the question becomes whether the legislature's impairment of the contract is reasonable and necessary to serve an important public purpose. Madison Teachers, Inc. v. Walker, 2014 WI 99, 358 Wis. 2d 1, 851 N.W.2d 337, 12–2067.

For a legislative enactment to be considered a contract, the language and circumstances must evince a legislative intent to create private rights of a contractual nature enforceable against the state. This requires the court, when reviewing a particular legislative enactment, to suspend judgment and proceed cautiously both in identifying a contract within the language of a regulatory statute and in defining the contours of any contractual obligation. Madison Teachers, Inc. v. Walker, 2014 WI 99, 358 Wis. 2d 1, 851 N.W.2d 337, 12–2067.

Under *Calder v. Bull*, 3 U.S. 386, "every law that alters the legal rules of evidence, and receives less, or different, testimony, than the law required at the time of the commission of the offense, in order to convict the offender," is a prohibited ex post facto law. A post–offense change in the law making hearsay evidence admissible at a preliminary hearing did not violate a defendant's ex post facto rights. The hearing is not held "in order to convict the offender," but rather to determine if probable cause exists to bind over a defendant for trial, at which the decision whether to convict occurs. State v. Hull, 2015 WI App 46, 363 Wis. 2d 603, 867 N.W.2d 419, 14–0365.

To determine whether a statute is punitive, the court applies the intent–effects test. The second part of the intent–effects test requires the court to examine the effect of the statute. Seven factors guide the court's analysis of whether the statute actually punishes a defendant: 1) does the statute involve an affirmative disability or restraint; 2) has the sanction at issue historically been regarded as punishment; 3) will the sanction be imposed only after a finding of scienter; 4) does the statute

promote the traditional aims of punishment — retribution and deterrence; 5) is the behavior to which the sanction applies already a crime; 6) is there an alternative purpose to which the sanction may be rationally connected; and 7) is the sanction excessive in relation to the alternative purpose assigned. State v. Williams, 2018 WI 59, 381 Wis. 2d 661, 912 N.W.2d 373, 16–0883.

A statute is an ex post facto law only if it imposes punishment. In *Muldrow*, 2018 WI 52, the court determined that neither the intent nor the effect of lifetime global positioning system (GPS) tracking is punitive. Thus, GPS tracking does not violate the ex post facto clause. Kaufman v. Walker, 2018 WI App 37, 382 Wis. 2d 774, 915 N.W.2d 193, 17–0085.

Constitutionality of rent control discussed. 62 Atty. Gen. 276.

Private property for public use. SECTION 13. The property of no person shall be taken for public use without just compensation therefor.

The dismissal of an appeal for lack of prosecution in a condemnation action did not violate the condemnee's right to just compensation. Taylor v. State Highway Comm., 45 Wis. 2d 490, 173 N.W.2d 707.

The total rental loss occasioned by a condemnation is compensable, and a limitation to one year's loss was invalid. Luber v. Milwaukee County, 47 Wis. 2d 271, 177 N.W.2d 380.

A prohibition against filling in wetlands pursuant to an ordinance adopted under ss. 59.971 and 144.26 [now ss. 59.692 and 281.31] does not amount to a taking of property. Police powers and eminent domain are compared. Just v. Marinette County, 56 Wis. 2d 7, 201 N.W.2d 761.

A special assessment against a railroad for a sanitary sewer laid along the railroad's right–of–way, admittedly of no immediate use or benefit to the railroad, did not constitute a violation of this section. Soo Line RR. Co v. Neenah, 64 Wis. 2d 665, 221 N.W.2d 907.

In order for the petitioner to succeed in the initial stages of an inverse condemnation proceeding, it must allege facts that, prima facie at least, show there has been either an occupation of its property under s. 32.10, or a taking, which must be compensated under the constitution. Howell Plaza, Inc. v. State Highway Comm., 66 Wis. 2d 720, 226 N.W.2d 185.

The owners of private wells ordered by the department of natural resources to seal them because of bacteriological danger are not entitled to compensation because such orders are a proper exercise of the state's police power to prevent a public harm, for which compensation is not required. Village of Sussex v. Dept. of Natural Resources, 68 Wis. 2d 187, 228 N.W.2d 173.

There must be a "taking" of property to justify compensation. DeBruin v. Green County, 72 Wis. 2d 464, 241 N.W.2d 167.

Condemnation powers are discussed. Falkner v. Northern States Power Co., 75 Wis. 2d 116, 248 N.W.2d 885.

Ordering a utility to place its power lines under ground in order to expand an airport constituted a taking because the public benefited from the enlarged airport. Public Service Corp. v. Marathon County, 75 Wis. 2d 442, 249 N.W.2d 543.

For inverse condemnation purposes, a taking can occur absent a physical invasion only when there is a legally imposed restriction upon the property's use. Howell Plaza, Inc. v. State Highway Comm., 92 Wis. 2d 74, 284 N.W.2d 887 (1979).

The doctrine of sovereign immunity cannot bar an action for just compensation based on the taking of private property for public use even though the legislature has failed to establish specific provisions for recovery of just compensation. Zinn v. State, 112 Wis. 2d 417, 334 N.W.2d 67 (1983).

Zoning classifications may unconstitutionally deprive property owners of due process of law. State ex rel. Nagawicka Is. Corp. v. Delafield, 117 Wis. 2d 23, 343 N.W.2d 816 (Ct. App. 1983).

Ordering a riparian owner to excavate and maintain a ditch to regulate a lake level was an unconstitutional taking of property. Otte v. DNR, 142 Wis. 2d 222, 418 N.W.2d 16 (Ct. App. 1987).

The operation of this section is discussed. W.H. Pugh Coal Co. v. State, 157 Wis. 2d 620, 460 N.W.2d 787 (Ct. App. 1990).

A taking by government restriction occurs only if the restriction deprives the owner of all or practically all use of property. Busse v. Dane County Regional Planning Comm., 181 Wis. 2d 527, 510 N.W.2d 136 (Ct. App. 1993).

A taking claim is not ripe for judicial review until the government agency charged with implementing applicable regulations has made a final decision applying the regulations to the property at issue. Taking claims based on equal protection or due process grounds must meet the ripeness requirement. Streff v. Town of Delafield, 190 Wis. 2d 348, 526 N.W.2d 822 (Ct. App. 1994).

Damage to property is not compensated as a taking. For flooding to be a taking it must constitute a permanent physical occupation of property. Menick v. City of Menasha, 200 Wis. 2d 737, 547 N.W.2d 778 (Ct. App. 1996), 95–0185.

A constructive taking occurs when government regulation renders a property useless for all practical purposes. Taking jurisprudence does not allow dividing the property into segments and determining whether rights in a particular segment have been abrogated. Zealy v. City of Waukesha, 201 Wis. 2d 365, 548 N.W.2d 528 (1996), 93–2381.

Section 32.10 does not govern inverse condemnation proceedings seeking just compensation for a temporary taking of land for public use. Such takings claims are based directly on this section. Anderson v. Village of Little Chute, 201 Wis. 2d 467, 549 N.W.2d 561 (Ct. App. 1996), 95–1677.

The mandate of just compensation cannot be limited by statute or barred by sovereign immunity. Just compensation is not measured by the economic benefit to the state resulting from the taking, but by the property owner's loss. Just compensation is for property presently taken and necessarily means the property's present value presently paid, not its present value to be paid at some future time without interest. Retired Teachers Ass'n v. Employee Trust Funds Board, 207 Wis. 2d 1, 558 N.W.2d 83 (1997), 94–0712.

When the state's constitution and statutes are silent as to the distribution of excess proceeds received when a tax lien is foreclosed on and the property is subsequently sold by the municipality, the municipality may constitutionally retain the proceeds as long as there has been notice sufficient to meet due process requirements. Due process does not require that notices state that should the tax lien be foreclosed and the property sold the municipality may retain all the proceeds. Ritter v. Ross, 207 Wis. 2d 476, 558 N.W.2d 909 (Ct. App. 1996), 95–1941.

The reversal of an agency decision by a court does not convert an action that might have otherwise been actionable as a taking into one that is not. Once there has been sufficient deprivation of use of property, there has been a taking even though the property owner regains full use of the land through rescission of the restriction. Eberle v. Dane County Board of Adjustment, 227 Wis. 2d 609, 595 N.W.2d 730 (1999), 97–2869.

When a regulatory taking claim is made, the plaintiff must prove: 1) a government restriction or regulation is excessive and therefore constitutes a taking; and 2) any proffered compensation is unjust. Eberle v. Dane County Board of Adjustment, 227 Wis. 2d 609, 595 N.W.2d 730 (1999), 97–2869.

A condemnation of property for a highway that was never built because an alternative route was found constituted a temporary taking entitling the owner to compensation, but not to attorney fees as there is no authority to award fees for an action brought directly under this section. Stelpflug v. Town of Waukesha, 2000 WI 81, 236 Wis. 2d 275, 612 N.W.2d 700, 97–3078.

A claimant who asserted ownership of condemned land, compensation for which was awarded to another as owner with the claimant having had full notice of the proceedings, could not institute an inverse condemnation action because the municipality had exercised its power of condemnation. Koskey v. Town of Bergen, 2000 WI App 140, 237 Wis. 2d 284, 614 N.W.2d 845, 99–2192.

A property owner who acquires property knowing that permits are required for development cannot presume that the permits will be granted and assumes the risk of loss in the event of denial. R.W. Docks & Slips v. State, 2000 WI App 183, 238 Wis. 2d 182, 617 N.W.2d 519, 99–2904.

Under Wisconsin eminent domain law, courts apply the unit rule, which prohibits valuing individual property interests or aspects separately from the property as a whole. When a parcel of land is taken by eminent domain, the compensation award is for the land itself, not the sum of the different interests therein. Hoekstra v. Guardian Pipeline, LLC, 2006 WI App 245, 298 Wis. 2d 165, 726 N.W.2d 648, 03–2809.

The lessor under a long–term favorable lease who received no compensation for its leasehold interest under the unit rule when the fair market value of the entire property was determined to be zero was not denied the right to just compensation. City of Milwaukee VFW Post No. 2874 v. Redevelopment Authority of the City of Milwaukee, 2009 WI 84, 319 Wis. 2d 553, 768 N.W.2d 749, 06–2866.

Consequential damages to property resulting from governmental action are not compensable under Article I, Section 13 or the takings clause of the 5th amendment. Here, the government did not physically occupy the plaintiff's property or use it in connection with the project in question, and the public obtained no benefit from the damaged property. Rather, the property was damaged as a result of alleged negligent construction. Accordingly, there was only damage, without appropriation to the public purpose. Such damage is not recoverable in a takings claim but instead sounds in tort. E–L Enterprises, Inc. v. Milwaukee Metropolitan Sewerage District, 2010 WI 58, 326 Wis. 2d 82, 785 N.W.2d 409, 08–0921.

Article I, Section 13 protects a wide variety of property interests recognized by state law. Contract rights are not the sine qua non for a property interest in a state fund. Property interests arise from a much broader set of factors than contract rights. A contractual relationship is a source of property interests, and that principle remains sound, but case law recognizes a broader scope of participant interests. These interests derive directly from statutory language and from the nature and purpose of the trust created by statute. Wisconsin Medical Society v. Morgan, 2010 WI 94, 328 Wis. 2d 469, 787 N.W.2d 22, 09–0728.

Health care providers have a constitutionally protected property interest in the injured patients and families compensation fund under s. 655.27, which defines the fund as an irrevocable trust, and the structure and purpose of which satisfy all the elements necessary to establish a formal trust. Because the health care providers are specifically named as beneficiaries of the trust, they have equitable title to the assets of the fund. The transfer of $200 million from the fund to another fund was an unconstitutional taking of private property without just compensation. Wisconsin Medical Society v. Morgan, 2010 WI 94, 328 Wis. 2d 469, 787 N.W.2d 22, 09–0728.

A taking occurs in airplane overflight cases when government action results in aircraft flying over a landowner's property low enough and with sufficient frequency to have a direct and immediate effect on the use and enjoyment of the property. The government airport operator bears responsibility if aircraft are regularly deviating from FAA flight patterns and those deviations result in invasions of the superadjacent airspace of neighboring property owners with adverse effects on their property. Placing the burden on the property owners to seek enforcement against individual airlines or pilots would effectively deprive the owners of a remedy for such takings. Brenner v. City of New Richmond, 2012 WI 98, 343 Wis. 2d 320, 816 N.W.2d 291, 10–0342.

Injury to property resulting from the exercise of the police power of the state does not necessitate compensation. A state acts under its police power when it regulates in the interest of public safety, convenience, and the general welfare of the public. The protection of public rights may be accomplished by the exercise of the police power unless the damage to the property owner is too great and amounts to a confiscation. Claims for such "regulatory takings" must be brought under s. 32.10, the inverse condemnation statute. Hoffer Properties, LLC v. State of Wisconsin, 2016 WI 5, 366 Wis. 2d 372, 874 N.W.2d 533, 12–2520.

To maintain an unconstitutional takings claim, four factors must be demonstrated: 1) a property interest exists; 2) the property interest has been taken; 3) the taking was for public use; and 4) the taking was without just compensation. Adams Outdoor Advertising Limited Partnership v. City of Madison, 2018 WI 70, 382 Wis. 2d 377, 914 N.W.2d 660, 16–0537.

A right to visibility of private property from a public road is not a cognizable right giving rise to a protected property interest. Adams Outdoor Advertising Limited Partnership v. City of Madison, 2018 WI 70, 382 Wis. 2d 377, 914 N.W.2d 660, 16–0537.

A New York law that a landlord must permit a cable television company to install cable facilities upon property was a compensable taking. Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419 (1982).

State land use regulation preventing beachfront development that rendered an owner's land valueless constituted a taking. When a regulation foreclosing all productive economic use of land goes beyond what "relevant background principals," such as nuisance law, would dictate, compensation must be paid. Lucas v. S. Carolina Coastal Council, 505 U.S. 1003, 120 L. Ed. 2d 798 (1992).

Seizure of private property in a forfeiture action under a warrant issued at an ex parte hearing to establish probable cause that a crime subjecting the property to forfeiture was committed, while possibly satisfying the prohibition against unreasonable searches and seizures, was a taking of property without due process. United States v. Good Real Estate, 510 U.S. 43, 126 L. Ed. 2d 490 (1993).

A municipality requiring the dedication of private property for some future public use as a condition of obtaining a building permit must meet a "rough proportionality" test showing it made some individualized determination that the dedication is related in nature and extent to the proposed development. Dolan v. City of Tigard, 512 U.S. 374, 129 L. Ed. 2d 304 (1994).

A taking claim is not barred by the mere fact that title to the property was acquired after the effective date of a state−imposed land use restriction. Palazzolo v. Rhode Island, 533 U.S. 606, 150 L. Ed. 2d 592 (2001).

A temporary moratorium on development imposed during the development of a comprehensive plan did not constitute a *per se* taking. Compensation is required when a regulation denies an owner all economically beneficial use of land. An interest in property consists of the metes and bounds of the property and the term of years that describes the owner's interest. Both dimensions must be considered in determining whether a taking occurred. A fee simple interest cannot be rendered valueless by a temporary prohibition on use. Tahoe−Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency, 535 U.S. 302, 152 L. Ed. 2d 517 (2002).

Regulatory takings jurisprudence aims to identify regulatory actions that are functionally equivalent to classic takings in which government directly appropriates private property or ousts the owner from his or her domain. Each applicable test focuses upon the severity of the burden that government imposes upon private property rights. In this case lower courts struck down a rent control statute applicable to company owned gas stations as an unconstitutional regulatory taking based solely upon a finding that it did not substantially advance the state's asserted interest in controlling retail gasoline prices. The "substantially advances" test prescribes an inquiry in the nature of a due process, not a takings, test that has no proper place in takings jurisprudence. Lingle v. Chevron U.S.A. Inc., 544 U.S. 528, 161 L. Ed. 2d 876, 125 S. Ct. 2074 (2005).

The State may transfer property from one private party to another if there is a public purpose for the taking. Without exception, cases have defined the concept of public purpose broadly, reflecting a longstanding policy of deference to legislative judgments in this field. It would be incongruous to hold that a city's interest in the economic benefits to be derived from the development of an area has less of a public character than any other public interests. Clearly, there is no basis for exempting economic development from the traditionally broad understanding of public purpose. Kelo v. City of New London, 545 U.S. 469, 125 S. Ct. 2655, 162 L. Ed. 2d 439 (2005).

Government induced flooding, temporary in duration, gains no automatic exemption from takings clause inspection. When regulation or temporary physical invasion by government interferes with private property time is a factor in determining the existence of a compensable taking. Arkansas Game and Fish Commission v. United States, 568 U.S. 23, 133 S. Ct. 511, 184 L. Ed. 2d 417 (2012).

Precedents enable permitting authorities to insist that applicants bear the full costs of their development proposals while still forbidding the government from engaging in "out−and−out . . . extortion that would thwart the 5th amendment right to just compensation." The government may choose whether and how a permit applicant is required to mitigate the impacts of a proposed development, but it may not leverage its legitimate interest in mitigation to pursue governmental ends that lack an essential nexus and rough proportionality to those impacts. Extortionate demands for property in the land use permitting context run afoul of the takings clause not because they take property but because they impermissibly burden the right not to have property taken without just compensation. Koontz v. St. Johns River Water Management District, 570 U.S. 595, 133 S. Ct. 2586, 186 L. Ed. 2d 697 (2013).

The question of the proper parcel in regulatory takings cases cannot be solved by any simple test. Courts must define the parcel in a manner that reflects reasonable expectations about the property, considering a number of factors, including the treatment of the land under state and local law; the physical characteristics of the land; and the prospective value of the regulated land. This endeavor should determine whether reasonable expectations about property ownership would lead a landowner to anticipate that his or her holdings would be treated as one parcel, or, instead, as separate tracts. The inquiry is objective, and the reasonable expectations at issue derive from background customs and the whole of our legal tradition. Murr v. Wisconsin, 582 U.S. ___, 137 S. Ct. 1933, 198 L. Ed. 2d 497 (2017).

Under a California regulation that grants labor organizations a "right to take access" to an agricultural employer's property in order to solicit support for unionization, agricultural employers must allow union organizers onto their property for up to three hours per day, 120 days per year. The access regulation appropriates a right to invade the growers' property and therefore constitutes a per se physical taking under the 5th and 14th amendments to the U.S. Constitution. Appropriations of a right to invade are per se physical takings, not use restrictions subject to the flexible test developed in *Penn Central Transportation Co.*, 438 U.S. 104 (1978). Cedar Point Nursery v. Hassid, 594 U.S. ___, 141 S. Ct. 2063, 210 L. Ed. 2d 369 (2021).

The Original Understanding of "Property" in the Constitution. Larkin. 100 MLR 1 (2016).

Murr and Wisconsin: The Badger State's Take on Regulatory Takings. Wenthold. 102 MLR 261 (2018).

Compensation for lost rents. 1971 WLR 657.

Blurring the Denominator: *Murr v. Wisconsin* and the Increasing Complexity of Takings Analysis. Gresik. 2018 WLR 1231.

Feudal tenures; leases; alienation. SECTION 14. All lands within the state are declared to be allodial, and feudal tenures are prohibited. Leases and grants of agricultural land for a longer term than fifteen years in which rent or service of any kind shall be reserved, and all fines and like restraints upon alienation reserved in any grant of land, hereafter made, are declared to be void.

Equal property rights for aliens and citizens. SECTION 15. No distinction shall ever be made by law between resident aliens and citizens, in reference to the possession, enjoyment or descent of property.

Imprisonment for debt. SECTION 16. No person shall be imprisoned for debt arising out of or founded on a contract, expressed or implied.

Section 943.20 (1) (e), which criminalizes the failure to return rented personal property, does not unconstitutionally imprison one for debt. State v. Roth, 115 Wis. 2d 163, 339 N.W.2d 807 (Ct. App. 1983).

This section only prohibits imprisonment for debt arising out of or founded upon a contract. A court imposed support order is not a debt on a contract and prosecution and incarceration for criminal nonsupport does not violate this section. State v. Lenz, 230 Wis. 2d 529, 602 N.W.2d 172 (Ct. App. 1999), 99−0860.

Exemption of property of debtors. SECTION 17. The privilege of the debtor to enjoy the necessary comforts of life shall be recognized by wholesome laws, exempting a reasonable amount of property from seizure or sale for the payment of any debt or liability hereafter contracted.

Freedom of worship; liberty of conscience; state religion; public funds. SECTION 18. [*As amended Nov. 1982*] The right of every person to worship Almighty God according to the dictates of conscience shall never be infringed; nor shall any person be compelled to attend, erect or support any place of worship, or to maintain any ministry, without consent; nor shall any control of, or interference with, the rights of conscience be permitted, or any preference be given by law to any religious establishments or modes of worship; nor shall any money be drawn from the treasury for the benefit of religious societies, or religious or theological seminaries. [*1979 J.R. 36, 1981 J.R. 29, vote Nov. 1982*]

A statute authorizing a contract requiring the state to pay an amount to a Catholic university for the education of dental students violated the establishment clause by permitting the use of funds paid by the state to be used in support of the operating costs of the university generally and violated the free exercise clause by requiring regulations as to management and hiring by the university that were not restricted to the dental school. Warren v. Nusbaum, 55 Wis. 2d 316, 198 N.W.2d 650.

It is outside the province of a civil court to review the merits of a determination of a duly authorized ecclesiastical tribunal that has adhered to prescribed canonical procedure and that results in terminating a clergyman's relationship with his church. Olston v. Hallock, 55 Wis. 2d 687, 201 N.W.2d 35.

This section is not violated by s. 118.155, which accommodates rather than restricts the right of students to religious instruction, does not compel any student to participate in religious training, and does not involve the use or expenditure of public funds, especially when the electorate approved an amendment to art. X, sec. 3, specifically authorizing enactment of a released time statute. State ex rel. Holt v. Thompson, 66 Wis. 2d 659, 225 N.W.2d 678.

For purposes of s. 121.51 (4) [now s. 121.51 (1)], and in the absence of fraud or collusion, when a religious school demonstrates by its corporate charter and bylaws that it is independent of, and unaffiliated with, a religious denomination, further inquiry by the state would violate this section. Holy Trinity Community School, Inc. v. Kahl, 82 Wis. 2d 139, 262 N.W.2d 210 (1978). But see St. Augustine School v. Taylor, 2021 WI 70, 398 Wis. 2d 92, 961 N.W.2d 635, 21−0265.

Refusal on religious grounds to send children to school was held to be a personal, philosophical choice by parents, rather than a protected religious expression. State v. Kasuboski, 87 Wis. 2d 407, 275 N.W.2d 101 (Ct. App. 1978).

The primary effect of health facilities authority under ch. 231, which fiances improvements for private, nonprofit health facilities, does not advance religion, nor does the chapter foster excessive entanglement between church and state. State ex rel. Wisconsin Health Facilities Authority v. Lindner, 91 Wis. 2d 145, 280 N.W.2d 773 (1979).

Meals served by a religious order, in carrying out their religious work, were not, under the circumstances, subject to Wisconsin sales tax for that portion of charges made to guests for lodging, food, and use of order's facilities. Kollasch v. Adamany, 104 Wis. 2d 552, 313 N.W.2d 47 (1981).

The state equal rights division did not violate the free exercise clause by investigating a discrimination complaint brought by an employee of a religious school. Sacred Heart School Board v. LIRC, 157 Wis. 2d 638, 460 N.W.2d 430 (Ct. App 1990). But see Hosanna−Tabor Evangelical Lutheran Church & School v. Equal Employment Opportunity Commission, 565 U.S. 171, 132 S. Ct. 694, 181 L. Ed.

2d 650 (2012); Our Lady of Guadalupe School v. Morrissey−Berru, 591 U.S. ___, 140 S. Ct. 2049, 207 L. Ed. 2d 870 (2020).

The test to determine whether governmental aid offends the establishment clause is discussed. Freedom from Religion Foundation v. Thompson, 164 Wis. 2d 736, 476 N.W.2d 318 (Ct. App. 1991).

The free exercise clause does not excuse a person from compliance with a valid law. A visitation order intended to prevent a noncustodial parent from imposing his religion on his children was a reasonable protection of the custodial parent's statutory right to choose the children's religion. Lange v. Lange, 175 Wis. 2d 373, N.W.2d (Ct. App. 1993).

In setting a sentence, a court may consider a defendant's religious beliefs and practices only if a reliable nexus exists between the defendant's criminal conduct and those beliefs and practices. State v. Fuerst, 181 Wis. 2d 903, 512 N.W.2d 243 (Ct. App. 1994).

A nativity scene surrounded by Christmas trees and accompanied by a sign proclaiming a "salute to liberty" did not violate the 1st amendment's establishment and free exercise clauses or Art. I, s.18. King v. Village of Waunakee, 185 Wis. 2d 25, 517 N.W.2d 671 (1994).

Probation conditions may impinge on religious rights as long as the conditions are not overly broad and are reasonably related to rehabilitation. Von Arx v. Schwarz, 185 Wis. 2d 645, 517 N.W.2d 540 (Ct. App. 1994).

The courts are prevented from determining what makes one competent to serve as a priest. As such, the courts cannot decide a claim of negligent hiring or retention by a church. Pritzlaff v. Archdiocese of Milwaukee, 194 Wis. 2d 302, 533 N.W.2d 780 (1995). See also L.L.N. v. Clauder, 209 Wis. 2d 674, 563 N.W.2d 434 (1997), 95−2084.

The state is prevented from enforcing discrimination laws against religious associations when the employment at issue serves a ministerial or ecclesiastical function. While it must be given considerable weight, a religious association's designation of a position as ministerial or ecclesiastical does not control its status. Jocz v. LIRC, 196 Wis. 2d 273, 538 N.W.2d 588 (Ct. App. 1995), 93−3042. But see Hosanna−Tabor Evangelical Lutheran Church & School v. Equal Employment Opportunity Commission, 565 U.S. 171, 132 S. Ct. 694, 181 L. Ed. 2d 650 (2012); Our Lady of Guadalupe School v. Morrissey−Berru, 591 U.S. ___, 140 S. Ct. 2049, 207 L. Ed. 2d 870 (2020).

Freedom of conscience as guaranteed by the Wisconsin Constitution is not constrained by the boundaries of protection set by the U.S. Supreme Court for the federal provision. As applied to Amish, requiring slow moving vehicle signs on buggies unconstitutionally infringed on religious liberties. Requiring Amish buggies to carry slow moving vehicle signs furthered a compelling state interest, but was not shown to be the least restrictive means of accomplishing that interest. State v. Miller, 202 Wis. 2d 56, 549 N.W.2d 235 (1996), 94−0159.

The role courts may play in church property disputes is limited, but a court may adopt one of several approaches so long as the court does not entangle itself in doctrinal affairs. Church doctrine may be examined from a secular perspective, but courts may not interpret church law, policies, or practice. United Methodist Church, Inc. v. Culver, 2000 WI App 132, 237 Wis. 2d 343, 614 N.W.2d 523, 99−1522.

While this article is more specific and terser than the clauses of the 1st amendment, it carries the same import. Both provisions are intended and operate to serve the purposes of prohibiting the establishment of religion and protecting the free exercise of religion. Jackson v. Benson, 218 Wis. 2d 835, 578 N.W.2d 602 (1998), 97−0270.

To succeed in a constitutional challenge to a local fire prevention code, the complaining church had the initial burden of proving that there was a sincerely held religious belief that would be burdened by the application of the code. The church failed to carry this burden because it did not present evidence of any basic tenet, principle, or dogma supporting representations that an exposed sprinkler system would desecrate the worship space. Peace Lutheran Church and Academy v. Village of Sussex, 2001 WI App 139, 246 Wis. 2d 502, 631 N.W.2d 229, 00−2328.

The Wisconsin constitution offers more expansive protections for freedom of conscience than those offered by the 1st amendment. When an individual makes a claim that state law violates his or her freedom of conscience, courts apply the compelling state interest/least restrictive alternative test, requiring the challenger to prove that he or she has a sincerely held religious belief that is burdened by application of the state law at issue. Upon such a showing, the burden shifts to the state to prove that the law is based in a compelling state interest that cannot be served by a less restrictive alternative. Noesen v. Department of Regulation and Licensing, 2008 WI App 52, 311 Wis. 2d 237, 751 N.W.2d 385, 06−1110.

The free exercise clause of the 1st amendment protects not only the right to freedom in what one believes, but extends (with limitations) to acting on those beliefs. Both individuals and communities of individuals have a right to the freedom of religion. Courts have adopted a "ministerial exception" that protects houses of worship from state interference with the decision of who will teach and lead a congregation. Ordination is not required to be considered "ministerial." The function of the position, as determined by whether the position is important to the spiritual and pastoral mission of the church and not whether religious tasks encompass the largest share of the position, is the primary consideration. Coulee Catholic Schools v. LIRC, 2009 WI 88, 320 Wis. 2d 275, 768 N.W.2d 868, 07−0496.

Discussing applicability of the 1st amendment to employment decisions of a religious institution relating to a ministerial employee. DeBruin v. St. Patrick Congregation, 2012 WI 94, 343 Wis. 2d 83, 816 N.W.2d 878, 10−2705.

The parents' fundamental right to make decisions for their children about religion and medical care does not prevent the state from imposing criminal liability on a parent who fails to protect the child when the parent has a legal duty to act. The constitutional freedom of religion is absolute as to beliefs but not as to the conduct, which may be regulated for the protection of society. The Due Process clause protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children, but a parent's fundamental right to make decisions concerning a child's care has limitations. The state's authority is not nullified merely because a parent grounds his or her claim to control the child in religious belief. State v. Neumann, 2013 WI 58, 348 Wis. 2d 455, 832 N.W.2d 560, 11−1044.

The constitutionality of state tuition grants to parents of resident pupils enrolled in private elementary or high schools is discussed. 58 Atty. Gen. 163.

Guidelines to possibly avoid constitutional objection to CESA service contracts with private schools are discussed. 62 Atty. Gen. 75.

Leasing of university buildings to a religious congregation during nonschool days and hours on a temporary basis while the congregation's existing facility is being renovated and leasing convention space to a church conference would not violate separation of church and state provisions of the 1st amendment. 63 Atty. Gen. 374.

The department of public instruction may, if so authorized under 16.54, implement the school lunch program and special food service plan for children in secular and sectarian private schools and child−care institutions without violating the U.S. or Wisconsin constitutions. 63 Atty. Gen. 473.

Funds received under Title I of the Elementary and Secondary Education Act may not be used to pay salaries of public school teachers teaching in church affiliated private schools. See 64 Atty. Gen. 139. 64 Atty. Gen. 136.

The establishment clause and this section prohibit public schools leasing classrooms from parochial schools to provide educational programs for parochial students. 67 Atty. Gen. 283.

A group of churches is entitled to a permit under s. 16.845 to use the capitol grounds for a civic or social activity even if the content of the program is partly religious in nature. 68 Atty. Gen. 217.

The U.S. and state constitutions do not prohibit the state from disbursing state matching funds under the National School Lunch Act to private, as well as, public schools. 69 Atty. Gen. 109.

The state can constitutionally license and regulate community based residential facilities that are operated by religious organizations and are not convents, monasteries, or similar facilities exempted by statute. 71 Atty. Gen. 112.

University of Wisconsin athletes may not engage in voluntary prayer led by a coach prior to an athletic event, although silent meditation or prayer organized by athletes may be undertaken within certain guidelines. 75 Atty. Gen. 81.

The scope of this section is discussed. 75 Atty. Gen. 251 (1986).

The establishment clause prohibits states from loaning instructional material to sectarian schools or providing auxiliary services to remedial and exceptional students in such schools. Meek v. Pittenger, 421 U.S. 349.

In adjudicating a church property dispute, the state may adopt a "neutral principles of law" analysis regarding deeds, applicable statutes, local church charters, and general church constitutions. Jones v. Walf, 443 U.S. 595 (1979).

A statute does not contravene the establishment clause if it has a secular legislative purpose, its primary effect neither advances nor inhibits religion, and it does not excessively entangle government with religion. Committee for Public Education v. Regan, 444 U.S. 646 (1980).

The representation of the Ten Commandments as the basis for the legal code of western civilization violated the establishment clause. Stone v. Graham, 449 U.S. 39 (1980).

The denial of unemployment compensation to a Jehovah's Witness who quit a job due to religious beliefs was a violation of free exercise rights. Thomas v. Review Bd., Ind. Empl. Sec. Div., 450 U.S. 707 (1981).

A state fair rule that limited a religious group to an assigned booth in conducting its religious activities did not violate the free exercise clause. Heffron v. Int'l Soc. for Krishna Consc., 452 U.S. 640 (1981).

A public university that provided a forum to many student groups but excluded religious student groups violated the principle that state regulation of speech should be content neutral. Widmar v. Vincent, 454 U.S. 263 (1981).

A nativity scene displayed by a city did not violate the establishment clause. Lynch v. Donnelly, 465 U.S. 668 (1984).

Due to the setting and nature of the display, a menorah placed next to a Christmas tree placed outside of a city−county building did not violate the establishment clause while prominent placement of a creche inside a courthouse did. Allegheny County v. Pittsburgh ACLU, 492 U.S. 573, 106 L. Ed. 2d 472 (1989).

The prohibition of peyote used in a religious ceremony does not violate the free exercise of religion. Employment Division v. Smith, 494 U.S. 872, 110 S. Ct. 1595, 108 L. Ed. 2d 876 (1990).

The right of free exercise does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability on the ground that the law proscribes or prescribes conduct that the individual's religion prescribes or proscribes. Employment Division v. Smith, 494 U.S. 872, 110 S. Ct. 1595, 108 L. Ed. 2d 876 (1990). But see Fulton v. City of Philadelphia, 593 U.S. ___, 141 S. Ct. 1868, 210 L. Ed. 2d 137 (2021).

The federal Equal Access Act prohibits high schools from barring student religious club meetings on school premises when other "noncurriculum−related" clubs are allowed access. Westside Community Schools v. Mergens, 496 U.S. 226, 110 L. Ed. 2d 191 (1990).

A public school district's inclusion of prayers at a public graduation ceremony, offered by a member of the clergy at the district's request and direction, violated the establishment clause. Lee v. Weisman, 505 U.S. 77, 120 L. Ed. 2d 467 (1992).

The denial of the use of a school building to a church seeking to exhibit a film when a nonsectarian group would have been allowed the use of the building to show a secular film on the same topic violated the right to free speech. Lamb's Chapel v. Center Moriches, 508 U.S. 384, 124 L. Ed. 2d 352 (1993).

A law that targets religious conduct for distinctive treatment is subject to the most rigorous scrutiny. The regulation of animal sacrifice that effectively prohibited the practices of one sect was void. Church of Lukumi v. Hialeah, 508 U.S. 520, 124 L. Ed. 2d 472 (1993).

The provision of an interpreter by a school district to a student attending a parochial school was permissible when provided as a part of a neutral program benefitting all qualified children without regard to the sectarian−nonsectarian nature of the school. Zobrest v. Catalina Foothills, 509 U.S. 1, 125 L. Ed. 2d 1 (1993).

Special legislation creating a public school district for a village consisting solely of members of a single religious community violated the establishment clause.

Board of Education of Kiryas Joel v. Grumet, 512 U.S. 687, 129 L. Ed. 2d 546 (1994).

A state university that funded the printing of a broad range of student publications but denied funding for printing the publication of a student religious group violated free speech guarantees and was not excused by the need to comply with the establishment clause. Rosenberger v. University of Virginia, 515 U.S. 819, 132 L. Ed. 2d (1995).

A school district policy permitting student−led, student−initiated prayer at school football games violated the establishment clause of the 1st amendment because it had the purpose and created the perception of encouraging the delivery of prayer at important high school events. Santa Fe Independent School District v. Doe, 530 U.S. 290, 147 L. Ed. 2d 295 (2000).

Speech discussing otherwise permissible subjects cannot be excluded from a limited public forum, such as a school, on the grounds that it is discussed from a religious viewpoint. A club's meetings, held after school, not sponsored by the school, and open to to any student who obtained parental consent, did not raise an establishment of religion violation that could be raised to justify content−based discrimination against the club. Good News Club v. Milford Central School, 533 U.S. 98, 150 L. Ed. 2d 151 (2001).

The Cleveland, Ohio school choice program that provides tuition aid to parents who may use the money to pay tuition to private, religious schools does not violate the establishment clause. When an aid program is neutral with respect to religion and provides assistance to a broad class of citizens who, in turn, direct the aid to religious schools through individual choice, the program is not subject to challenge. Zelman v. Simmons−Harris, 536 U.S. 639, 153 L. Ed. 2d 604 (2002).

The state of Washington, under its constitution, which prohibits even indirect funding of religious instruction that will prepare students for the ministry, could deny such students funding available to all other students without violating the free exercise clause of the 1st amendment. Locke v. Davey, 540 U.S. 712, 124 S. Ct. 1307, 158 L. Ed 2d 1 (2004). But see Espinoza v. Montana Department of Revenue, 591 U.S. ___, 140 S. Ct. 2246, 207 L. Ed. 2d 679 (2020).

The Establishment Clause of the 1st amendment allows display of a monument inscribed with the Ten Commandments on the Texas State Capitol grounds. Van Orden v. Perry, 545 U.S. 677, 125 S. Ct. 2854, 162 L. Ed. 2d 607 (2005).

A display of the Ten Commandments in a county courthouse violated the Establishment Clause of the 1st amendment. The government agency's manifest objective in presenting the display may be dispositive of the constitutional enquiry, and the development of the presentation should be considered when determining its purpose. Governmental purpose needs to be taken seriously under the Establishment Clause and to be understood in light of context; an implausible claim that governmental purpose has changed should not carry the day in a court of law any more than in a head with common sense. McCreary County v. American Civil Liberties Union of Kentucky, 545 U.S. 844, 125 S. Ct. 2722, 162 L. Ed. 2d 729 (2005).

Respondents' status as taxpayers did not give them standing to challenge state tax credits to organizations that awarded scholarships to religious schools. For standing there must be a nexus between the plaintiff's taxpayer status and the precise nature of the constitutional infringement alleged. Tax credits and governmental expenditures do not both implicate individual taxpayers in sectarian activities. A dissenter whose tax dollars are "extracted and spent" knows that he or she has in some small measure been made to contribute to an establishment in violation of conscience. When the government declines to impose a tax there is no such connection between dissenting taxpayer and alleged establishment. Arizona Christian School Tuition Organization v. Winn, 563 U.S. 125, 131 S. Ct. 1436, 179 L. Ed. 2d 523 (2011).

Certain employment discrimination laws authorize employees who have been wrongfully terminated to sue their employers for reinstatement and damages. However, the establishment and free exercise clauses of the 1st amendment to the U.S. Constitution bar such an action when the employer is a religious group and the employee is one of the group's ministers. Thus, in an employment discrimination suit brought on behalf of a minister challenging her church's decision to fire her, the ministerial exception barred the suit. Hosanna−Tabor Evangelical Lutheran Church & School v. Equal Employment Opportunity Commission, 565 U.S. 171, 132 S. Ct. 694, 181 L. Ed. 2d 650 (2012). See also Our Lady of Guadalupe School v. Morrissey−Berru, 591 U.S. ___, 140 S. Ct. 2049, 207 L. Ed. 2d 870 (2020).

Legislative prayer, while religious in nature, has long been understood as compatible with the establishment clause. As practiced by congress since the framing of the constitution, legislative prayer lends gravity to public business, reminds lawmakers to transcend petty differences in pursuit of a higher purpose, and expresses a common aspiration to a just and peaceful society. It is not necessary to define the precise boundary of the establishment clause where history shows that the specific practice is permitted. Any test the court adopts must acknowledge a practice that was accepted by the framers and has withstood the critical scrutiny of time and political change. Town of Greece v. Galloway, 572 U.S. 565, 134 S. Ct. 1811, 188 L. Ed. 2d 835 (2014).

Once it invites prayer into the public sphere, government must permit a prayer giver to address his or her own God or gods as conscience dictates, unfettered by what an administrator or judge considers to be nonsectarian. So long as the town maintains a policy of nondiscrimination, the constitution does not require it to search beyond its borders for non−Christian prayer givers in an effort to achieve religious balancing. The quest to promote a diversity of religious views would require the town to make wholly inappropriate judgments about the number of religions it should sponsor and the relative frequency with which it should sponsor each. Town of Greece v. Galloway, 572 U.S. 565, 134 S. Ct. 1811, 188 L. Ed. 2d 835 (2014).

Denying a generally available benefit solely on account of religious identity imposes a penalty on the free exercise of religion that can be justified only by a state interest of the highest order. A policy of categorically disqualifying churches and other religious organizations from receiving grants under a state playground resurfacing program violated the rights of a church applicant for a grant under the free exercise clause of the 1st amendment. Trinity Lutheran Church of Columbia, Inc. v. Comer, 582 U.S. ___, 137 S. Ct. 2012, 198 L. Ed. 2d 551 (2017).

A state civil rights commission violated the free exercise clause when it showed elements of a clear and impermissible hostility toward the sincere religious beliefs of a baker who declined to make a wedding cake for a same−sex couple in violation of a state anti−discrimination law. Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission, 584 U.S. ___, 138 S. Ct. 1719, 201 L. Ed. 2d 35 (2018).

Retaining established, religiously expressive monuments, symbols, and practices is quite different from erecting or adopting new ones. The passage of time gives rise to a strong presumption of constitutionality under the establishment clause. American Legion v. American Humanist Ass'n, 588 U. S. ____, 139 S. Ct. 2067, 204 L. Ed. 2d 452 (2019).

The Montana Constitution bars aid to any school controlled in whole or in part by any church, sect, or denomination. Like the grants at issue in *Trinity Lutheran*, 582 U.S. ___, 137 S. Ct. 2012 (2017), the no−aid provision bars religious schools from public benefits solely because of the religious character of the schools. A state need not subsidize private education. But once a state decides to do so, it cannot disqualify some private schools solely because they are religious. Therefore, the free exercise clause of the 1st amendment to the U.S. Constitution precluded the Montana Supreme Court from applying Montana's no−aid provision to bar religious schools from a scholarship program established by the Montana Legislature. Espinoza v. Montana Department of Revenue, 591 U.S. ___, 140 S. Ct. 2246, 207 L. Ed. 2d 679 (2020).

The refusal of a city to contract with a child welfare agency for the provision of foster care services unless the child welfare agency agrees to certify same−sex couples as foster parents cannot survive strict scrutiny and violates the 1st amendment. Fulton v. City of Philadelphia, 593 U.S. ___, 141 S. Ct. 1868, 210 L. Ed. 2d 137 (2021).

A legislative mandate requiring reasonable accommodation of religious conduct does not violate establishment clause. Nottelson v. Smith Steel Wkrs. D.A.L.U. 19806, 643 F.2d 445 (1981).

A prison regulation allowing a cross to be worn only with a rosary discriminated against protestants, without a "ghost of reason," in violation of the right to the free exercise of religion. Sasnett v. Litscher, 197 F.3d 290 (1999).

Although the sale to private parties of a small parcel of land in a public park ended direct government action constituting endorsement of religion, the proximity of the statue to city property and the lack of visual definition between the city and private land created a perception of improper endorsement of religion in violation of the establishment clause. Freedom From Religion Foundation v. City of Marshfield, 203 F.3d 487 (2000).

A public library that allowed a wide range of uses of its meeting room by non−profit groups violated the 1st amendment by excluding the use of the room for religious services or instruction. Pfeifer v. City of West Allis, 91 F. Supp. 2d 1253 (2000).

Grants to a faith−based counseling organization that integrated religion into its counseling program were unconstitutional when there were insufficient safeguards in place to insure that public funding did not contribute to a religious end. Freedom From Religion Foundation v. McCallum, 179 F. Supp. 2d 950 (2002).

Excluding a religious charitable organization from participation in the Wisconsin State Employees Combined Campaign solely because that organization discriminates on the basis of religion or creed in choosing its governing board and employees is constitutionally impermissible. Ass'n of Faith−Based Organizations, 454 F. Supp. 812 (2006).

Nyquist and Public Aid to Private Education. Piekarski. 58 MLR 247 (1975).

The Light of Nature: John Locke, Natural Rights, and the Origins of American Religious Liberty. Heyman. 101 MLR 705 (2018).

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King v. Village of Waunakee: Redefining Establishment Clause Jurisprudence in Wisconsin. Lanford. 1996 WLR 185.

Free Exercise (Dis)Honesty. Oleske. 2019 WLR 689.

How Vast is *King*'s Realm? Constitutional Challenge to the Church−State Clause. Gordon. Wis. Law. Aug. 1995.

Religious tests prohibited. SECTION 19. No religious tests shall ever be required as a qualification for any office of public trust under the state, and no person shall be rendered incompetent to give evidence in any court of law or equity in consequence of his opinions on the subject of religion.

Military subordinate to civil power. SECTION 20. The military shall be in strict subordination to the civil power.

Rights of suitors. SECTION 21. [*As amended April 1977*] **(1)** Writs of error shall never be prohibited, and shall be issued by such courts as the legislature designates by law.

(2) In any court of this state, any suitor may prosecute or defend his suit either in his own proper person or by an attorney of the suitor's choice. [*1975 J.R. 13, 1977 J.R. 7, vote April 1977*]

As a matter of Wisconsin constitutional law, the right to an appeal is absolute. In order that the right be meaningful, a defendant must be furnished a full transcript—or a functionally equivalent substitute that, in a criminal case, beyond a rea-

sonable doubt, portrays in a way that is meaningful to the particular appeal exactly what happened in the course of trial. The usual remedy when the transcript deficiency is such that there cannot be a meaningful appeal is reversal with directions that there be a new trial. However, error in transcript preparation or production, like error in trial procedure, is subject to the harmless−error rule. State v. Perry, 136 Wis. 2d 92, 401 N.W.2d 748 (1987).

Every person has an absolute right to appear *pro se*. Hlavinka v. Blunt, Ellis & Loewi, Inc., 174 Wis. 2d 381, N.W.2d (Ct. App. 1993).

A nonlawyer may not sign and file a notice of appeal on behalf of a corporation. Requiring a lawyer to represent a corporation in filing the notice does not violate the guarantee that any suitor may prosecute or defend a suit personally. A corporation is not a natural person and does not fall with in the term "any suitor." Jadair Inc. v. United States Fire Insurance Co., 209 Wis. 2d 187, 561 N.W.2d 718 (1997), 95−1946.

Sub. (2) gives the right in a civil trial to chose whether to defend oneself personally or to have an attorney, but does not address whether the party may, or may not, be ordered to be physically present at trial when represented. City of Sun Prairie v. Davis, 217 Wis. 2d 268, 575 N.W.2d 268 (Ct. App. 1998), 97−1651.

If a telephone warrant application has not been recorded and there is no evidence of intentional or reckless misconduct on the part of law enforcement officers, a reconstructed application may serve as an equivalent of the record of the original application and can protect the defendant's right to a meaningful appeal. State v. Raflik, 2001 WI 129, 248 Wis. 2d 593, 636 N.W.2d 129, 00−1086.

Because a transcript is crucial to the right to an appeal, courts provide additional protection for appellants when they do not have a complete transcript. Under *Perry*, 136 Wis. 2d 92 (1987), and *DeLeon*, 127 Wis. 2d 74 (Ct. App. 1985), when a trial transcript is incomplete, a defendant may be entitled to a new trial, but only after the defendant makes a facially valid claim of arguably prejudicial error. The *Perry*/*DeLeon* procedure applies even when the entire trial transcript is unavailable. The court does not presume prejudice when the trial transcript is unavailable. State v. Pope, 2019 WI 106, 389 Wis. 2d 390, 936 N.W.2d 606, 17−1720.

Maintenance of free government. SECTION 22. The blessings of a free government can only be maintained by a firm adherence to justice, moderation, temperance, frugality and virtue, and by frequent recurrence to fundamental principles.

Transportation of school children. SECTION 23. [*As created April 1967*] Nothing in this constitution shall prohibit the legislature from providing for the safety and welfare of children by providing for the transportation of children to and from any parochial or private school or institution of learning. [*1965 J.R. 46, 1967 J.R. 13, vote April 1967*]

Elementary Secondary Education Act funds may be used in dual enrollment programs to transport children from parochial schools to and from public schools. 65 Atty. Gen. 126.

Use of school buildings. SECTION 24. [*As created April 1972*] Nothing in this constitution shall prohibit the legislature from authorizing, by law, the use of public school buildings by civic, religious or charitable organizations during nonschool hours upon payment by the organization to the school district of reasonable compensation for such use. [*1969 J.R. 38, 1971 J.R. 27, vote April 1972*]

Right to keep and bear arms. SECTION 25. [*As created Nov. 1998*] The people have the right to keep and bear arms for security, defense, hunting, recreation or any other lawful purpose. [*1995 J.R. 27, 1997 J.R. 21, vote Nov. 1998*]

The state constitutional right to bear arms is fundamental, but it is not absolute. This section does not affect the reasonable regulation of guns. The standard of review for challenges to statutes allegedly in violation of this section is whether the statute is a reasonable exercise of police power. State v. Cole, 2003 WI 112, 264 Wis. 2d 520, 665 N.W.2d 328, 01−0350.

The concealed weapons statute is a restriction on the manner in which firearms are possessed and used. It is constitutional under Art. I, s. 25. Only if the public benefit in the exercise of the police power is substantially outweighed by an individual's need to conceal a weapon in the exercise of the right to bear arms will an otherwise valid restriction on that right be unconstitutional. The right to keep and bear arms for security, as a general matter, must permit a person to possess, carry, and sometimes conceal arms to maintain the security of a private residence or privately operated business, and to safely move and store weapons within those premises. State v. Hamdan, 2003 WI 113, 264 Wis. 2d 433, 665 N.W.2d 785, 01−0056.

A challenge on constitutional grounds of a prosecution for carrying a concealed weapon requires affirmative answers to the following before the defendant may raise the constitutional defense: 1) under the circumstances, did the defendant's interest in concealing the weapon to facilitate exercise of his or her right to keep and bear arms substantially outweigh the state's interest in enforcing the concealed weapons statute? and 2) did the defendant conceal his or her weapon because concealment was the only reasonable means under the circumstances to exercise his or her right to bear arms? State v. Hamdan, 2003 WI 113, 264 Wis. 2d 433, 665 N.W.2d 785, 01−0056.

Under both *Hamdan* and *Cole* there are 2 places in which a citizen's desire to exercise the right to keep and bear arms for purposes of security is at its apex: in the citizen's home or in his or her privately−owned business. It logically and necessarily follows that the individual's interest in the right to bear arms for purposes of security will not, as a general matter, be particularly strong outside those two locations. An individual generally has no heightened interest in his or her right to bear arms for security while in a vehicle. State v. Fisher, 2006 WI 44, 290 Wis. 2d 121, 714 N.W.2d 495, 04−2989.

The ban on felons possessing firearms is constitutional and that ban extends to all felons, including nonviolent ones. The governmental objective of public safety is an important one, and the legislature's decision to deprive a nonviolent felon, such as the plaintiff, of the right to possess a firearm is substantially related to this goal. State v. Pocian, 2012 WI App 58, 341 Wis. 2d 380, 814 N.W.2d 894, 11−1035.

Silencers are not "arms" for the purposes of the 2nd amendment. The prohibition on possession of a silencer under s. 941.298 does not impose a burden on conduct falling within the scope of the 2nd amendment's guarantee and therefore is not unconstitutional. State v. Barrett, 2020 WI App 13, 391 Wis. 2d 283, 941 N.W.2d 866, 18−2324.

The most natural reading of "keep arms" in the 2nd amendment is to have weapons. The natural meaning of "bear arms" is to "wear, bear, or carry . . . upon the person or in the clothing or in a pocket, for the purpose . . . of being armed and ready for offensive or defensive action in a case of conflict with another person." Putting all textual elements together, the 2nd amendment guarantees the individual right to possess and carry weapons in case of confrontation. However, like most rights, the right secured by the 2nd amendment is not unlimited. District of Columbia v. Heller, 554 U.S. 570, 171 L. Ed. 2d 637, 128 S. Ct. 2783, (2008).

The 2nd amendment right to bear arms, is fully applicable to the states. The due process clause of the 14th amendment incorporates the 2nd amendment right recognized in *Heller*. However, incorporation does not imperil every law regulating firearms. McDonald v. Chicago, 561 U.S. 742, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (2010).

The Next Big Gun Case: The Resurrection of the Second Amendment at the New Roberts Court. Ciocchetti. 102 MLR 309 (2018).

Out of the Home and in Plain Sight: Our Evolving Second Amendment and Open Carry in Wisconsin. Duroni. 102 MLR 1305 (2019).

Right to fish, hunt, trap, and take game. SECTION 26. [*As created April 2003*] The people have the right to fish, hunt, trap, and take game subject only to reasonable restrictions as prescribed by law. [*2001 J.R. 16, 2003 J.R. 8, vote April 2003*]

ARTICLE II.

BOUNDARIES

State boundary. SECTION 1. It is hereby ordained and declared that the state of Wisconsin doth consent and accept of the boundaries prescribed in the act of congress entitled "An act to enable the people of Wisconsin territory to form a constitution and state government, and for the admission of such state into the Union," approved August sixth, one thousand eight hundred and forty−six, to wit: Beginning at the northeast corner of the state of Illinois — that is to say, at a point in the center of Lake Michigan where the line of forty−two degrees and thirty minutes of north latitude crosses the same; thence running with the boundary line of the state of Michigan, through Lake Michigan, Green Bay, to the mouth of the Menominee river; thence up the channel of the said river to the Brule river; thence up said last−mentioned river to Lake Brule; thence along the southern shore of Lake Brule in a direct line to the center of the channel between Middle and South Islands, in the Lake of the Desert; thence in a direct line to the head waters of the Montreal river, as marked upon the survey made by Captain Cramm; thence down the main channel of the Montreal river to the middle of Lake Superior; thence through the center of Lake Superior to the mouth of the St. Louis river; thence up the main channel of said river to the first rapids in the same, above the Indian village, according to Nicollet's map; thence due south to the main branch of the river St. Croix; thence down the main channel of said river to the Mississippi; thence down the center of the main channel of that river to the northwest corner of the state of Illinois; thence due east with the northern boundary of the state of Illinois to the place of beginning, as established by "An act to enable the people of the Illinois territory to form a constitution and state government, and for the admission of such state into the Union on an equal footing with the original states," approved April 18th, 1818.

The Mississippi River is an inland water of Wisconsin and the boat toilet law may be enforced on the entire width of the Mississippi bordering Minnesota and up to the center of the main channel bordering Iowa. 61 Atty. Gen. 167.

Enabling act accepted. SECTION 2. [*As amended April 1951*] The propositions contained in the act of congress are hereby accepted, ratified and confirmed, and shall remain irrevocable without the consent of the United States; and it is hereby

ordained that this state shall never interfere with the primary disposal of the soil within the same by the United States, nor with any regulations congress may find necessary for securing the title in such soil to bona fide purchasers thereof; and in no case shall nonresident proprietors be taxed higher than residents. Provided, that nothing in this constitution, or in the act of congress aforesaid, shall in any manner prejudice or affect the right of the state of Wisconsin to 500,000 acres of land granted to said state, and to be hereafter selected and located by and under the act of congress entitled "An act to appropriate the proceeds of the sales of the public lands, and grant pre−emption rights," approved September fourth, one thousand eight hundred and forty−one. [*1949 J.R. 11, 1951 J.R. 7, vote April 1951*]

ARTICLE III.

SUFFRAGE

Electors. SECTION 1. [*Amended Nov. 1882, Nov. 1908, and Nov. 1934; repealed April 1986; as created April 1986*] Every United States citizen age 18 or older who is a resident of an election district in this state is a qualified elector of that district. [*1881 J.R. 26 A, 1882 J.R. 5, 1882 c. 272, vote Nov. 1882; 1905 J.R. 15, 1907 J.R. 25, 1907 c. 661, vote Nov. 1908; 1931 J.R. 91, 1933 J.R. 76, vote Nov. 1934; 1983 J.R. 30, 1985 J.R. 14, vote April 1986*]

It is clearly within the legislature's province to require any person offering to vote to furnish such proof as it deems requisite that he or she is a qualified elector. Requiring a potential voter to identify himself or herself as a qualified elector through acceptable photo identification does not impose an elector qualification in addition to those set out in this section. League of Women Voters of Wisconsin Education Network, Inc. v. Walker, 2014 WI 97, 357 Wis. 2d 360, 851 N.W.2d 302, 12−0584.

The legislature can amend the current election statutes, without referendum, so as to make the statutes conform with the 26th amendment to the U.S. Constitution. 61 Atty. Gen. 89.

A proposal to amend a statute to allow nonresident property owners to vote on metropolitan sewerage district bonds, in addition to electors, probably would require the proposal to be submitted to a vote of the electorate under sec. 1. 63 Atty. Gen. 391.

Constitutional law: residency requirements. 53 MLR 439.

Implementation. SECTION 2. [*Repealed April 1986; as created April 1986*] Laws may be enacted:

(1) Defining residency.

(2) Providing for registration of electors.

(3) Providing for absentee voting.

(4) Excluding from the right of suffrage persons:

(a) Convicted of a felony, unless restored to civil rights.

(b) Adjudged by a court to be incompetent or partially incompetent, unless the judgment specifies that the person is capable of understanding the objective of the elective process or the judgment is set aside.

(5) Subject to ratification by the people at a general election, extending the right of suffrage to additional classes. [*1983 J.R. 30, 1985 J.R. 14, vote April 1986*]

The requirement to present acceptable photo identification comes within the legislature's authority to enact laws providing for the registration of electors under this section because acceptable photo identification is the mode by which election officials verify that a potential voter is the elector listed on the registration list. League of Women Voters of Wisconsin Education Network, Inc. v. Walker, 2014 WI 97, 357 Wis. 2d 360, 851 N.W.2d 302, 12−0584.

Disenfranchisement of felons does not deny them equal protection. Richardson v. Ramirez, 418 U.S. 24, 94 S. Ct. 2655, 41 L. Ed. 2d 551 (1974).

Even rational restrictions on the right to vote are invidious if they are unrelated to voter qualifications. However evenhanded restrictions that protect the integrity and reliability of the electoral process itself are not invidious. An Indiana statute requiring citizens voting in person on election day, or casting a ballot in person at the office of the circuit court clerk prior to election day, to present photo identification issued by the government did not violate constitutional standards. Crawford v. Marion County Election Board, 553 U.S. 181, 128 S. Ct. 1610, 170 L. Ed. 2d 574 (2008).

Secret ballot. SECTION 3. [*Repealed April 1986; as created April 1986*] All votes shall be by secret ballot. [*1983 J.R. 30, 1985 J.R. 14, vote April 1986*]

Residence saved. SECTION 4. [*Repealed April 1986; see 1983 J.R. 30, 1985 J.R. 14, vote April 1986.*]

Military stationing does not confer residence. SECTION 5. [*Repealed April 1986; see 1983 J.R. 30, 1985 J.R. 14, vote April 1986.*]

Exclusion from suffrage. SECTION 6. [*Repealed April 1986; see 1983 J.R. 30, 1985 J.R. 14, vote April 1986.*]

ARTICLE IV.

LEGISLATIVE

Legislative power. SECTION 1. The legislative power shall be vested in a senate and assembly.

An act validating existing sewerage districts previously held to be unconstitutionally organized is within the power of the legislature. Madison Metropolitan Sewerage Dist. v. Stein, 47 Wis. 2d 349, 177 N.W.2d 131.

The power given vocational district boards to levy taxes does not violate this section. The manner of appointing board members is constitutional. West Milwaukee v. Area Bd. Vocational, T. & A. Ed., 51 Wis. 2d 356, 187 N.W.2d 387.

One legislature cannot dictate action by a future legislature or a future legislative committee. State ex rel. Warren v. Nusbaum, 59 Wis. 2d 391, 208 N.W.2d 780.

The legislature may constitutionally prescribe a criminal penalty for violation of an administrative rule. State v. Courtney, 74 Wis. 2d 705, 247 N.W.2d 714.

Provisions of s. 144.07 (1m) [now s. 281.34 (1m)], that void a DNR sewerage connection order if electors in the affected town area reject annexation to the city ordered to extend sewerage service, represents a valid legislative balancing and accommodation of 2 statewide concerns: urban development and pollution control. City of Beloit v. Kallas, 76 Wis. 2d 61, 250 N.W.2d 342.

Mediation − arbitration under s. 111.70 (4) (cm) is a constitutional delegation of legislative authority. Milwaukee County v. District Council 48, 109 Wis. 2d 14, 325 N.W.2d 350 (Ct. App. 1982).

The court will invalidate legislation only for constitutional violations. State ex rel. La Follette v. Stitt, 114 Wis. 2d 358, 338 N.W.2d 684 (1983).

Reference in a statute to a general federal law, as amended, necessarily references the current federal law where the act named in the statute is repealed and the law rewritten in another act. Because reference is stated as part of a contingency, it does not constitute unlawful delegation of legislative authority to U.S. Congress. Dane County Hospital & Home v. LIRC, 125 Wis. 2d 308, 371 N.W.2d 815 (Ct. App. 1985).

The supreme court declined to review the validity of the procedure used to give notice of a joint legislative committee on conference alleged to violate the state open meetings law. The court will not determine whether internal operating rules or procedural statutes have been complied with by the legislature in the course of its enactments and will not intermeddle in what it views, in the absence of constitutional directives to the contrary, to be purely legislative concerns. Ozanne v. Fitzgerald, 2011 WI 43, 334 Wis. 2d 70, 798 N.W.2d 436, 11−0613.

When administrative agencies promulgate rules, they are exercising legislative power that the legislature has chosen to delegate to them by statute. Stated otherwise, agencies have no inherent constitutional authority to make rules, and their rule−making powers can be repealed by the legislature. It follows that the legislature may place limitations and conditions on an agency's exercise of rulemaking authority, including establishing the procedures by which agencies may promulgate rules. Koschkee v. Taylor, 2019 WI 76, 387 Wis. 2d 552, 929 N.W.2d 600, 17−2278.

The legislature may enact the laws the executive is duty−bound to execute, but it may not control his knowledge or intentions about those laws. Nor may it mute or modulate the communication of his knowledge or intentions to the public. Because there was no set of facts pursuant to which 2017 Wis. Act 369's restrictions on guidance documents would not impermissibly interfere with the executive's exercise of his core constitutional power, they were in that respect facially unconstitutional. Service Employees International Union (SEIU), Local 1 v. Vos, 2020 WI 67, 393 Wis. 2d 38, 946 N.W.2d 35, 19−0614.

Proposed amendments to bills creating variable obscenity laws that would exempt motion picture films shown at theaters that comply with the film ratings of the motion picture association of America constitute an unconstitutional delegation of legislative power. 58 Atty. Gen. 36.

The one man−one vote principle is inapplicable to legislative committees since that principle applies only to the exercise of legislative powers and such powers cannot constitutionally be delegated to these committees. There has been no such unconstitutional delegation as to the joint committee on finance, the board on government operations, the joint legislative council or the committee to visit state properties. Legislative oversight of administrative rules discussed. 63 Atty. Gen. 173.

Legislature, how constituted. SECTION 2. The number of the members of the assembly shall never be less than fifty−four nor more than one hundred. The senate shall consist of a number not more than one−third nor less than one−fourth of the number of the members of the assembly.

Apportionment. SECTION 3. [*As amended Nov. 1910, Nov. 1962, and Nov. 1982*] At its first session after each enumeration made by the authority of the United States, the legislature shall apportion and district anew the members of the senate and

assembly, according to the number of inhabitants. [*1907 J.R. 30, 1909 J.R. 55, 1909 c. 478, vote Nov. 1910; 1959 J.R. 30, 1961 J.R. 32, vote Nov. 1962; 1979 J.R. 36, 1981 J.R. 29, vote Nov. 1982*]

The phrase "according to the number of inhabitants" in this section was intended to secure the preexisting right to proportionate representation and apportionment as nearly equal as practicable among the several counties for the election of members of the legislature. This section gives the legislature the duty to enact a redistricting plan after each federal census to prevent one person's vote in an underpopulated district from having more weight than another's in an overly populated district. Johnson v. Wisconsin Elections Commission, 2021 WI 87, 399 Wis. 2d 623, 967 N.W.2d 469, 21–1450.

Unlike the Wisconsin Constitution's Declaration of Rights, article IV, sections 3, 4, and 5, of the Wisconsin Constitution express a series of discrete requirements governing redistricting. These are the only Wisconsin constitutional limits the supreme court has ever recognized on the legislature's discretion to redistrict. Johnson v. Wisconsin Elections Commission, 2021 WI 87, 399 Wis. 2d 623, 967 N.W.2d 469, 21–1450.

The Wisconsin Constitution requires the legislature—a political body—to establish the legislative districts in this state. Just as the laws enacted by the legislature reflect policy choices, so will the maps drawn by that political body. Nothing in the constitution empowers the supreme court to second–guess those policy choices, and nothing in the constitution vests the court with the power of the legislature to enact new maps. Johnson v. Wisconsin Elections Commission, 2021 WI 87, 399 Wis. 2d 623, 967 N.W.2d 469, 21–1450.

In this state's constitutional order, redistricting remains the legislature's duty. Any remedy the court may impose would be in effect only until such time as the legislature and governor have enacted a valid legislative apportionment plan. Johnson v. Wisconsin Elections Commission, 2021 WI 87, 399 Wis. 2d 623, 967 N.W.2d 469, 21–1450.

Institutional populations, as well as other populations that may include persons disenfranchised for some reason, may not be disregarded for redistricting purposes. 70 Atty. Gen. 80.

When drawing state and local legislative districts, jurisdictions are permitted to deviate somewhat from perfect population equality to accommodate traditional districting objectives, among them: preserving the integrity of political subdivisions, maintaining communities of interest, and creating geographic compactness. When the maximum population deviation between the largest and smallest district is less than ten percent, a state or local legislative map presumptively complies with the one–person, one–vote rule. The equal protection clause does not mandate use of the voter–eligible population. It is plainly permissible for jurisdictions to measure equalization by the total population of state and local legislative districts. Evenwel v. Abbott, 578 U.S. 54, 136 S. Ct. 1120, 194 L. Ed. 2d 291 (2016).

Those attacking a state–approved plan must show that it is more probable than not that a population deviation from absolute equality of districts of less than 10 percent reflects the predominance of illegitimate reapportionment factors rather than the legitimate considerations. Harris v. Arizona Independent Redistricting Commission, 578 U.S. 253, 136 S. Ct. 1301, 194 L. Ed. 2d 497 (2016).

Representatives to the assembly, how chosen. SECTION 4. [*As amended Nov. 1881 and Nov. 1982*] The members of the assembly shall be chosen biennially, by single districts, on the Tuesday succeeding the first Monday of November in even–numbered years, by the qualified electors of the several districts, such districts to be bounded by county, precinct, town or ward lines, to consist of contiguous territory and be in as compact form as practicable. [*1880 J.R. 9S, 1881 J.R. 7A, 1881 c. 262, vote Nov. 1881; 1979 J.R. 36, 1981 J.R. 29, vote Nov. 1982*]

U.S. Supreme Court decisions requiring almost absolute equality of population among electoral districts render nugatory the state court's construction of art. IV, sec. 4, as prohibiting assembly districts from dividing counties except where a county is entitled to more than one assembly member. 58 Atty. Gen. 88.

Senators, how chosen. SECTION 5. [*As amended Nov. 1881 and Nov. 1982*] The senators shall be elected by single districts of convenient contiguous territory, at the same time and in the same manner as members of the assembly are required to be chosen; and no assembly district shall be divided in the formation of a senate district. The senate districts shall be numbered in the regular series, and the senators shall be chosen alternately from the odd and even–numbered districts for the term of 4 years. [*1880 J.R. 9S, 1881 J.R. 7A, 1881 c. 262, vote Nov. 1881; 1979 J.R. 36, 1981 J.R. 29, vote Nov. 1982*]

Qualifications of legislators. SECTION 6. No person shall be eligible to the legislature who shall not have resided one year within the state, and be a qualified elector in the district which he may be chosen to represent.

A candidate for election to Congress need not be a resident of the district at the time he or she files nomination papers and executes the declaration of intent to accept the office if elected. A candidate for congress must be an inhabitant of the state at the time of election. 61 Atty. Gen. 155.

Organization of legislature; quorum; compulsory attendance. SECTION 7. Each house shall be the judge of the elections, returns and qualifications of its own members; and a majority of each shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as each house may provide.

Rules; contempts; expulsion. SECTION 8. Each house may determine the rules of its own proceedings, punish for contempt and disorderly behavior, and with the concurrence of two–thirds of all the members elected, expel a member; but no member shall be expelled a second time for the same cause.

Courts have no jurisdiction to review legislative rules of proceeding, which are those rules having "to do with the process the legislature uses to propose or pass legislation or how it determines the qualifications of its members." Milwaukee Journal Sentinel v. DOA, 2009 WI 79, 319 Wis. 2d 439, 768 N.W.2d 700, 07–1160.

The Wisconsin Constitution affords the legislature absolute discretion to determine the rules of its own proceedings. League of Women Voters v. Evers, 2019 WI 75, 387 Wis. 2d 511, 929 N.W.2d 209, 19–0559.

The legislature cannot sentence a person to confinement for contempt without notice and without giving an opportunity to respond to the charge. Groppi v. Leslie, 404 U.S. 496.

Officers. SECTION 9. [*As amended April 1979 and Nov. 2014*] **(1)** Each house shall choose its presiding officers from its own members.

(2) The legislature shall provide by law for the establishment of a department of transportation and a transportation fund. [*1977 J.R. 32, 1979 J.R. 3, vote April 1979; 2011 J.R. 4, 2013 J.R. 1, vote Nov. 2014*]

Journals; open doors; adjournments. SECTION 10. Each house shall keep a journal of its proceedings and publish the same, except such parts as require secrecy. The doors of each house shall be kept open except when the public welfare shall require secrecy. Neither house shall, without consent of the other, adjourn for more than three days.

Meeting of legislature. SECTION 11. [*As amended Nov. 1881 and April 1968*] The legislature shall meet at the seat of government at such time as shall be provided by law, unless convened by the governor in special session, and when so convened no business shall be transacted except as shall be necessary to accomplish the special purposes for which it was convened. [*1880 J.R. 9S, 1881 J.R. 7A, 1881 c. 262, vote Nov. 1881; 1965 J.R. 57, 1967 J.R. 48, vote April 1968*]

How the legislature meets, when it meets, and what descriptive titles the legislature assigns to those meetings or their operating procedures constitute parts of the legislative process with which the judicial branch has no jurisdiction or right to interfere. League of Women Voters v. Evers, 2019 WI 75, 387 Wis. 2d 511, 929 N.W.2d 209, 19–0559.

Section 13.02 (3) satisfies the Wisconsin Constitution by authorizing the legislature's own committee to set its work schedule. League of Women Voters v. Evers, 2019 WI 75, 387 Wis. 2d 511, 929 N.W.2d 209, 19–0559.

Ineligibility of legislators to office. SECTION 12. No member of the legislature shall, during the term for which he was elected, be appointed or elected to any civil office in the state, which shall have been created, or the emoluments of which shall have been increased, during the term for which he was elected.

A legislator may be elected to a constitutional or statutory state elective office even though the emoluments of the office were raised during his or her legislative term. If so elected, the legislator is limited by 13.04 (1) to the emoluments of the office prior to the increase. A legislator is not eligible, however, for appointment to an office created during his or her term or to an office the emoluments of which appointive office were raised during his or her legislative term. 63 Atty. Gen. 127.

Ineligibility of federal officers. SECTION 13. [*As amended April 1966*] No person being a member of congress, or holding any military or civil office under the United States, shall be eligible to a seat in the legislature; and if any person shall, after his election as a member of the legislature, be elected to congress, or be appointed to any office, civil or military, under the government of the United States, his acceptance thereof shall vacate his seat. This restriction shall not prohibit a legislator

from accepting short periods of active duty as a member of the reserve or from serving in the armed forces during any emergency declared by the executive. [*1963 J.R. 34, 1965 J.R. 14, vote April 1966*]

Filling vacancies. SECTION 14. The governor shall issue writs of election to fill such vacancies as may occur in either house of the legislature.

Exemption from arrest and civil process. SECTION 15. Members of the legislature shall in all cases, except treason, felony and breach of the peace, be privileged from arrest; nor shall they be subject to any civil process, during the session of the legislature, nor for fifteen days next before the commencement and after the termination of each session.

The privilege under this section can be invoked by a legislator only if the legislator is subpoenaed, not if an aide is subpoenaed. State v. Beno, 116 Wis. 2d 122, 341 N.W.2d 668 (1984).

The members of the Wisconsin Constitutional Convention did not intend to create a legislative privilege from criminal arrest and prosecution when they included article IV, section 15 in the Wisconsin Constitution. The phrase "treason, felony and breach of the peace" in that section was intended to mean all crimes. State v. Burke, 2002 WI App 291, 258 Wis. 2d 832, 653 N.W.2d 922, 02–2161.

Privilege in debate. SECTION 16. No member of the legislature shall be liable in any civil action, or criminal prosecution whatever, for words spoken in debate.

The sphere of legislative action protected under this section is broader than floor deliberations. A legislator may invoke the privilege under this section to immunize an aide from a subpoena to testify as to an investigation conducted by the aide at the legislator's request. State v. Beno, 116 Wis. 2d 122, 341 N.W.2d 668 (1984).

Not all activities of a legislator are protected by this section insofar as that activity is not an integral part of the deliberative and communicative processes. While legislative acts are protected by the speech and debate clause, political acts are not. Hiring, directing, and managing legislative caucus staff to oversee political campaigns is not protected. By its very nature, engaging in campaign activity is political. State v. Chvala, 2004 WI App 53, 271 Wis. 2d 115, 678 N.W.2d 880, 03–0442. See also State v. Jensen, 2004 WI App 89, 272 Wis. 2d 707, 684 N.W.2d 136, 03–0106.

This section provides only immunity from prosecution based on use of communications, and not secrecy for communications of government officials and employees. Legislative Technical Services Bureau Custodian of Records v. State, 2004 WI 65, 272 Wis. 2d 208, 680 N.W.2d 792, 02–3063.

In a federal criminal prosecution against a state legislator there is no legislative privilege barring introduction of evidence of the legislator's legislative acts. United States v. Gillock, 445 U.S. 360 (1980).

Enactment of laws. SECTION 17. [*As amended April 1977*] **(1)** The style of all laws of the state shall be "The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:".

(2) No law shall be enacted except by bill. No law shall be in force until published.

(3) The legislature shall provide by law for the speedy publication of all laws. [*1975 J.R. 13, 1977 J.R. 7, vote April 1977*]

The enacting clause is not required for each particular statute. According to legislative rule, when an act, or part of an act, creates a statute section number, that action indicates a legislative intent to make the section a part of the Wisconsin Statutes. Hence, because the legislature can intend that only a part of an act creates a statute, it does not follow that each statute must contain all the constituent parts of an act, namely, the enabling clause. State v. Weidman, 2007 WI App 258, 306 Wis. 2d 723, 743 N.W.2d 854, 06–2168.

In order for the legislature to create a law, the proposed law must be enacted by bill. Mere enactment of a bill to ratify a collective bargaining agreement and publication of it as an act was not sufficient to cause a provision of the collective bargaining agreement to become a law enacted under this section to create an exception to the public records law, s. 19.35. The act did not reference s. 19.35 or the contract provision that purportedly modified that law, did not purport to amend any published statutes, and did not contain any language that might give notice that the statute was being amended. As a result, the contract provision was not enacted by bill and remained a contractual provision and was not a "law" that is an exception to s. 19.35. Milwaukee Journal Sentinel v. DOA, 2009 WI 79, 319 Wis. 2d 439, 768 N.W.2d 700, 07–1160.

Under certain circumstances, incorporation by reference in a bill may be effective to work a change in the law. Cases recognizing incorporation by reference have generally dealt with incorporating the provisions of other published statutes and with the establishment of standards by reference, not incorporation of sources being given the force of law. The source being incorporated cannot be a law itself without having been enacted in a manner sufficient to satisfy this section. Milwaukee Journal Sentinel v. DOA, 2009 WI 79, 319 Wis. 2d 439, 768 N.W.2d 700, 07–1160.

In order for the legislature to create a law, the proposed law must be enacted by bill and be published. For some action to be sufficient to constitute publication, that action must be evaluated in light of the purpose publication seeks to achieve, i.e., was the public provided with sufficient notice of the law that is being enacted or amended. The publication requirement is meant to avoid the situation where the people have their rights sacrificed by the operation of laws that they are bound to know, but have no means of knowing. Milwaukee Journal Sentinel v. DOA, 2009 WI 79, 319 Wis. 2d 439, 768 N.W.2d 700, 07–1160.

This section vests the legislature with the constitutional power to "provide by law" for publication. The legislature has set the requirements for publication. If a court can intervene and prohibit the publication of an act, the court determines what shall be law and not the legislature. If the court does that, it does not in terms legislate but it invades the constitutional power of the legislature to declare what shall become law. This a court may not do. Ozanne v. Fitzgerald, 2011 WI 43, 334 Wis. 2d 70, 798 N.W.2d 436, 11–0613.

The state legislature cannot constitutionally adopt prospective federal legislation by reference. 63 Atty. Gen. 229.

Article VII, sec. 21 [17] requires full text publication of all general laws, and publication of an abstract or synopsis of such laws would not be sufficient. Methods other than newspaper publication, under 985.04, may be utilized to give public notice of general laws. 63 Atty. Gen. 346. See also s. 14.38 (10).

Title of private bills. SECTION 18. No private or local bill which may be passed by the legislature shall embrace more than one subject, and that shall be expressed in the title.

Chapter 418, laws of 1977, s. 923 (48) (a) is a private or local bill enacted unconstitutionally. Soo Line R. Co. v. Transportation Dept., 101 Wis. 2d 64, 303 N.W.2d 626 (1981).

A specific prison siting provision in a budget act did not violate this section. The test for distinguishing a private or local law is established. Milwaukee Brewers v. DHSS, 130 Wis. 2d 79, 387 N.W.2d 254 (1986).

Challenged legislation, although general on its face, violated this section because the classification employed was not based on any substantial distinction between classes employed nor was it germane to purposes of the legislation. Brookfield v. Milwaukee Sewerage District, 144 Wis. 2d 896, 426 N.W.2d 591 (1988).

A bill has a single subject if all of its provisions are related to the same general purpose and are incident to that purpose. A title is insufficient only if it fails to reasonably suggest the purpose of the act or if a reading of the act with the full scope of the title in mind discloses a provision clearly outside the title. Brookfield v. Milwaukee Sewerage District, 171 Wis. 2d 400, 491 N.W.2d 484 (1992).

A 2−prong analysis for determining violations of this section is discussed. City of Oak Creek v. DNR, 185 Wis. 2d 424, 518 N.W.2d 276 (Ct. App. 1994).

Courts will not afford legislation challenged under this section a presumption of constitutionality unless the record shows that the legislature adequately considered the legislation in question. When a majority of the members of the Assembly co−sponsored a single−subject bill exempting YMCAs from property taxation before the measure was added to the budget bill and a majority of senators either co−sponsored the stand−alone bill or considered and voted for the proposal as members of the Joint Finance Committee, there was a presumption that the legislators who sponsored the bill or voted for it in committee adequately considered the proposal. Lake Country Racquet and Athletic Club, Inc. v. Morgan, 2006 WI App 25, 289 Wis. 2d 498, 710 N.W.2d 701, 04–3061.

Origin of bills. SECTION 19. Any bill may originate in either house of the legislature, and a bill passed by one house may be amended by the other.

Yeas and nays. SECTION 20. The yeas and nays of the members of either house on any question shall, at the request of one−sixth of those present, be entered on the journal.

The taking of yea and nay votes and the entry on the journals of the senate and assembly can be complied with by recording the total aye vote together with a listing of the names of those legislators who voted no, were absent or not voting, or were paired on the question. Discussing article V, section 10; article VIII, section 8; and article XII, section 1. 63 Atty. Gen. 346.

Compensation of members. SECTION 21. [*Amended Nov. 1867 and Nov. 1881; repealed April 1929; see 1865 J.R. 9, 1866 J.R. 3, 1867 c. 25, vote Nov. 1867; 1880 J.R. 9S, 1881 J.R. 7A, 1881 c. 262, vote Nov. 1881; 1927 J.R. 57, 1929 J.R. 6, vote April 1929.*]

Powers of county boards. SECTION 22. The legislature may confer upon the boards of supervisors of the several counties of the state such powers of a local, legislative and administrative character as they shall from time to time prescribe.

Milwaukee County may, by ordinance, provide credit in a retirement system for service of an employee with another municipality. 61 Atty. Gen. 177.

Town and county government. SECTION 23. [*As amended Nov. 1962, April 1969, and April 1972*] The legislature shall establish but one system of town government, which shall be as nearly uniform as practicable; but the legislature may provide for the election at large once in every 4 years of a chief executive officer in any county with such powers of an administrative character as they may from time to time prescribe in accordance with this section and shall establish one or more systems of county government. [*1959 J.R. 68, 1961 J.R. 64, vote Nov. 1962;*

1967 J.R. 49, 1969 J.R. 2, vote April 1969; 1969 J.R. 32, 1971 J.R. 13, vote April 1972]

Abolishing the office of town assessor in those counties adopting a countywide assessor system does not amount to the creation of a different system of town government. Thompson v. Kenosha County, 64 Wis. 2d 673, 221 N.W.2d 845 (1974).

Only enactments that unnecessarily interfere with the system's uniformity in a material respect are invalidated by this section. Classifications based upon population have generally been upheld. State ex rel. Wolf v. Town of Lisbon, 75 Wis. 2d 152, 248 N.W.2d 450 (1977).

Chief executive officer to approve or veto resolutions or ordinances; proceedings on veto. SECTION 23a. [*As created Nov. 1962 and amended April 1969*] Every resolution or ordinance passed by the county board in any county shall, before it becomes effective, be presented to the chief executive officer. If he approves, he shall sign it; if not, he shall return it with his objections, which objections shall be entered at large upon the journal and the board shall proceed to reconsider the matter. Appropriations may be approved in whole or in part by the chief executive officer and the part approved shall become law, and the part objected to shall be returned in the same manner as provided for in other resolutions or ordinances. If, after such reconsideration, two–thirds of the members–elect of the county board agree to pass the resolution or ordinance or the part of the resolution or ordinance objected to, it shall become effective on the date prescribed but not earlier than the date of passage following reconsideration. In all such cases, the votes of the members of the county board shall be determined by ayes and noes and the names of the members voting for or against the resolution or ordinance or the part thereof objected to shall be entered on the journal. If any resolution or ordinance is not returned by the chief executive officer to the county board at its first meeting occurring not less than 6 days, Sundays excepted, after it has been presented to him, it shall become effective unless the county board has recessed or adjourned for a period in excess of 60 days, in which case it shall not be effective without his approval. [*1959 J.R. 68, 1961 J.R. 64, vote Nov. 1962; 1967 J.R. 49, 1969 J.R. 2, vote April 1969*]

A county executive's power to veto ordinances and resolutions extends to rezoning petitions that are in essence proposed amendments to the county zoning ordinance. The veto is subject to limited judicial review. Schmeling v. Phelps, 212 Wis. 2d 898, 569 N.W.2d 784 (Ct. App. 1997), 96–2661.

A county executive's partial–veto power is similar to the governor's power. 73 Atty. Gen. 92.

A county board may not amend a resolution, ordinance, or part thereof vetoed by the county executive, but can pass a separate substitute for submission to the executive. The board has a duty to promptly reconsider vetoed resolutions, ordinances, or parts thereof. 74 Atty. Gen. 73.

A county executive has the authority to reduce a line item budget appropriation from one specific dollar figure to another through the use of his or her partial veto. Constitutional amendments limiting the governor's veto authority in article V, section 10 (1) (c) impose no corresponding limit upon the veto authority of the county executive. OAG 6–14.

Gambling. SECTION 24. [*As amended April 1965, April 1973, April 1977, April 1987, April 1993, and April 1999*] **(1)** Except as provided in this section, the legislature may not authorize gambling in any form.

(2) Except as otherwise provided by law, the following activities do not constitute consideration as an element of gambling:

(a) To listen to or watch a television or radio program.

(b) To fill out a coupon or entry blank, whether or not proof of purchase is required.

(c) To visit a mercantile establishment or other place without being required to make a purchase or pay an admittance fee.

(3) The legislature may authorize the following bingo games licensed by the state, but all profits shall accrue to the licensed organization and no salaries, fees or profits may be paid to any other organization or person: bingo games operated by religious, charitable, service, fraternal or veterans' organizations or those to which contributions are deductible for federal or state income tax purposes. All moneys received by the state that are attributable to bingo games shall be used for property tax relief for residents of this state as provided by law. The distribution of moneys that are attributable to bingo games may not vary based on the income or age of the person provided the property tax relief. The distribution of moneys that are attributable to bingo games shall not be subject to the uniformity requirement of section 1 of article VIII. In this subsection, the distribution of all moneys attributable to bingo games shall include any earnings on the moneys received by the state that are attributable to bingo games, but shall not include any moneys used for the regulation of, and enforcement of law relating to, bingo games.

(4) The legislature may authorize the following raffle games licensed by the state, but all profits shall accrue to the licensed local organization and no salaries, fees or profits may be paid to any other organization or person: raffle games operated by local religious, charitable, service, fraternal or veterans' organizations or those to which contributions are deductible for federal or state income tax purposes. The legislature shall limit the number of raffles conducted by any such organization.

(5) This section shall not prohibit pari–mutuel on–track betting as provided by law. The state may not own or operate any facility or enterprise for pari–mutuel betting, or lease any state–owned land to any other owner or operator for such purposes. All moneys received by the state that are attributable to pari–mutuel on–track betting shall be used for property tax relief for residents of this state as provided by law. The distribution of moneys that are attributable to pari–mutuel on–track betting may not vary based on the income or age of the person provided the property tax relief. The distribution of moneys that are attributable to pari–mutuel on–track betting shall not be subject to the uniformity requirement of section 1 of article VIII. In this subsection, the distribution of all moneys attributable to pari–mutuel on–track betting shall include any earnings on the moneys received by the state that are attributable to pari–mutuel on–track betting, but shall not include any moneys used for the regulation of, and enforcement of law relating to, pari–mutuel on–track betting.

(6) (a) The legislature may authorize the creation of a lottery to be operated by the state as provided by law. The expenditure of public funds or of revenues derived from lottery operations to engage in promotional advertising of the Wisconsin state lottery is prohibited. Any advertising of the state lottery shall indicate the odds of a specific lottery ticket to be selected as the winning ticket for each prize amount offered. The net proceeds of the state lottery shall be deposited in the treasury of the state, to be used for property tax relief for residents of this state as provided by law. The distribution of the net proceeds of the state lottery may not vary based on the income or age of the person provided the property tax relief. The distribution of the net proceeds of the state lottery shall not be subject to the uniformity requirement of section 1 of article VIII. In this paragraph, the distribution of the net proceeds of the state lottery shall include any earnings on the net proceeds of the state lottery.

(b) The lottery authorized under par. (a) shall be an enterprise that entitles the player, by purchasing a ticket, to participate in a game of chance if: 1) the winning tickets are randomly predetermined and the player reveals preprinted numbers or symbols from which it can be immediately determined whether the ticket is a winning ticket entitling the player to win a prize as prescribed in the features and procedures for the game, including an opportunity to win a prize in a secondary or subsequent chance drawing or game; or 2) the ticket is evidence of the numbers or symbols selected by the player or, at the player's option, selected by a computer, and the player becomes entitled to a prize as prescribed in the features and procedures for the game, including an opportunity to win a prize in a secondary or subsequent chance drawing or game if some or all of the player's symbols or numbers are selected in a chance drawing or game, if the player's ticket is randomly selected by the computer at the time of purchase or if the ticket is selected in a chance drawing.

(c) Notwithstanding the authorization of a state lottery under par. (a), the following games, or games simulating any of the fol-

lowing games, may not be conducted by the state as a lottery: 1) any game in which winners are selected based on the results of a race or sporting event; 2) any banking card game, including blackjack, baccarat or chemin de fer; 3) poker; 4) roulette; 5) craps or any other game that involves rolling dice; 6) keno; 7) bingo 21, bingo jack, bingolet or bingo craps; 8) any game of chance that is placed on a slot machine or any mechanical, electromechanical or electronic device that is generally available to be played at a gambling casino; 9) any game or device that is commonly known as a video game of chance or a video gaming machine or that is commonly considered to be a video gambling machine, unless such machine is a video device operated by the state in a game authorized under par. (a) to permit the sale of tickets through retail outlets under contract with the state and the device does not determine or indicate whether the player has won a prize, other than by verifying that the player's ticket or some or all of the player's symbols or numbers on the player's ticket have been selected in a chance drawing, or by verifying that the player's ticket has been randomly selected by a central system computer at the time of purchase; 10) any game that is similar to a game listed in this paragraph; or 11) any other game that is commonly considered to be a form of gambling and is not, or is not substantially similar to, a game conducted by the state under par. (a). No game conducted by the state under par. (a) may permit a player of the game to purchase a ticket, or to otherwise participate in the game, from a residence by using a computer, telephone or other form of electronic, telecommunication, video or technological aid. [*1963 J.R. 35, 1965 J.R. 2, vote April 1965; 1971 J.R. 31, 1973 J.R. 3, vote April 1973; 1975 J.R. 19, 1977 J.R. 6, vote April 1977; 1985 J.R. 36, 1987 J.R. 3, vote April 1987; 1985 J.R. 35, 1987 J.R. 4, vote April 1987; 1991 J.R. 27, 1993 J.R. 3, vote April 1993; 1997 J.R. 19, 1999 J.R. 2, vote April 1999*]

The governor acted contrary to the public policy embodied in state law and therefore acted without authority by agreeing to an Indian gaming compact allowing the conduct of games prohibited by Art. IV, s. 24 and criminal statutes. Panzer v. Doyle, 2004 WI 52, 271 Wis. 2d 295, 680 N.W.2d 666, 03–0910.

The 1993 amendment to this section did not invalidate the original compacts between the state and Indian tribes. Because the original compacts contemplated extending and amending the scope of Indian gaming, the parties' right of renewal is constitutionally protected by the contract clauses of the United States and Wisconsin constitutions; and amendments to the original compacts that expand the scope of gaming are likewise constitutionally protected by the contract clauses of the Wisconsin and United States constitutions. Dairyland Greyhound Park, Inc. v. Doyle, 2006 WI 107, 295 Wis. 2d 1, 719 N.W.2d 408, 03–0421.

The state lottery board may conduct any lottery game that complies with the ticket language in constitution and ch. 565. The term "lottery" in the constitution and statutes does not include any other forms of betting, playing or operation of gambling machines and devices and other forms of gambling defined in ch. 945. The legislature can statutorily authorize other non–lottery gambling including casino–type games. 79 Atty. Gen. 14.

Under the Indian Gaming Regulatory Act, 25 U.S.C.A. ss. 2701–2721, gambling activities as defined and prohibited in ch. 945, other than lotteries and pari–mutuel on–track wagering, are not permitted by any person within or without Indian country in State of Wisconsin. The prohibition includes all non–lottery gambling such as casino–type games, gambling machines and other devices. The legislature can statutorily authorize non–lottery gambling within Indian country. 79 Atty. Gen. 14.

Enactment of legislation that would propose to license and regulate certain "amusement devices" that are gambling machines would authorize "gambling" in violation of Art. IV, section 24. OAG 2–96.

The state's interest in preventing organized crime infiltration of a tribal bingo enterprise does not justify state regulation in light of compelling federal and tribal interest supporting it. California v. Cabazon Band of Indians, 480 U.S. 202 (1987).

Wisconsin cannot have it both ways. The state must entirely prohibit poker within its borders if it wants to prevent any Indian tribe from offering poker on the tribe's sovereign lands. When the state decriminalized hosting poker for taverns, it could no longer deny that game to tribes as a matter of federal law. Wisconsin v. Ho–Chunk Nation, 784 F.3d 1076 (2015).

When voters authorized a state–operated "lottery" they removed any remaining prohibition against state–operated games, schemes, or plans involving prize, chance and consideration. Lac du Flambeau Indians v. State of Wisconsin, 770 F. Supp. 480 (1991).

Panzer v. Doyle: Wisconsin Constitutional Law Deals the Governor a New Hand. Wawrzyn. 89 MLR. 221 (2005).

Gambling and the law: The Wisconsin experience, 1848–1980. Farnsley. 1980 WLR 811.

Stationery and printing. SECTION 25. The legislature shall provide by law that all stationery required for the use of the state, and all printing authorized and required by them to be done for their use, or for the state, shall be let by contract to the lowest bidder, but the legislature may establish a maximum price; no member of the legislature or other state officer shall be interested, either directly or indirectly, in any such contract.

The legality of appointing a nominee to the board of regents when that person is a major stockholder in a printing company that is under contract to the state is discussed. 60 Atty. Gen. 172.

Extra compensation; salary change. SECTION 26. [*As amended April 1956, April 1967, April 1974, April 1977, and April 1992*] **(1)** The legislature may not grant any extra compensation to a public officer, agent, servant or contractor after the services have been rendered or the contract has been entered into.

(2) Except as provided in this subsection, the compensation of a public officer may not be increased or diminished during the term of office:

(a) When any increase or decrease in the compensation of justices of the supreme court or judges of any court of record becomes effective as to any such justice or judge, it shall be effective from such date as to every such justice or judge.

(b) Any increase in the compensation of members of the legislature shall take effect, for all senators and representatives to the assembly, after the next general election beginning with the new assembly term.

(3) Subsection (1) shall not apply to increased benefits for persons who have been or shall be granted benefits of any kind under a retirement system when such increased benefits are provided by a legislative act passed on a call of ayes and noes by a three–fourths vote of all the members elected to both houses of the legislature and such act provides for sufficient state funds to cover the costs of the increased benefits. [*1953 J.R. 41, 1955 J.R. 17, vote April 1956; 1965 J.R. 96, 1967 J.R. 17, vote April 1967; 1971 J.R. 12, 1973 J.R. 15, vote April 1974; 1975 J.R. 13, 1977 J.R. 7, vote April 1977; 1989 J.R. 55, 1991 J.R. 13, vote April 1992*]

This section does not prohibit a retroactive wage adjustment negotiated by collective bargaining and applied only to a period when employees were working without a contract. DOA v. WERC, 90 Wis. 2d 426, 280 N.W.2d 150 (1979).

Payments to roadbuilders for extra compensation due to unexpected fuel costs violated this section. Krug v. Zueske, 199 Wis. 2d 406, 544 N.W.2d 618 (Ct. App. 1996), 94–3193.

The sub. (3) requirement of a three–fourths vote of all members elected to the legislature permits passage of a bill increasing benefits under a retirement system when the bill has received the votes of three–fourths of the entire elected membership of the legislature. Wisconsin Professional Police Ass'n, Inc. v. Lightbourn, 2001 WI 59, 243 Wis. 2d 512, 627 N.W.2d 807, 99–3297.

An amendment authorizing increased benefits to all retired employees would constitute a legislative declaration that such expenditures would be for a public purpose. 58 Atty. Gen. 101.

University salaries may be increased only from the date the regents adopt the budget and are subject to subsequent funding by the legislature. 60 Atty. Gen. 487.

Suits against state. SECTION 27. The legislature shall direct by law in what manner and in what courts suits may be brought against the state.

An action will not lie against the secretary of revenue for a refund of a sales tax deposit as that is an action against the state and it was not alleged that the secretary acted outside his authority. Appel v. Halverson, 50 Wis. 2d 230, 184 N.W.2d 99.

Since the mandate of this section is to the legislature, the supreme court cannot judicially intervene to change the doctrine of procedural immunity and thereby correct the anomaly that arises as a result of the constitutional restriction, absent legislative implementation, of tort suits against the state. Cords v. State, 62 Wis. 2d 42, 214 N.W.2d 405.

A state agency or officer may not waive the state's sovereign immunity without specific authorization, nor will principles of estoppel be applied to deprive the state of its sovereign rights. Lister v. Bd. of Regents, 72 Wis. 2d 282, 240 N.W.2d 610.

Although courts have common law jurisdiction to enforce arbitration awards generally, they cannot enforce awards against the state absent express legislative authorization. Teaching Assistants Assoc. v. UW–Madison, 96 Wis. 2d 492, 292 N.W.2d 657 (Ct. App. 1980).

The doctrine of sovereign immunity cannot bar an action for just compensation based on a taking of private property for public use even though the legislature has failed to establish specific provisions for the recovery of just compensation. Zinn v. State, 112 Wis. 2d 417, 334 N.W.2d 67 (1983).

A waiver of sovereign immunity in the creation of a state agency is discussed. Busse v. Dane County Regional Planning Comm., 181 Wis. 2d 527, 510 N.W.2d 136 (Ct. App. 1993).

Sovereign immunity does not apply to arbitration. State v. P.G. Miron Const. Co., 181 Wis. 2d 1045, 512 N.W.2d 499 (1994).

A specific performance action is a suit under this section. The legislature has not consented to be sued for specific performance, and such an action is not permitted

against the state. Erickson Oil Products, Inc. v. DOT, 184 Wis. 2d 36, 516 N.W.2d 755 (Ct. App. 1994).

The state waives its sovereign immunity when it creates an agency as an independent going concern. Bahr v. State Investment Bd., 186 Wis. 2d 379, 521 N.W.2d 152 (Ct. App. 1994).

A county's appeal of an ex parte order that it was responsible for court costs incurred by the state public defender for an indigent defendant was not an action "brought" against the state. The public defender could not assert that the appeal was barred by sovereign immunity. Polk County v. State Public Defender, 188 Wis. 2d 665, 524 N.W.2d 389 (1994).

Although the general rule is that waivers of sovereign immunity must be read narrowly, when a statute provides a clear, express, and broadly worded consent to sue, the rule of narrow construction will not be applied anew to every type of claim brought under the statute. German v. DOT, 223 Wis. 2d 525, 589 N.W.2d 651 (Ct. App. 1998), 98–0250.

When the state creates an entity independent from the state, which acts as neither its arm nor its agent, such entity falls outside the protection of sovereign immunity. The determination that a state entity is an independent going concern is a narrow exception to sovereign immunity. In determining whether a state entity is an independent going concern, courts should consider both the character and breadth of the statutory powers granted to the entity. Mayhugh v. State, 2015 WI 77, 364 Wis. 2d 208, 867 N.W.2d 754, 13–1023.

Section 301.04, which permits the Department of Corrections (DOC) to sue and be sued, is not an express waiver of the DOC's tort immunity but rather addresses the DOC's capacity to be sued. Mayhugh v. State, 2015 WI 77, 364 Wis. 2d 208, 867 N.W.2d 754, 13–1023.

The court in *Zinn*, 112 Wis. 2d 417 (1983), endorsed the view that the constitutional directive that persons receive just compensation for takings of their private property is "self–executing," and no express statutory provision for its enforcement against the state is necessary. Conversely, no language in the uniformity clause is analogous to that constitutional command. Just compensation is a constitutional directive contained in the takings clause; nowhere does the uniformity clause authorize general damages for an alleged violation of the uniformity principle. Klein v. DOR, 2020 WI App 56, 394 Wis. 2d 66, 949 N.W.2d 608, 18–1133.

Congress lacks the power to subject the states to private suits in their own state courts. Alder v. Maine, 527 U.S. 706, 144. L. Ed. 2d 636 (1999).

The U.S. Constitution does not permit a state to be sued by a private party without the state's consent in the courts of a different state. Franchise Tax Board v. Hyatt, 587 U.S. ___, 139 S. Ct. 1485, 203 L. Ed. 2d 768 (2019).

The state has removed only the substantive defense of governmental tort immunity and the state constitutional barrier providing that the state may be sued only upon its consent remains. Knox v. Regents of University of Wisconsin, 385 F. Supp. 886.

State immunity from suit. 1971 WLR 879.

Oath of office. SECTION 28. Members of the legislature, and all officers, executive and judicial, except such inferior officers as may be by law exempted, shall before they enter upon the duties of their respective offices, take and subscribe an oath or affirmation to support the constitution of the United States and the constitution of the state of Wisconsin, and faithfully to discharge the duties of their respective offices to the best of their ability.

Militia. SECTION 29. The legislature shall determine what persons shall constitute the militia of the state, and may provide for organizing and disciplining the same in such manner as shall be prescribed by law.

Elections by legislature. SECTION 30. [*As amended Nov. 1982*] All elections made by the legislature shall be by roll call vote entered in the journals. [*1979 J.R. 36, 1981 J.R. 29, vote Nov. 1982*]

Special and private laws prohibited. SECTION 31. [*As created Nov. 1871 and amended Nov. 1892 and April 1993*] The legislature is prohibited from enacting any special or private laws in the following cases:

(1) For changing the names of persons, constituting one person the heir at law of another or granting any divorce.

(2) For laying out, opening or altering highways, except in cases of state roads extending into more than one county, and military roads to aid in the construction of which lands may be granted by congress.

(3) For authorizing persons to keep ferries across streams at points wholly within this state.

(4) For authorizing the sale or mortgage of real or personal property of minors or others under disability.

(5) For locating or changing any county seat.

(6) For assessment or collection of taxes or for extending the time for the collection thereof.

(7) For granting corporate powers or privileges, except to cities.

(8) For authorizing the apportionment of any part of the school fund.

(9) For incorporating any city, town or village, or to amend the charter thereof. [*1870 J.R. 13, 1871 J.R. 1, 1871 c. 122, vote Nov. 1871; 1889 J.R. 4, 1891 J.R. 4, 1891 c. 362, vote Nov. 1892; 1991 J.R. 27, 1993 J.R. 3, vote April 1993*]

An act validating existing sewerage districts previously held to be unconstitutionally organized is within the power of the legislature. Madison Metropolitan Sewerage Dist. v. Stein, 47 Wis. 2d 349, 177 N.W.2d 131.

The Housing Authority, designated as a corporation, does not violate the prohibition against granting of corporate powers by the legislature. State ex rel. Warren v. Nusbaum, 59 Wis. 2d 391, 208 N.W.2d 780.

Sec. 31 includes a public purpose doctrine allowing the granting of limited corporate powers to entities created to promote a public and state purpose. Brookfield v. Milwaukee Sewerage District, 171 Wis. 2d 400, 491 N.W.2d 484 (1992).

The plain meaning of sub. (9) pertains not just to legislation directly incorporating a municipality, but also to legislation providing a process for incorporating. A provision in a budget bill that exempted a town from the normal statutory incorporation process violated sub. (9) and was unconstitutional. Kuehne v. Burdette, 2009 WI App 119, 320 Wis. 2d 784, 772 N.W.2d 225, 08–1342.

Creation of citizens utility board is constitutional. 69 Atty. Gen. 153.

General laws on enumerated subjects. SECTION 32. [*As created Nov. 1871 and amended April 1993*] The legislature may provide by general law for the treatment of any subject for which lawmaking is prohibited by section 31 of this article. Subject to reasonable classifications, such laws shall be uniform in their operation throughout the state. [*1870 J.R. 13, 1871 J.R. 1, 1871 c. 122, vote Nov. 1871; 1991 J.R. 27, 1993 J.R. 3, vote April 1993*]

Tests for violation of ss. 31 and 32 discussed. Brookfield v. Milwaukee Sewerage District, 144 Wis. 2d 896, 426 N.W.2d 591 (1988).

Auditing of state accounts. SECTION 33. [*As created Nov. 1946*] The legislature shall provide for the auditing of state accounts and may establish such offices and prescribe such duties for the same as it shall deem necessary. [*1943 J.R. 60, 1945 J.R. 73, vote Nov. 1946*]

Continuity of civil government. SECTION 34. [*As created April 1961*] The legislature, in order to ensure continuity of state and local governmental operations in periods of emergency resulting from enemy action in the form of an attack, shall (1) forthwith provide for prompt and temporary succession to the powers and duties of public offices, of whatever nature and whether filled by election or appointment, the incumbents of which may become unavailable for carrying on the powers and duties of such offices, and (2) adopt such other measures as may be necessary and proper for attaining the objectives of this section. [*1959 J.R. 50, 1961 J.R. 10, vote April 1961*]

ARTICLE V.

EXECUTIVE

Governor; lieutenant governor; term. SECTION 1. [*As amended April 1979*] The executive power shall be vested in a governor who shall hold office for 4 years; a lieutenant governor shall be elected at the same time and for the same term. [*1977 J.R. 32, 1979 J.R. 3, vote April 1979*]

Executive Orders of the Wisconsin Governor. King. 1980 WLR 333.

Governor; 4–year term. SECTION 1m. [*Created April 1967; repealed April 1979; see 1965 J.R. 80, 1967 J.R. 10 and 15, vote April 1967; 1977 J.R. 32, 1979 J.R. 3, vote April 1979.*]

Lieutenant governor; 4–year term. SECTION 1n. [*Created April 1967; repealed April 1979; see 1965 J.R. 80, 1967*

J.R. 10 and 15, vote April 1967; 1977 J.R. 32, 1979 J.R. 3, vote April 1979.]

Eligibility. SECTION 2. No person except a citizen of the United States and a qualified elector of the state shall be eligible to the office of governor or lieutenant governor.

Election. SECTION 3. [*As amended April 1967*] The governor and lieutenant governor shall be elected by the qualified electors of the state at the times and places of choosing members of the legislature. They shall be chosen jointly, by the casting by each voter of a single vote applicable to both offices beginning with the general election in 1970. The persons respectively having the highest number of votes cast jointly for them for governor and lieutenant governor shall be elected; but in case two or more slates shall have an equal and the highest number of votes for governor and lieutenant governor, the two houses of the legislature, at its next annual session shall forthwith, by joint ballot, choose one of the slates so having an equal and the highest number of votes for governor and lieutenant governor. The returns of election for governor and lieutenant governor shall be made in such manner as shall be provided by law. [*1965 J.R. 45, 1967 J.R. 11 and 14, vote April 1967*]

Powers and duties. SECTION 4. The governor shall be commander in chief of the military and naval forces of the state. He shall have power to convene the legislature on extraordinary occasions, and in case of invasion, or danger from the prevalence of contagious disease at the seat of government, he may convene them at any other suitable place within the state. He shall communicate to the legislature, at every session, the condition of the state, and recommend such matters to them for their consideration as he may deem expedient. He shall transact all necessary business with the officers of the government, civil and military. He shall expedite all such measures as may be resolved upon by the legislature, and shall take care that the laws be faithfully executed.

The legislature cannot require the governor to make specific recommendations to a future legislature or to include future appropriations in the executive budget bill. State ex rel. Warren v. Nusbaum, 59 Wis. 2d 391, 208 N.W.2d 780 (1973).

Our constitutional structure does not contemplate unilateral rule by executive decree. It consists of policy choices enacted into law by the legislature and carried out by the executive branch. Therefore, if the governor has authority to exercise certain expanded powers not provided in our constitution, it must be because the legislature has enacted a law that passes constitutional muster and gives the governor that authority. Fabick v. Evers, 2021 WI 28, 396 Wis. 2d 231, 956 N.W.2d 856, 20–1718.

Compensation of governor. SECTION 5. [*Amended Nov. 1869 and Nov. 1926; repealed Nov. 1932; see 1868 J.R. 9, 1869 J.R. 2, 1869 c. 186, vote Nov. 1869; 1923 J.R. 80, 1925 J.R. 52, 1925 c. 413, vote Nov. 1926; 1929 J.R. 69, 1931 J.R. 52, vote Nov. 1932.*]

Pardoning power. SECTION 6. The governor shall have power to grant reprieves, commutations and pardons, after conviction, for all offenses, except treason and cases of impeachment, upon such conditions and with such restrictions and limitations as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. Upon conviction for treason he shall have the power to suspend the execution of the sentence until the case shall be reported to the legislature at its next meeting, when the legislature shall either pardon, or commute the sentence, direct the execution of the sentence, or grant a further reprieve. He shall annually communicate to the legislature each case of reprieve, commutation or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the commutation, pardon or reprieve, with his reasons for granting the same.

Executive Clemency in Wisconsin: Procedures and Policies. Bauer. 1973 WLR 1154.

To Forgive, Divine: The Governor's Pardoning Power. Bach. Wis. Law. Feb. 2005.

Lieutenant governor, when governor. SECTION 7. [*As amended April 1979*] **(1)** Upon the governor's death, resignation or removal from office, the lieutenant governor shall become governor for the balance of the unexpired term.

(2) If the governor is absent from this state, impeached, or from mental or physical disease, becomes incapable of performing the duties of the office, the lieutenant governor shall serve as acting governor for the balance of the unexpired term or until the governor returns, the disability ceases or the impeachment is vacated. But when the governor, with the consent of the legislature, shall be out of this state in time of war at the head of the state's military force, the governor shall continue as commander in chief of the military force. [*1977 J.R. 32, 1979 J.R. 3, vote April 1979*]

Discussing the meaning of "absence." 68 Atty. Gen. 109.

Secretary of state, when governor. SECTION 8. [*As amended April 1979*] **(1)** If there is a vacancy in the office of lieutenant governor and the governor dies, resigns or is removed from office, the secretary of state shall become governor for the balance of the unexpired term.

(2) If there is a vacancy in the office of lieutenant governor and the governor is absent from this state, impeached, or from mental or physical disease becomes incapable of performing the duties of the office, the secretary of state shall serve as acting governor for the balance of the unexpired term or until the governor returns, the disability ceases or the impeachment is vacated. [*1977 J.R. 32, 1979 J.R. 3, vote April 1979*]

Compensation of lieutenant governor. SECTION 9. [*Amended Nov. 1869; repealed Nov. 1932; see 1868 J.R. 9, 1869 J.R. 2, 1869 c. 186, vote Nov. 1869; 1929 J.R. 70, 1931 J.R. 53, vote Nov. 1932.*]

Governor to approve or veto bills; proceedings on veto. SECTION 10. [*As amended Nov. 1908, Nov. 1930, April 1990, and April 2008*] **(1)** (a) Every bill which shall have passed the legislature shall, before it becomes a law, be presented to the governor.

(b) If the governor approves and signs the bill, the bill shall become law. Appropriation bills may be approved in whole or in part by the governor, and the part approved shall become law.

(c) In approving an appropriation bill in part, the governor may not create a new word by rejecting individual letters in the words of the enrolled bill, and may not create a new sentence by combining parts of 2 or more sentences of the enrolled bill.

(2) (a) If the governor rejects the bill, the governor shall return the bill, together with the objections in writing, to the house in which the bill originated. The house of origin shall enter the objections at large upon the journal and proceed to reconsider the bill. If, after such reconsideration, two–thirds of the members present agree to pass the bill notwithstanding the objections of the governor, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two–thirds of the members present it shall become law.

(b) The rejected part of an appropriation bill, together with the governor's objections in writing, shall be returned to the house in which the bill originated. The house of origin shall enter the objections at large upon the journal and proceed to reconsider the rejected part of the appropriation bill. If, after such reconsideration, two–thirds of the members present agree to approve the rejected part notwithstanding the objections of the governor, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two–thirds of the members present the rejected part shall become law.

(c) In all such cases the votes of both houses shall be determined by ayes and noes, and the names of the members voting for or against passage of the bill or the rejected part of the bill

notwithstanding the objections of the governor shall be entered on the journal of each house respectively.

(3) Any bill not returned by the governor within 6 days (Sundays excepted) after it shall have been presented to the governor shall be law unless the legislature, by final adjournment, prevents the bill's return, in which case it shall not be law. [*1905 J.R. 14, 1907 J.R. 13, 1907 c. 661, vote Nov. 1908; 1927 J.R. 37, 1929 J.R. 43, vote Nov. 1930; 1987 J.R. 76, 1989 J.R. 39, vote April 1990; 2005 J.R. 46, 2007 J.R. 26, vote April 2008*]

In determining whether the governor has acted in six days, judicial notice may be taken of the chief clerk's records to establish the date the bill was presented to the governor. State ex rel. General Motors Corp. v. City of Oak Creek, 49 Wis. 2d 299, 182 N.W.2d 481 (1971).

The governor may veto individual words, letters, and digits, and may also reduce appropriations by striking digits, as long as what remains after the veto is a complete, entire, and workable law. State ex rel. Wisconsin Senate v. Thompson, 144 Wis. 2d 429, 424 N.W.2d 385 (1988).

The governor may approve part of an appropriation bill by reducing the amount of money appropriated by striking a number and writing in a smaller one. This power extends only to monetary figures and is not applicable outside the context of reducing appropriations. Citizens Utility Board v. Klauser, 194 Wis. 2d 485, 534 N.W.2d 608 (1995).

The governor may not disapprove of parts of legislation by writing in new numbers except when the disapproved part is a monetary figure that expresses an appropriation amount in an appropriation bill. Figures that are not appropriation amounts but are closely related to appropriation amounts are not subject to such a "write–in" veto. Risser v. Klauser, 207 Wis. 2d 176, 558 N.W.2d 108 (1997), 96–0042.

Discussing the governor's partial veto authority. Bartlett v. Evers, 2020 WI 68, 393 Wis. 2d 172, 945 N.W.2d 685, 19–1376.

The taking of yea and nay votes and the entry on the journals of the senate and assembly can be complied with by recording the total aye vote together with a listing of the names of those legislators who voted no, were absent or not voting or were paired on the question. Discussing this section and article VIII, section 8, and article XII, section 1. 63 Atty. Gen. 346.

The governor may not alter partial vetoes once the approved portion of the act has been delivered to the secretary of state and the disapproved portion returned to the house of origin. 70 Atty. Gen. 154.

Failure of the governor to express objections to several possible partial vetoes of the 1981–82 budget bill made any such possible vetoes ineffective. 70 Atty. Gen. 189.

The governor's partial veto of section 1117g of 1991 Wis. Act 269 did not result in a complete and workable law and was invalid. Because the governor's approval was not necessary for the bill to become law, the invalidity of the partial veto resulted in s. 605.35 being enforced as passed by the legislature. 80 Atty. Gen. 327.

The partial veto power violates no federal constitutional provision. Risser v. Thompson, 930 F.2d 549 (1991).

The Wisconsin Partial Veto: Past, Present and Future. Burke. 1989 WLR 1395.

The Cheese Stands Alone: Wisconsin's "Quirky" Partial Veto In Its New Constitutional Era. LeRoy. 2020 WLR 833.

The Origin and Evolution of Partial Veto Power. Wade. Wis. Law. Mar. 2008.

ARTICLE VI.

ADMINISTRATIVE

Election of secretary of state, treasurer and attorney general; term. SECTION 1. [*As amended April 1979*] The qualified electors of this state, at the times and places of choosing the members of the legislature, shall in 1970 and every 4 years thereafter elect a secretary of state, treasurer and attorney general who shall hold their offices for 4 years. [*1977 J.R. 32, 1979 J.R. 3, vote April 1979*]

Secretary of state; 4–year term. SECTION 1m. [*Created April 1967; repealed April 1979; see 1965 J.R. 80, 1967 J.R. 10 and 15, vote April 1967; 1977 J.R. 32, 1979 J.R. 3, vote April 1979.*]

Treasurer; 4–year term. Section 1n. [*Created April 1967; repealed April 1979; see 1965 J.R. 80, 1967 J.R. 10 and 15, vote April 1967; 1977 J.R. 32, 1979 J.R. 3, vote April 1979.*]

Attorney general; 4–year term. Section 1p. [*Created April 1967; repealed April 1979; see 1965 J.R. 80, 1967 J.R. 10 and 15, vote April 1967; 1977 J.R. 32, 1979 J.R. 3, vote April 1979.*]

Secretary of state; duties, compensation. SECTION 2. [*As amended Nov. 1946*] The secretary of state shall keep a fair record of the official acts of the legislature and executive department of the state, and shall, when required, lay the same and all matters relative thereto before either branch of the legislature. He shall perform such other duties as shall be assigned him by law. He shall receive as a compensation for his services yearly such sum as shall be provided by law, and shall keep his office at the seat of government. [*1943 J.R. 60, 1945 J.R. 73, vote Nov. 1946*]

Treasurer and attorney general; duties, compensation. SECTION 3. The powers, duties and compensation of the treasurer and attorney general shall be prescribed by law.

The attorney general does not have authority to challenge the constitutionality of statutes. State v. City of Oak Creek, 223 Wis. 2d 219, 588 N.W.2d 380 (Ct. App. 1998), 97–2188.

A state can speak in litigation only through its agents and may select its agents without the interference of the federal courts. Typically, a state chooses to designate a singular attorney general to defend its interests, but nothing in the U.S. Constitution mandates this procedure or even the existence of an attorney general position. Planned Parenthood of Wisconsin, Inc. v. Kaul, 942 F.3d 793 (2019).

The Powers of the Attorney General in Wisconsin. Van Alstyne & Roberts. 1974 WLR 721.

County officers; election, terms, removal; vacancies. SECTION 4. [*As amended Nov. 1882, April 1929, Nov. 1962, April 1965, April 1967, April 1972, April 1982, Nov. 1998, and April 2005*] **(1)** (a) Except as provided in pars. (b) and (c) and sub. (2), coroners, registers of deeds, district attorneys, and all other elected county officers, except judicial officers, sheriffs, and chief executive officers, shall be chosen by the electors of the respective counties once in every 2 years.

(b) Beginning with the first general election at which the governor is elected which occurs after the ratification of this paragraph, sheriffs shall be chosen by the electors of the respective counties, or by the electors of all of the respective counties comprising each combination of counties combined by the legislature for that purpose, for the term of 4 years and coroners in counties in which there is a coroner shall be chosen by the electors of the respective counties, or by the electors of all of the respective counties comprising each combination of counties combined by the legislature for that purpose, for the term of 4 years.

(c) Beginning with the first general election at which the president is elected which occurs after the ratification of this paragraph, district attorneys, registers of deeds, county clerks, and treasurers shall be chosen by the electors of the respective counties, or by the electors of all of the respective counties comprising each combination of counties combined by the legislature for that purpose, for the term of 4 years and surveyors in counties in which the office of surveyor is filled by election shall be chosen by the electors of the respective counties, or by the electors of all of the respective counties comprising each combination of counties combined by the legislature for that purpose, for the term of 4 years.

(2) The offices of coroner and surveyor in counties having a population of 500,000 or more are abolished. Counties not having a population of 500,000 shall have the option of retaining the elective office of coroner or instituting a medical examiner system. Two or more counties may institute a joint medical examiner system.

(3) (a) Sheriffs may not hold any other partisan office.

(b) Sheriffs may be required by law to renew their security from time to time, and in default of giving such new security their office shall be deemed vacant.

(4) The governor may remove any elected county officer mentioned in this section except a county clerk, treasurer, or surveyor, giving to the officer a copy of the charges and an opportunity of being heard.

(5) All vacancies in the offices of coroner, register of deeds or district attorney shall be filled by appointment. The person appointed to fill a vacancy shall hold office only for the unexpired portion of the term to which appointed and until a successor shall be elected and qualified.

(6) When a vacancy occurs in the office of sheriff, the vacancy shall be filled by appointment of the governor, and the person appointed shall serve until his or her successor is elected and qualified. [*1881 J.R. 16A, 1882 J.R. 3, 1882 c. 290, vote Nov. 1882; 1927 J.R. 24, 1929 J.R. 13, vote April 1929; 1959 J.R. 68, 1961 J.R. 64, vote Nov. 1962; 1963 J.R. 30, 1965 J.R. 5, vote April 1965; 1965 J.R. 61, 1967 J.R. 12, vote April 1967; 1969 J.R. 33, 1971 J.R. 21, vote April 1972; 1979 J.R. 38, 1981 J.R. 15, vote April 1982; 1995 J.R. 23, 1997 J.R. 18, vote Nov. 1998; 2003 J.R. 12, 2005 J.R. 2, vote April 2005*]

This section does not bar a county from assisting in the defense of actions brought against the sheriff as a result of the sheriff's official acts. Bablitch & Bablitch v. Lincoln County, 82 Wis. 2d 574, 263 N.W.2d 218 (1978).

Discussing sheriff's powers and duties. Wisconsin Professional Police Ass'n v. County of Dane, 106 Wis. 2d 303, 316 N.W.2d 656 (1982).

A sheriff's assignment of a deputy to an undercover drug investigation falls within the constitutionally protected powers of the sheriff and could not be limited by a collective bargaining agreement. Manitowoc County v. Local 986B, 168 Wis. 2d 819, 484 N.W.2d 534 (1992). See also Washington County v. Washington County Deputy Sheriff's Ass'n, 192 Wis. 2d 728, 531 N.W.2d 468 (Ct. App. 1995).

The sheriff's power to appoint, dismiss, or demote a deputy is not constitutionally protected and may be limited by a collective bargaining agreement not in conflict with the statutes. Heitkemper v. Wirsing, 194 Wis. 2d 182, 533 N.W.2d 770 (1995). See also Brown County Sheriff's Department v. Brown County Sheriff's Department Non−Supervisory Employees Ass'n, 194 Wis. 2d 266, 533 N.W.2d 766 (1995).

The power to hire does not give character and distinction to the office of sheriff; it is not a power peculiar to the office. Certain duties of the sheriff at common law that are peculiar to the office and that characterize and distinguish the office are constitutionally protected from legislative interference, but the constitution does not prohibit all legislative change in the powers and duties of a sheriff as they existed at common law. Internal management and administrative duties that neither give character nor distinction to the office fall within the mundane and common administrative duties that may be regulated by the legislature. Hiring and firing personnel to provide food to inmates is subject to legislative regulation, including collective bargaining under s. 111.70. Kocken v. Wisconsin Council 40 AFSCME, 2007 WI 72, 301 Wis. 2d 266, 732 N.W.2d 828, 05−2742.

The assignment of deputies to transport federal and state prisoners to and from a county jail pursuant to a contract for the rental of bed space was not a constitutionally protected duty of the sheriff's office and was thus subject to the restrictions of a collective bargaining agreement. Ozaukee County v. Labor Ass'n of Wisconsin, 2008 WI App 174, 315 Wis. 2d 102, 763 N.W.2d 140, 07−1615.

A sheriff may not be restricted in whom the sheriff assigns to carry out the sheriff's constitutional duties if the sheriff is performing immemorial, principal, and important duties characterized as belonging to the sheriff at common law. Attending on the courts is one of the duties preserved for the sheriff by the constitution. When a sheriff effects the delivery of prisoners pursuant to court−issued writs, the sheriff is attending on the court. The sheriff could contract with a private entity for the transportation of prisoners, rather than utilizing deputies employed by the sheriff's department. Brown County Sheriff's Department Non−Supervisory Labor Ass'n v. Brown County, 2009 WI App 75, 318 Wis. 2d 774, 767 N.W.2d 600, 08−2069.

Staffing an x−ray and metal detector security screening station is not one of those "certain immemorial, principal, and important duties of the sheriff at common law that are peculiar to the office of sheriff" and is not part of the sheriff's constitutionally protected powers that cannot be limited by a collective bargaining agreement. Washington County v. Washington County Deputy Sheriff's Ass'n, 2009 WI App 116, 320 Wis. 2d 570, 772 N.W.2d 697, 08−1210.

The transport of individuals in conjunction with the service or execution of all processes, writs, precepts, and orders constitute immemorial, principal, and important duties that characterize and distinguish the office of sheriff and fall within the sheriff's constitutional powers, rights, and duties. As such, the sheriff has the constitutional authority to determine how to carry out those duties and can elect to privatize those duties. That s. 59.26 (4) specifically directs that the sheriff must act personally or by means of the sheriff's undersheriff or deputies is not persuasive. The simple fact that the legislature codified a duty and responsibility of the sheriff, like providing food for jail inmates, does not strip sheriffs of any constitutional protections they may have regarding this duty. Milwaukee Deputy Sheriff's Ass'n v. Clarke, 2009 WI App 123, 320 Wis. 2d 486, 772 N.W.2d 216, 08−2290.

The following powers of the sheriff are constitutionally protected: 1) the operation of the jail; 2) attendance on the courts; 3) maintaining law and order; and 4) preserving the peace. Even if a duty is related to one of these powers, however, that duty may still be regulated if it is a non−distinctive, mundane and commonplace, internal management, and administrative duty of a sheriff. The constitutional prerogative of the office of sheriff to maintain law and order and preserve the peace does not encompass the power to appoint or dismiss deputies. Milwaukee Deputy Sheriffs' Ass'n v. Milwaukee County, 2016 WI App 56, 370 Wis. 2d 644, 883 N.W.2d 154, 15−1577.

Implementation legislation is necessary before counties under 500,000 may abolish the office of coroner. 61 Atty. Gen. 355.

A county board in a county under 500,000 can abolish the elective office of coroner and implement a medical examiner system to be effective at the end of incumbent coroner's term. Language in 61 Atty. Gen. 355 inconsistent herewith is withdrawn. 63 Atty. Gen. 361.

This section does not immunize counties from liability for their own acts. Soderbeck v. Burnett County, 752 F.2d 285 (1985).

A county sheriff is an officer of the state, not county, when fulfilling constitutional obligations. Soderbeck v. Burnett County, 821 F.2d 446 (1987).

A sheriff represents the county when enforcing the law. Sovereign immunity for state officials under the 11th amendment to the U.S. Constitution does not apply. Abraham v. Piechowski, 13 F. Supp. 2d 870 (1998).

An entity characterized as the "office of the district attorney" or "district attorney," separate from the elected official, does not have authority to sue or be sued. Buchanan v. City of Kenosha, 57 F. Supp. 2d 675 (1999).

ARTICLE VII.

JUDICIARY

Impeachment; trial. SECTION 1. [*As amended Nov. 1932*] The court for the trial of impeachments shall be composed of the senate. The assembly shall have the power of impeaching all civil officers of this state for corrupt conduct in office, or for crimes and misdemeanors; but a majority of all the members elected shall concur in an impeachment. On the trial of an impeachment against the governor, the lieutenant governor shall not act as a member of the court. No judicial officer shall exercise his office, after he shall have been impeached, until his acquittal. Before the trial of an impeachment the members of the court shall take an oath or affirmation truly and impartially to try the impeachment according to evidence; and no person shall be convicted without the concurrence of two−thirds of the members present. Judgment in cases of impeachment shall not extend further than to removal from office, or removal from office and disqualification to hold any office of honor, profit or trust under the state; but the party impeached shall be liable to indictment, trial and punishment according to law. [*1929 J.R. 72, 1931 J.R. 58, vote Nov. 1932*]

Court system. SECTION 2. [*As amended April 1966 and April 1977*] The judicial power of this state shall be vested in a unified court system consisting of one supreme court, a court of appeals, a circuit court, such trial courts of general uniform statewide jurisdiction as the legislature may create by law, and a municipal court if authorized by the legislature under section 14. [*1963 J.R. 48, 1965 J.R. 50, vote April 1966; 1975 J.R. 13, 1977 J.R. 7, vote April 1977*]

The Shawano−Menominee court was a constitutional district court since Menominee county was not organized for judicial purposes. Pamanet v. State, 49 Wis. 2d 501, 182 N.W.2d 459.

If s. 425.113 were to be interpreted so as to remove a court's power to issue a body attachment for one who chooses to ignore its orders, that interpretation would cause the statute to be unconstitutional as a violation of the principle of separation of powers. Smith v. Burns, 65 Wis. 2d 638, 223 N.W.2d 562.

Courts have no inherent power to stay or suspend the execution of a sentence in the absence of statutory authority. A court's refusal to impose a legislatively mandated sentence constitutes an abuse of discretion and usurpation of the legislative field. State v. Sittig, 75 Wis. 2d 497, 249 N.W.2d 770.

WERC is authorized by s. 111.06 (1) (L) to determine whether conduct in violation of criminal law has occurred, which is not a delegation of judicial power in violation of Art. VII, sec. 2 nor does the administrative procedure violate Art. I, sec. 8. Layton School of Art & Design v. WERC, 82 Wis. 2d 324, 262 N.W.2d 218.

Courts have no inherent power to dismiss a criminal complaint with prejudice prior to attachment of jeopardy. State v. Braunsdorf, 92 Wis. 2d 849, 286 N.W.2d 14 (Ct. App. 1979).

The highest standard of proof of an articulated compelling need must be met before a court will order the expenditure of public funds for its own needs. Flynn v. DOA, 216 Wis. 2d 521, 576 N.W.2d 245 (1998), 96−3266.

Judicial assistants are subject to the judiciary's exclusive authority once appointed. Any collective bargaining agreement between a county and employee's union that provides for possible "bumping" of the assistant by another employee and final and binding arbitration regarding disputes over bumping is an unconstitutional infringement on the court's inherent powers. Barland v. Eau Claire County, 216 Wis. 2d 560, 575 N.W.2d 691 (1998), 96−1607.

Probation and probation revocation are within the powers shared by the branches of government. Legislative delegation of revocation to the executive branch does not unduly burden or substantially interfere with the judiciary's constitutional function to impose criminal penalties. State v. Horn, 226 Wis. 2d 637, 594 N.W.2d 772 (1999), 97−2751.

A court's inherent powers are those that must be used to enable the judiciary to accomplish its constitutional or statutory functions and include the power to maintain the dignity of the court, transact its business, or accomplish the purpose of its existence. Courts have inherent power to investigate claims that a party is engaging in fraudulent behavior or improperly influencing witnesses, and a court is within its authority to hold an evidentiary hearing on such matters. Schultz v. Sykes, 2001 WI App 255, 248 Wis. 2d 746, 638 N.W.2d 604, 00−0915.

The issuance of a search warrant is not an exercise of "[t]he judicial power," as that phrase in employed in Art. VII, s. 2. Instead, issuance of a valid search warrant requires that the individual be authorized by law to issue the warrant, that he or she be neutral and detached, and that the warrant be issued only upon a showing of probable cause. Section 757.69 (1) (b), which allocates the power to issue search warrants to circuit court commissioners, does not impermissibly intrude upon "[t]he judicial power" granted to the courts by Art. VII, s. 2. State v. Williams, 2012 WI 59, 341 Wis. 2d 191, 814 N.W.2d 460, 10−1551.

The order of reference in this case impermissibly delegated to the referee judicial power vested by this section in Wisconsin's unified court system. Constitutional judges can take no power from the legislature to subdelegate their judicial functions. Referees may share in judicial labor but cannot assume the place of the judge. In this case, the order of reference enabled the referee to hear and decide all motions filed, whether discovery or dispositive, subject to review by the circuit court under the standard of erroneous exercise of discretion, impermissibly reducing the function of the circuit court to that of a reviewing court. Insofar as the order of reference authorized the referee to supervise pretrial discovery disputes, the order did not contravene the state constitution's vesting of judicial power in a unified court system. Universal Processing Services v. Circuit Court of Milwaukee County, 2017 WI 26, 374 Wis. 2d 26, 892 N.W.2d 267, 16–0923.

Permitting an executive agency to review judges' official actions for compliance with the victims' rights laws would upend the constitutional structure of separated powers. An executive agency, acting pursuant to authority delegated by the legislature, may not review a court's exercise of discretion, declare its application of the law to be in error, and then sanction the judge for making a decision the agency disfavors. Any other response would unconstitutionally permit an executive entity to substitute its judgment for that of the judge — effectively imposing an executive veto over discretionary judicial decision making and incentivizing judges to make decisions not in accordance with the law but in accordance with the demands of the executive branch in order to avoid a public rebuke reinforced with the imprimatur of a quasi–judicial board. Gabler v. Crime Victims Rights Board, 2017 WI 67, 376 Wis. 2d 147, 897 N.W.2d 384, 16–0275.

While the court's constitutional judicial discipline power does not expressly include authority to assess a forfeiture or impose an equitable remedy, allowing the legislature to create an executive board with the power to penalize or enjoin official judicial action would be anathema to the judicial independence preserved by the separation of governmental powers under the Wisconsin Constitution. Gabler v. Crime Victims Rights Board, 2017 WI 67, 376 Wis. 2d 147, 897 N.W.2d 384, 16–0275.

Inherent authority of courts consists of only those powers that are necessary for the judiciary to accomplish its constitutionally mandated functions and preserve its role as a coequal branch of government. Wisconsin courts have generally exercised inherent authority in three areas: 1) to guard against actions that would impair the powers or efficacy of the courts or judicial system; 2) to regulate the bench and bar; and 3) to ensure the efficient and effective functioning of the court and to fairly administer justice. State v. Schwind, 2019 WI 48, 386 Wis. 2d 526, 926 N.W.2d 742, 17–0141.

Probation is a statutory creation, and the power to reduce or terminate a term of probation is not necessary for courts to accomplish their constitutionally mandated functions. Therefore, Wisconsin courts do not have the inherent authority to reduce or terminate a period of probation. State v. Schwind, 2019 WI 48, 386 Wis. 2d 526, 926 N.W.2d 742, 17–0141.

In mental hearings under 51.02, 1973 stats., or alcohol or drug abuse hearings under 51.09 (1), 1973 stats., the power to appoint an attorney at public expense, to determine indigency and to fix compensation are judicial and must be exercised by the court or under its direction and cannot be limited by the county board or delegated to a private nonprofit corporation. 63 Atty. Gen. 323.

Unless acting in a clear absence of all jurisdiction, judges are immune from liability for judicial acts, even when such acts are in excess of their jurisdiction and are alleged to have been done maliciously or corruptly. Stump v. Sparkman, 435 U.S. 349 (1978).

An integrated state bar's use of mandatory dues to fund political or ideological activities violates free speech provisions. Keller v. State Bar of California, 496 U.S. 226, 110 L. Ed. 2d 1 (1990).

Court reform of 1977: The Wisconsin supreme court ten years later. Bablitch. 72 MLR 1 (1988).

The Separation of Powers: Control of Courts and Lawyers. Currie & Resh. WBB Dec. 1974.

Supreme court: jurisdiction. SECTION 3. [*As amended April 1977*] **(1)** The supreme court shall have superintending and administrative authority over all courts.

(2) The supreme court has appellate jurisdiction over all courts and may hear original actions and proceedings. The supreme court may issue all writs necessary in aid of its jurisdiction.

(3) The supreme court may review judgments and orders of the court of appeals, may remove cases from the court of appeals and may accept cases on certification by the court of appeals. [*1975 J.R. 13, 1977 J.R. 7, vote April 1977*]

The authority of supreme court to review and modify criminal sentences is discussed. Riley v. State, 47 Wis. 2d 801, 177 N.W.2d 838.

The supreme court's authority to issue a writ of error is not dependent upon a specific legislative enactment, but the constitution and statutes relating to its appellate jurisdiction give it the authority to issue such writs as are necessary to exercise its appellate jurisdiction. Shave v. State, 49 Wis. 2d 379, 182 N.W.2d 505.

A writ of error coram nobis cannot be used for the purpose of producing newly discovered evidence affecting only the credibility of a confession. Mikulovsky v. State, 54 Wis. 2d 699, 196 N.W.2d 748.

The supreme court exercises an inherent supervisory power over the practice of the law and this can be more effectively exercised with an independent review. Contrary language, if any, in prior cases withdrawn. Herro, McAndrews & Porter v. Gerhardt, 62 Wis. 2d 179, 214 N.W.2d 401.

The supreme court declines to adopt the equitable doctrine of "substituted judgment" under which a court substitutes its judgment for that of a person incompetent to arrive at a decision for himself or herself. In re Guardianship of Pescinski, 67 Wis. 2d 4, 226 N.W.2d 180.

Courts are endowed with all judicial powers essential to carry out the judicial functions delegated to the courts. These powers are known as incidental, implied, or inherent powers, all of which terms are used to describe those powers that must necessarily be used by the various departments of government in order that they may efficiently perform the functions imposed upon them by the people. In re Hon. Charles E. Kading, 70 Wis. 2d 508, 235 N.W.2d 409 (1975).

Adoption by the supreme court of a rule 17 requiring annual financial disclosure by judges of assets and liabilities was valid and enforceable under the court's inherent power to function as the supreme court and under the court's general superintending control over all inferior courts. In re Hon. Charles E. Kading, 70 Wis. 2d 508, 235 N.W.2d 409 (1975).

A declaration of rights is an appropriate vehicle for the exercise of superintending control over inferior courts. State ex rel. Memmel v. Mundy, 75 Wis. 2d 276, 249 N.W.2d 573.

The supreme court has power to formulate and carry into effect a court system budget. Moran v. DOA, 103 Wis. 2d 311, 307 N.W.2d 658 (1981).

The court will invalidate legislation only for constitutional violations. State ex rel. La Follette v. Stitt, 114 Wis. 2d 358, 338 N.W.2d 684 (1983).

A statute that required the withholding of a judge's salary for failure to decide cases within a specified time was an unconstitutional intrusion by the legislature into an area of exclusive judicial authority. In Matter of Complaint Against Grady, 118 Wis. 2d 762, 348 N.W.2d 559 (1984).

A court's inherent power to appoint counsel is not derived from an individual litigant's constitutional right to counsel, but rather is inherent to serve the interests of the court. A court may use its inherent discretionary authority to appoint counsel in furtherance of the court's need for the orderly and fair presentation of a case. Joni B. v. State, 202 Wis. 2d 1, 549 N.W.2d 411 (1996), 95–2757.

When confronted with a direct conflict between a decision of the state supreme court and a later decision of the U.S. Supreme Court on a matter of federal law, the court of appeals may certify the case to the state supreme court under s. 809.61. If it does not, or certification is not accepted, the supremacy clause of the U.S. Constitution compels adherence to U.S. Supreme Court precedent on matters of federal law, although it means deviating from a conflicting decision of the state supreme court. State v. Jennings, 2002 WI 44, 252 Wis. 2d 228, 647 N.W.2d 142, 00–1680.

Determining whether to recuse is the sole responsibility of the individual justice for whom disqualification from participation is sought. A majority of the court does not have the power to disqualify a judicial peer from performing the constitutional functions of a Wisconsin Supreme Court justice on a case–by–case basis. Aside from actions brought under the Judicial Code, the only constitutional authority to remove a justice rests with the legislature, by impeachment or address, or the voters by recall. State v. Henley, 2011 WI 67, 802 N.W.2d 175, 08–0697.

On the facts of this case, the court exercised its superintending authority to determine that the superintendent of public instruction and the Department of Public Instruction were entitled to counsel of their choice and were not required to be represented by the Department of Justice. Koschkee v. Evers, 2018 WI 82, 382 Wis. 2d 666, 913 N.W.2d 878, 17–2278.

The term "supervisory writ" is both: 1) the general term used in petitioning the court of appeals to exercise its constitutional supervisory authority and in petitioning the supreme court to exercise its constitutional superintending authority; and 2) a new writ the supreme court devised independent of the traditional common law writs. State ex rel. CityDeck Landing LLC v. Circuit Court for Brown County, 2019 WI 15, 385 Wis. 2d 516, 922 N.W.2d 832, 18–0291.

The court will not exercise its superintending power to require that courts employ a specific procedure to establish a sufficient factual basis when accepting an *Alford*, 400 U.S. 25 (1970), plea when there is another adequate remedy, by appeal or otherwise, for the conduct of the trial court. State v. Nash, 2020 WI 85, 394 Wis. 2d 238, 951 N.W.2d 404, 18–0731.

The Virginia supreme court was not immune from suit under s. 1983. Supreme Court of Virginia v. Consumers Union, 446 U.S. 719 (1980).

Inherent power and administrative court reform. 58 MLR 133.

Supreme court: election, chief justice, court system administration. SECTION 4. [*As amended Nov. 1877, April 1889, April 1903, April 1977, and April 2015*] **(1)** The supreme court shall have 7 members who shall be known as justices of the supreme court. Justices shall be elected for 10–year terms of office commencing with the August 1 next succeeding the election. Only one justice may be elected in any year. Any 4 justices shall constitute a quorum for the conduct of the court's business.

(2) The chief justice of the supreme court shall be elected for a term of 2 years by a majority of the justices then serving on the court. The justice so designated as chief justice may, irrevocably, decline to serve as chief justice or resign as chief justice but continue to serve as a justice of the supreme court.

(3) The chief justice of the supreme court shall be the administrative head of the judicial system and shall exercise this administrative authority pursuant to procedures adopted by the supreme court. The chief justice may assign any judge of a court of record to aid in the proper disposition of judicial business in any court of record except the supreme court. [*1876 J.R. 10, 1877 J.R. 1, 1877 c. 48, vote Nov. 1877; 1887 J.R. 5, 1889 J.R. 3, 1889 c. 22, vote April 1889; 1901 J.R. 8, 1903 J.R. 7, 1903 c. 10, vote April 1903; 1975 J.R. 13, 1977 J.R. 7, vote April 1977; 2013 J.R. 16, 2015 J.R. 2, vote April 2015*]

Voting and Electoral Politics in the Wisconsin Supreme Court. Czarnezki. 87 MLR 323.

Step One to Recusal Reform: Find an Alternative to the Rule of Necessity. Croy. 2019 WLR 623.

Note: Judicial circuits. SECTION 5. [*Repealed April 1977; see 1975 J.R. 13, 1977 J.R. 7, vote April 1977.*]

Court of appeals. SECTION 5. [*As created April 1977*] **(1)** The legislature shall by law combine the judicial circuits of the state into one or more districts for the court of appeals and shall designate in each district the locations where the appeals court shall sit for the convenience of litigants.

(2) For each district of the appeals court there shall be chosen by the qualified electors of the district one or more appeals judges as prescribed by law, who shall sit as prescribed by law. Appeals judges shall be elected for 6−year terms and shall reside in the district from which elected. No alteration of district or circuit boundaries shall have the effect of removing an appeals judge from office during the judge's term. In case of an increase in the number of appeals judges, the first judge or judges shall be elected for full terms unless the legislature prescribes a shorter initial term for staggering of terms.

(3) The appeals court shall have such appellate jurisdiction in the district, including jurisdiction to review administrative proceedings, as the legislature may provide by law, but shall have no original jurisdiction other than by prerogative writ. The appeals court may issue all writs necessary in aid of its jurisdiction and shall have supervisory authority over all actions and proceedings in the courts in the district. [*1975 J.R. 13, 1977 J.R. 7, vote April 1977*]

The court of appeals does not have jurisdiction to entertain an original action unrelated to its supervisory or appellate authority over circuit courts. State ex rel. Swan v. Elections Board, 133 Wis. 2d 87, 394 N.W.2d 732 (1986).

The court of appeals is authorized to exercise its supervisory authority over a chief judge who is ruling on a substitution request. James L.J. v. Walworth County Circuit Court, 200 Wis. 2d 496, 546 N.W.2d 460 (1996), 94−2043.

Only the supreme court has the power to overrule, modify, or withdraw language from a published opinion of the court of appeals. Cook v. Cook, 208 Wis. 2d 166, 560 N.W.2d 246 (1997), 95−1963.

The term "supervisory writ" is both: 1) the general term used in petitioning the court of appeals to exercise its constitutional supervisory authority and in petitioning the supreme court to exercise its constitutional superintending authority; and 2) a new writ the supreme court devised independent of the traditional common law writs. State ex rel. CityDeck Landing LLC v. Circuit Court for Brown County, 2019 WI 15, 385 Wis. 2d 516, 922 N.W.2d 832, 18−0291.

A Shift in the Bottleneck: The Appellate Caseload Problem Twenty Years After the Creation of the Wisconsin Court of Appeals. Garlys. 1998 WLR 1547.

Circuit court: boundaries. SECTION 6. [*As amended April 1977*] The legislature shall prescribe by law the number of judicial circuits, making them as compact and convenient as practicable, and bounding them by county lines. No alteration of circuit boundaries shall have the effect of removing a circuit judge from office during the judge's term. In case of an increase of circuits, the first judge or judges shall be elected. [*1975 J.R. 13, 1977 J.R. 7, vote April 1977*]

Circuit court: election. SECTION 7. [*As amended April 1897, Nov. 1924, and April 1977*] For each circuit there shall be chosen by the qualified electors thereof one or more circuit judges as prescribed by law. Circuit judges shall be elected for 6−year terms and shall reside in the circuit from which elected. [*1895 J.R. 8, 1897 J.R. 9, 1897 c. 69, vote April 1897; 1921 J.R. 24S, 1923 J.R. 64, 1923 c. 408, vote Nov. 1924; 1975 J.R. 13, 1977 J.R. 7, vote April 1977*]

Circuit court: jurisdiction. SECTION 8. [*As amended April 1977*] Except as otherwise provided by law, the circuit court shall have original jurisdiction in all matters civil and criminal within this state and such appellate jurisdiction in the circuit as the legislature may prescribe by law. The circuit court may issue all writs necessary in aid of its jurisdiction. [*1975 J.R. 13, 1977 J.R. 7, vote April 1977*]

Although prohibition is not the appropriate remedy to suppress prosecution on an illegal search warrant, the supreme court treated the case as a petition for habeas corpus. State ex rel. Furlong v. Waukesha County Court, 47 Wis. 2d 515, 177 N.W.2d 333.

Certiorari cannot be used to upset the legislative discretion of a city council but the court should review the council's action to determine whether there was a rational factual basis for it. The review is limited to the record consisting of the petition and the return to the writ, plus matters of which the court could take judicial notice. State ex rel. Hippler v. Baraboo, 47 Wis. 2d 603, 178 N.W.2d 1.

A writ of prohibition may not be used to test the admissibility of evidence at an impending trial. State ex rel. Cortez v. Bd. of F. & P. Comm., 49 Wis. 2d 130, 181 N.W.2d 378.

Jurisdiction depends not on whether the relief asked for is available, but on whether the court has the power to hear the kind of action brought. It is not defeated by the possibility that averments in a complaint might fail to state a cause of action, for any such failure calls for a judgment on the merits not for a dismissal for want of jurisdiction. Murphy v. Miller Brewing Co., 50 Wis. 2d 323, 184 N.W.2d 141.

Mandamus is a discretionary writ and the order of a trial court refusing to quash it will not be reversed except for an abuse of discretion. A court can treat it as a motion for declaratory relief. Milwaukee County v. Schmidt, 52 Wis. 2d 58, 187 N.W.2d 777.

Differences between common law and statutory certiorari are discussed. Browndale International v. Board of Adjustment, 60 Wis. 2d 182, 208 N.W.2d 121.

The statutory designation of circuit court branches as criminal court branches does not deprive other branches of criminal jurisdiction. Dumer v. State, 64 Wis. 2d 590, 219 N.W.2d 592.

Circuit court review of a decision of the city of Milwaukee Board of Fire and Police Commissioners was proper via writ of certiorari. Edmonds v. Board of Fire & Police Commrs., 66 Wis. 2d 337, 224 N.W.2d 575.

A judge having jurisdiction of the person and subject matter involved and acting within that jurisdiction and in his or her judicial capacity, is exempt from civil liability. Abdella v. Catlin, 79 Wis. 2d 270, 255 N.W.2d 516.

The circuit courts are constitutional courts with plenary jurisdiction. They do not depend solely upon statute for their powers. However in certain cases with vast social ramifications not addressed by statute, prudence requires the courts to refuse to exercise their jurisdiction. As such, circuit courts are prohibited from exercising jurisdiction regarding sterilization of incompetents. In Matter of Guardianship of Eberhardy, 102 Wis. 2d 539, 307 N.W.2d 881 (1981).

Because courts have exclusive criminal jurisdiction, criminal charges against the defendant were not collaterally estopped even though a parole revocation hearing examiner concluded that defendant's acts did not merit parole revocation. State v. Spanbauer, 108 Wis. 2d 548, 322 N.W.2d 511 (Ct. App. 1982).

While circuit courts possess plenary jurisdiction not dependent upon legislative authorization, under some circumstances they may lack competency to act. Interest of L.M.C., 146 Wis. 2d 377, 430 N.W.2d 352 (Ct. App. 1988).

Challenges to a circuit court's competency are waived if not raised in the circuit court, subject to the reviewing court's inherent authority to overlook a waiver in appropriate cases or engage in discretionary review of a waived competency challenge pursuant to s. 751.06 or 752.35. Lack of competency is not jurisdictional and does not result in a void judgment. Accordingly, it is not true that a motion for relief from judgment on grounds of lack of circuit court competency may be made at any time. Village of Trempealeau v. Mikrut, 2004 WI 79, 273 Wis. 2d 76, 681 N.W.2d 190, 03−0534. See also City of Eau Claire v. Booth, 2016 WI 65, 370 Wis. 2d 595, 882 N.W.2d 738, 15−0869.

A circuit court may lack competency to render a valid order or judgment when the parties seeking judicial review fail to meet certain statutory requirements. Not every failure to comply with statutory requirements will deprive the court of competency, however. Only when the failure to abide by a statutory mandate is central to the statutory scheme of which it is a part will the circuit court's competency to proceed be implicated. Xcel Energy Services, Inc. v. LIRC, 2013 WI 64, 349 Wis. 2d 234, 833 N.W.2d 665, 11−0203.

Although cases sometimes use the words forfeiture and waiver interchangeably, the two words embody very different legal concepts. Whereas forfeiture is the failure to make the timely assertion of a right, waiver is the intentional relinquishment or abandonment of a known right. Challenges to court competency are forfeited if not timely raised in the circuit court. Properly construed, although *Mikrut*, 2004 WI 79, says "waiver," it means "forfeiture." City of Eau Claire v. Booth, 2016 WI 65, 370 Wis. 2d 595, 882 N.W.2d 738, 15−0869.

A circuit court lacks competency but retains subject matter jurisdiction when the court enters a civil forfeiture judgment under a municipal ordinance for a first−offense operating while intoxicated (OWI) that factually should have been criminally charged as a second−offense OWI under s. 346.65 (2) due to an undiscovered prior countable conviction. Unlike defects in subject matter jurisdiction, challenges to circuit court competency may be forfeited. In this case, the defendant forfeited the right to challenge a 1992 first−offense OWI judgment by failing to timely raise the challenge. City of Eau Claire v. Booth, 2016 WI 65, 370 Wis. 2d 595, 882 N.W.2d 738, 15−0869.

This section provides that "the circuit court shall have . . . such appellate jurisdiction in the circuit as the legislature may prescribe by law." The legislature has not granted the circuit courts appellate jurisdiction over rulings by referees. Therefore, a provision in a circuit court order of reference that the circuit court's review of the referee's rulings shall be based on the referee's erroneous exercise of discretion contravened the constitution, statutes, and rules regarding circuit court and appellate court authority and practice. Universal Processing Services v. Circuit Court of Milwaukee County, 2017 WI 26, 374 Wis. 2d 26, 892 N.W.2d 267, 16−0923.

This section confers broad jurisdiction on circuit courts to hear all matters civil and criminal within this state "except as otherwise provided by law." The Wisconsin Arbitration Act, ch. 788, comprises one constitutionally−permissible exception to a circuit court's original jurisdiction. A circuit court possesses only limited, statutorily enumerated powers with respect to a private arbitration. A circuit court has no authority to halt a contractually agreed upon arbitration. State ex rel. CityDeck Landing LLC v. Circuit Court for Brown County, 2019 WI 15, 385 Wis. 2d 516, 922 N.W.2d 832, 18−0291.

Judicial elections, vacancies. SECTION 9. [*As amended April 1953 and April 1977*] When a vacancy occurs in the office of justice of the supreme court or judge of any court of record, the vacancy shall be filled by appointment by the governor, which shall continue until a successor is elected and qualified.

There shall be no election for a justice or judge at the partisan general election for state or county officers, nor within 30 days either before or after such election. [*1951 J.R. 41, 1953 J.R. 12, vote April 1953; 1975 J.R. 13, 1977 J.R. 7, vote April 1977*]

Judges: eligibility to office. SECTION 10. [*As amended Nov. 1912 and April 1977*] **(1)** No justice of the supreme court or judge of any court of record shall hold any other office of public trust, except a judicial office, during the term for which elected. No person shall be eligible to the office of judge who shall not, at the time of election or appointment, be a qualified elector within the jurisdiction for which chosen.

(2) Justices of the supreme court and judges of the courts of record shall receive such compensation as the legislature may authorize by law, but may not receive fees of office. [*1909 J.R. 34, 1911 J.R. 24, 1911 c. 665, vote Nov. 1912; 1975 J.R. 13, 1977 J.R. 7, vote April 1977*]

Sub. (1) prohibits a circuit judge from holding a nonjudicial office of public trust during the full period of time for which he or she is elected to serve in a judicial position, even if the judge chooses to resign before that term would otherwise expire. The period of time constituting the "term for which elected" is set when a judge or justice is elected, and is thereafter unalterable by means of resignation. Wagner v. Milwaukee County Election Commission, 2003 WI 103, 263 Wis. 2d 709, 666 N.W.2d 816, 02–0375.

An "office of public trust" does not refer only to an elective office. "Judicial office," as used in Article VII, should be construed as referring to an office that is located within the judicial branch of government created by that article. Membership on the government accountability board is an office of public trust but is not a judicial office within the meaning of Art. VII, s. 10, and therefore an individual who has resigned from the office of judge may not serve as a member of the board for the duration of the term to which the individual was elected to serve as a judge. OAG 4–08.

Note: Terms of courts; change of judges. SECTION 11. [*Repealed April 1977; see 1975 J.R. 13, 1977 J.R. 7, vote April 1977.*]

Disciplinary proceedings. SECTION 11. [*As created April 1977*] Each justice or judge shall be subject to reprimand, censure, suspension, removal for cause or for disability, by the supreme court pursuant to procedures established by the legislature by law. No justice or judge removed for cause shall be eligible for reappointment or temporary service. This section is alternative to, and cumulative with, the methods of removal provided in sections 1 and 13 of this article and section 12 of article XIII. [*1975 J.R. 13, 1977 J.R. 7, vote April 1977*]

Clerks of circuit and supreme courts. SECTION 12. [*As amended Nov. 1882 and April 2005*] **(1)** There shall be a clerk of circuit court chosen in each county organized for judicial purposes by the qualified electors thereof, who, except as provided in sub. (2), shall hold office for two years, subject to removal as provided by law.

(2) Beginning with the first general election at which the governor is elected which occurs after the ratification of this subsection, a clerk of circuit court shall be chosen by the electors of each county, for the term of 4 years, subject to removal as provided by law.

(3) In case of a vacancy, the judge of the circuit court may appoint a clerk until the vacancy is filled by an election.

(4) The clerk of circuit court shall give such security as the legislature requires by law.

(5) The supreme court shall appoint its own clerk, and may appoint a clerk of circuit court to be the clerk of the supreme court. [*1881 J.R. 16A, 1882 J.R. 3, 1882 c. 290, vote Nov. 1882; 2003 J.R. 12, 2005 J.R. 2, vote April 2005*]

Justices and judges: removal by address. SECTION 13. [*As amended April 1974 and April 1977*] Any justice or judge may be removed from office by address of both houses of the legislature, if two−thirds of all the members elected to each house concur therein, but no removal shall be made by virtue of this section unless the justice or judge complained of is served with a copy of the charges, as the ground of address, and has had an opportunity of being heard. On the question of removal, the ayes and noes shall be entered on the journals. [*1971 J.R. 30, 1973 J.R. 25, vote April 1974; 1975 J.R. 13, 1977 J.R. 7, vote April 1977*]

Municipal court. SECTION 14. [*As amended April 1977*] The legislature by law may authorize each city, village and town to establish a municipal court. All municipal courts shall have uniform jurisdiction limited to actions and proceedings arising under ordinances of the municipality in which established. Judges of municipal courts may receive such compensation as provided by the municipality in which established, but may not receive fees of office. [*1975 J.R. 13, 1977 J.R. 7, vote April 1977*]

A municipal court has authority to determine the constitutionality of a municipal ordinance. City of Milwaukee v. Wroten, 160 Wis. 2d 207, 466 N.W.2d 861 (1991).

The municipal court did not lack subject matter jurisdiction over an operating while intoxicated (OWI) case that was incorrectly charged as a first−offense ordinance violation instead of a second−offense criminal violation. At the time the proceeding in municipal court commenced, it was based on an alleged ordinance violation, and therefore jurisdiction "arose under" the ordinance of the municipality for the purposes of this section. City of Cedarburg v. Hansen, 2020 WI 11, 390 Wis. 2d 109, 938 N.W.2d 463, 18−1129.

The defendant forfeited any objection that could exist to the competency of the municipal court when he failed to raise it for 11 years. City of Cedarburg v. Hansen, 2020 WI 11, 390 Wis. 2d 109, 938 N.W.2d 463, 18−1129.

Justices of the peace. SECTION 15. [*Amended April 1945; repealed April 1966; see 1943 J.R. 27, 1945 J.R. 2, vote April 1945; 1963 J.R. 48, 1965 J.R. 50, vote April 1966.*]

Tribunals of conciliation. SECTION 16. [*Repealed April 1977; see 1975 J.R. 13, 1977 J.R. 7, vote April 1977.*]

Style of writs; indictments. SECTION 17. [*Repealed April 1977; see 1975 J.R. 13, 1977 J.R. 7, vote April 1977.*]

Suit tax. SECTION 18. [*Repealed April 1977; see 1975 J.R. 13, 1977 J.R. 7, vote April 1977.*]

Testimony in equity suits; master in chancery. SECTION 19. [*Repealed April 1977; see 1975 J.R. 13, 1977 J.R. 7, vote April 1977.*]

Rights of suitors. SECTION 20. [*Repealed April 1977; see 1975 J.R. 13, 1977 J.R. 7, vote April 1977.*] See Art. I, sec. 21.

Publication of laws and decisions. SECTION 21. [*Repealed April 1977; see 1975 J.R. 13, 1977 J.R. 7, vote April 1977.*] See Art. IV, sec. 17.

Commissioners to revise code of practice. SECTION 22. [*Repealed April 1977; see 1975 J.R. 13, 1977 J.R. 7, vote April 1977.*]

Court commissioners. SECTION 23. [*Repealed April 1977; see 1975 J.R. 13, 1977 J.R. 7, vote April 1977.*]

Justices and judges: eligibility for office; retirement. SECTION 24. [*As created April 1955 and amended April 1968 and April 1977*] **(1)** To be eligible for the office of supreme court justice or judge of any court of record, a person must be an attorney licensed to practice law in this state and have been so licensed for 5 years immediately prior to election or appointment.

(2) Unless assigned temporary service under subsection (3), no person may serve as a supreme court justice or judge of a court of record beyond the July 31 following the date on which such person attains that age, of not less than 70 years, which the legislature shall prescribe by law.

(3) A person who has served as a supreme court justice or judge of a court of record may, as provided by law, serve as a judge of any court of record except the supreme court on a temporary basis if assigned by the chief justice of the supreme court. [*1953 J.R. 46, 1955 J.R. 14, vote April 1955; 1965 J.R. 101,*

1967 J.R. 22 and 56, vote April 1968; 1975 J.R. 13, 1977 J.R. 7, vote April 1977]

ARTICLE VIII.

FINANCE

Rule of taxation uniform; income, privilege and occupation taxes. SECTION 1. [*As amended Nov. 1908, April 1927, April 1941, April 1961, and April 1974*] The rule of taxation shall be uniform but the legislature may empower cities, villages or towns to collect and return taxes on real estate located therein by optional methods. Taxes shall be levied upon such property with such classifications as to forests and minerals including or separate or severed from the land, as the legislature shall prescribe. Taxation of agricultural land and undeveloped land, both as defined by law, need not be uniform with the taxation of each other nor with the taxation of other real property. Taxation of merchants' stock–in–trade, manufacturers' materials and finished products, and livestock need not be uniform with the taxation of real property and other personal property, but the taxation of all such merchants' stock–in–trade, manufacturers' materials and finished products and livestock shall be uniform, except that the legislature may provide that the value thereof shall be determined on an average basis. Taxes may be imposed on incomes, privileges and occupations, which taxes may be graduated and progressive, and reasonable exemptions may be provided. [*1905 J.R. 12, 1907 J.R. 29, 1907 c. 661, vote Nov. 1908; 1925 J.R. 62, 1927 J.R. 13, vote April 1927; 1939 J.R. 88, 1941 J.R. 18, vote April 1941; 1959 J.R. 78, 1961 J.R. 13, vote April 1961; 1971 J.R. 39, 1973 J.R. 29, vote April 1974*]

While a sale establishes value, the assessment still has to be equal to that on comparable property. Sub. (2) (b) requires the assessor to fix a value before classifying the land. It does not prohibit the assessor from considering the zoning of the property when it is used for some other purpose. State ex rel. Hensel v. Town of Wilson, 55 Wis. 2d 101, 197 N.W.2d 794.

The fact that land purchased for industrial development under s. 66.521, Stats. 1969, [now s. 66.1103] and leased to a private person is not subject to a tax lien if taxes are not paid does not violate the uniformity provision. State ex rel. Hammermill Paper Co. v. La Plante, 58 Wis. 2d 32, 205 N.W.2d 784.

The Housing Authority Act, in granting tax exemptions to bonds, does not violate this section. State ex rel. Warren v. Nusbaum, 59 Wis. 2d 391, 208 N.W.2d 780.

A law requiring a reduction in rent due to property tax relief does not violate the uniformity clause. It is not a tax law. State ex rel. Bldg. Owners v. Adamany, 64 Wis. 2d 280, 219 N.W.2d 274.

The denial of equal protection claimed by the taxpayer, by reason of the exclusion from the "occasional sale" exemption of sellers holding permits was properly held by the trial court to be without merit. Ramrod, Inc. v. DOR, 64 Wis. 2d 499, 219 N.W.2d 604.

The income and property tax exemptions provided in the Solid Waste Recycling Authority Act bear a reasonable relation to a legitimate end of governmental action and therefore do not violate the Wisconsin Constitution, since the exemptions allow for reduction in user charges and in the cost of capital needs, thereby benefiting the state's citizens by promoting use of the Authority's facilities. Wisconsin Solid Waste Recycling Auth. v. Earl, 70 Wis. 2d 464, 235 N.W.2d 648.

Negative–aid provisions of school district financing, as mandated by 121.07 and 121.08, Stats. (1973), are violative of the rule of uniform taxation. Buse v. Smith, 74 Wis. 2d 550, 247 N.W.2d 141.

Improvements tax relief provisions of 79.24 and 79.25, 1977 stats., are unconstitutional as violative of uniformity clause. State ex rel. La Follette v. Torphy, 85 Wis. 2d 94, 270 N.W.2d 187 (1978).

A tax exemption with a reasonable, though remote, relation to a legitimate government purpose was permissible. Madison General Hospital Asso. v. Madison, 92 Wis. 2d 125, 284 N.W.2d 603 (1979).

The tax Increment Law, s.66.46 [now s. 66.1105] does not violate the uniformity rule. Sigma Tau Gamma Fraternity House v. Menomonie, 93 Wis. 2d 392, 288 N.W.2d 85 (1980).

A contract by which a landowner agreed to petition for annexation to a city, not to develop land, and to grant water rights to the city in exchange for reimbursement of all property taxes violated the uniformity rule. Cornwell v. City of Stevens Point, 159 Wis. 2d 136, 464 N.W.2d 33 (Ct. App. 1990).

For purposes of the uniformity clause, there is only one class of property, property that is taxable, and the burden of taxation must be borne as nearly as practicable among all property, based on value. Noah's Ark Family Park v. Village of Lake Delton, 210 Wis. 2d 301, 565 N.W.2d 230 (Ct. App. 1997).

Affirmed. 216 Wis. 2d 387, 573 N.W.2d 852 (1998), 96–1074.

To prove a statute unconstitutional due to a violation of the uniformity clause, a taxpayer must initially prove that his property has been overvalued while other property has been undervalued. Norquist v. Zeuske, 211 Wis. 2d 241, 564 N.W.2d 748 (1997), 96–1812.

Sections 70.47 (13), 70.85, and 74.37 provide the exclusive method to challenge a municipality's bases for assessment of individual parcels. All require appeal to the board of review prior to court action. There is no alternative procedure to challenge an assessment's compliance with the uniformity clause. Hermann v. Town of Delavan, 215 Wis. 2d 370, 572 N.W.2d 855 (1998), 96–0171.

The uniformity clause is limited to property taxes, recurring *ad valorem* taxes on property, as opposed to transactional taxes such as those imposed on income or sales. Telemark Development, Inc. v. DOR, 218 Wis. 2d 809, 581 N.W.2d 585 (Ct. App. 1998), 97–3133.

The supreme court has rejected challenges alleging violations of the rule of uniformity when the claim was based on comparing one taxpayer's appraised value to the value assigned to an inadequate number of other properties in the assessment district. A lack of uniformity must be established by showing general undervaluation on a district–wide basis if the subject property has been assessed at full market value. Allright Properties, Inc. v. City of Milwaukee, 2009 WI App 46, 317 Wis. 2d 228, 767 N.W.2d 567, 08–0510.

Comparing the value attributed to only one component of the real property in a uniformity challenge is an analytical method without support in statutes or relevant case law. Taxes are levied on the value of the real property; not separately on the components of land, or improvements, or other rights or limitations of ownership. Allright Properties, Inc. v. City of Milwaukee, 2009 WI App 46, 317 Wis. 2d 228, 767 N.W.2d 567, 08–0510.

Reassessing one property at a significantly higher rate than comparable properties using a different methodology and then declining to reassess the comparable properties by that methodology violates the uniformity clause. U.S. Oil Co., Inc. v. City of Milwaukee, 2011 WI App 4, 331 Wis. 2d 407, 794 N.W.2d 904, 09–2260.

Comparing a taxpayer's appraised value to lower values assigned to a relatively small number of other properties has long been rejected as a claimed violation of the uniformity clause. Lack of uniformity must be established by showing a general undervaluation of properties within a district when the subject property has been assessed at full market value. Great Lakes Quick Lube, LP v. City of Milwaukee, 2011 WI App 7, 331 Wis. 2d 137, 794 N.W.2d 510, 09–2775.

The court in *Zinn*, 112 Wis. 2d 417 (1983), endorsed the view that the constitutional directive that persons receive just compensation for takings of their private property is "self–executing," and no express statutory provision for its enforcement against the state is necessary. Conversely, no language in the uniformity clause is analogous to that constitutional command. Just compensation is a constitutional directive contained in the takings clause; nowhere does the uniformity clause authorize general damages for an alleged violation of the uniformity principle. Klein v. DOR, 2020 WI App 56, 394 Wis. 2d 66, 949 N.W.2d 608, 18–1133.

A partial exemption from property taxation, proposed for land conveyed to The National Audubon Society, Inc., probably is unconstitutional under the equal protection clause of the 14th amendment and the rule of uniformity. 61 Atty. Gen. 173.

Competitive bidding for the issuance of a liquor license violates this section. 61 Atty. Gen. 180.

A bill providing for a tax on all known commercially feasible low–grade iron ore reserve deposits in Wisconsin, would appear to violate the uniformity of taxation provisions of sec. 1. 63 Atty. Gen. 3.

A law providing that improvements to real property would be assessed as of the date of completion of the improvements would be unconstitutional. 81 Atty. Gen. 94.

Appropriations; limitation. SECTION 2. [*As amended Nov. 1877*] No money shall be paid out of the treasury except in pursuance of an appropriation by law. No appropriation shall be made for the payment of any claim against the state except claims of the United States and judgments, unless filed within six years after the claim accrued. [*1876 J.R. 7, 1877 J.R. 4, 1877 c. 158, vote Nov. 1877*]

The creation of a continuing appropriation by one legislature does not restrict a subsequent legislature from reallocating the unexpended, unencumbered public funds subject to the original appropriation. Flynn v. DOA, 216 Wis. 2d 521, 576 N.W.2d 245 (1998), 96–3266.

Although there is no specific clause in the constitution establishing the public purpose doctrine, the doctrine is firmly accepted as a basic tenet of the constitution, mandating that public appropriations may not be used for other than public purposes. Courts are to give great weight and afford very wide discretion to legislative declarations of public purpose, but are not bound by such legislative expressions. It is the duty of the court to determine whether a public purpose can be conceived that might reasonably justify the basis of the duty. Town of Beloit v. County of Rock, 2003 WI 8, 259 Wis. 2d 37, 657 N.W.2d 344, 00–1231.

Funds may not be used to construct a project that has not been provided for in either the long–range building program or specifically described in the session laws. 61 Atty. Gen. 298.

The constitution does not preclude grants of state money to private parties for the purpose of affording disaster relief under the Disaster Relief Act of 1974. An appropriation by the legislature is required, however, to provide the state funding contemplated by the Act. Federal advances under the Act are limited by Art. VIII, sec. 6. 64 Atty. Gen. 39.

Credit of state. SECTION 3. [*As amended April 1975*] Except as provided in s. 7 (2) (a), the credit of the state shall never be given, or loaned, in aid of any individual, association or corporation. [*1973 J.R. 38, 1975 J.R. 3, vote April 1975*]

Contracting state debts. SECTION 4. The state shall never contract any public debt except in the cases and manner herein provided.

The Housing Authority Act does not create a state debt even though it calls for legislative appropriations in future years to service payment of notes and bonds. State ex rel. Warren v. Nusbaum, 59 Wis. 2d 391, 208 N.W.2d 780.

An authority's power to issue notes and bonds does not constitute the creation of a state debt or a pledge of the state's credit in violation of art. VIII, since the creating act specifically prohibited the authority from incurring state debt or pledging state credit, and the provision of the act recognizing a moral obligation on the part of the legislature to make up deficits does not create an obligation legally enforceable against the state. Wisconsin Solid Waste Recycling Auth. v. Earl, 70 Wis. 2d 464, 235 N.W.2d 648.

This section restricts the state from levying taxes to create a surplus having no public purpose. Although the constitutional provision does not apply directly to municipalities, the same limitation applies to school districts because the state cannot delegate more power than it has. Barth v. Monroe Board of Education, 108 Wis. 2d 511, 514–15, 322 N.W.2d 694 (Ct. App. 1982).

Because operating notes are to be paid from money in the process of collection, notes are not public debt. State ex rel. La Follette v. Stitt, 114 Wis. 2d 358, 338 N.W.2d 684 (1983).

An agreement to pay rent under a long–term lease would amount to contracting a debt unless the lease is made subject to the availability of future funds. 60 Atty. Gen. 408.

Borrowing money from federal government to replenish Wisconsin's unemployment compensation fund does not contravene either art. VIII, sec. 3 or 4. 71 Atty. Gen. 95.

Annual tax levy to equal expenses. SECTION 5. The legislature shall provide for an annual tax sufficient to defray the estimated expenses of the state for each year; and whenever the expenses of any year shall exceed the income, the legislature shall provide for levying a tax for the ensuing year, sufficient, with other sources of income, to pay the deficiency as well as the estimated expenses of such ensuing year.

Deficit reported in financial statements prepared in accordance with generally accepted accounting principles would not violate this section. 74 Atty. Gen. 202.

Public debt for extraordinary expense; taxation. SECTION 6. For the purpose of defraying extraordinary expenditures the state may contract public debts (but such debts shall never in the aggregate exceed one hundred thousand dollars). Every such debt shall be authorized by law, for some purpose or purposes to be distinctly specified therein; and the vote of a majority of all the members elected to each house, to be taken by yeas and nays, shall be necessary to the passage of such law; and every such law shall provide for levying an annual tax sufficient to pay the annual interest of such debt and the principal within five years from the passage of such law, and shall specially appropriate the proceeds of such taxes to the payment of such principal and interest; and such appropriation shall not be repealed, nor the taxes be postponed or diminished, until the principal and interest of such debt shall have been wholly paid.

The constitution does not preclude grants of state money to private parties for the purpose of affording disaster relief under the federal Disaster Relief Act of 1974;. An appropriation by the legislature is required, however, to provide the state funding contemplated by the Act. Federal advances under the Act are limited by Art. VIII, sec. 6. 64 Atty. Gen. 39.

Public debt for public defense; bonding for public purposes. SECTION 7. [*As amended April 1969, April 1975, and April 1992*] **(1)** The legislature may also borrow money to repel invasion, suppress insurrection, or defend the state in time of war; but the money thus raised shall be applied exclusively to the object for which the loan was authorized, or to the repayment of the debt thereby created.

(2) Any other provision of this constitution to the contrary notwithstanding:

(a) The state may contract public debt and pledges to the payment thereof its full faith, credit and taxing power:

1. To acquire, construct, develop, extend, enlarge or improve land, waters, property, highways, railways, buildings, equipment or facilities for public purposes.

2. To make funds available for veterans' housing loans.

(b) The aggregate public debt contracted by the state in any calendar year pursuant to paragraph (a) shall not exceed an amount equal to the lesser of:

1. Three–fourths of one per centum of the aggregate value of all taxable property in the state; or

2. Five per centum of the aggregate value of all taxable property in the state less the sum of: a. the aggregate public debt of the state contracted pursuant to this section outstanding as of January 1 of such calendar year after subtracting therefrom the amount of sinking funds on hand on January 1 of such calendar year which are applicable exclusively to repayment of such outstanding public debt and, b. the outstanding indebtedness as of January 1 of such calendar year of any entity of the type described in paragraph (d) to the extent that such indebtedness is supported by or payable from payments out of the treasury of the state.

(c) The state may contract public debt, without limit, to fund or refund the whole or any part of any public debt contracted pursuant to paragraph (a), including any premium payable with respect thereto and any interest to accrue thereon, or to fund or refund the whole or any part of any indebtedness incurred prior to January 1, 1972, by any entity of the type described in paragraph (d), including any premium payable with respect thereto and any interest to accrue thereon.

(d) No money shall be paid out of the treasury, with respect to any lease, sublease or other agreement entered into after January 1, 1971, to the Wisconsin State Agencies Building Corporation, Wisconsin State Colleges Building Corporation, Wisconsin State Public Building Corporation, Wisconsin University Building Corporation or any similar entity existing or operating for similar purposes pursuant to which such nonprofit corporation or such other entity undertakes to finance or provide a facility for use or occupancy by the state or an agency, department or instrumentality thereof.

(e) The legislature shall prescribe all matters relating to the contracting of public debt pursuant to paragraph (a), including: the public purposes for which public debt may be contracted; by vote of a majority of the members elected to each of the 2 houses of the legislature, the amount of public debt which may be contracted for any class of such purposes; the public debt or other indebtedness which may be funded or refunded; the kinds of notes, bonds or other evidence of public debt which may be issued by the state; and the manner in which the aggregate value of all taxable property in the state shall be determined.

(f) The full faith, credit and taxing power of the state are pledged to the payment of all public debt created on behalf of the state pursuant to this section and the legislature shall provide by appropriation for the payment of the interest upon and instalments of principal of all such public debt as the same falls due, but, in any event, suit may be brought against the state to compel such payment.

(g) At any time after January 1, 1972, by vote of a majority of the members elected to each of the 2 houses of the legislature, the legislature may declare that an emergency exists and submit to the people a proposal to authorize the state to contract a specific amount of public debt for a purpose specified in such proposal, without regard to the limit provided in paragraph (b). Any such authorization shall be effective if approved by a majority of the electors voting thereon. Public debt contracted pursuant to such authorization shall thereafter be deemed to have been contracted pursuant to paragraph (a), but neither such public debt nor any public debt contracted to fund or refund such public debt shall be considered in computing the debt limit provided in paragraph (b). Not more than one such authorization shall be thus made in any 2–year period. [*1967 J.R. 58, 1969 J.R. 3, vote April 1969; 1973 J.R. 38, 1975 J.R. 3, vote April 1975; 1989 J.R. 52, 1991 J.R. 9, vote April 1992*]

The Housing Authority Act does not violate sub. (2) (d) because housing constructed is not for state use. State ex rel. Warren v. Nusbaum, 59 Wis. 2d 391, 208 N.W.2d 780.

An authority's power to issue notes and bonds does not constitute the creation of a state debt or a pledge of the state's credit in violation of art. VIII, since the creating act specifically prohibited the authority from incurring state debt or pledging state credit, and the provision of the act recognizing a moral obligation on the part of the legislature to make up deficits does not create an obligation legally enforce-

able against the state. Wisconsin Solid Waste Recycling Auth. v. Earl, 70 Wis. 2d 464, 235 N.W.2d 648.

The debt limitations imposed are annual limitations but nevertheless have the effect of establishing an aggregate state debt limitation of 5% of the total value of all taxable property in the state plus the amount of debt sinking fund reserves on hand. 58 Atty. Gen. 1.

State debt financing under s. 32.19 is permissible. 62 Atty. Gen. 42.

Issuance of general obligation bonds to finance a state fair park coliseum is authorized by s. 20.866 (2) (zz) and is not violative of the state constitution. 62 Atty. Gen. 236.

Section 7 (2) (d) does not preclude the state from entering into a lease with a nonprofit corporation or other entity furnishing facilities for governmental functions unless there is an attempt to use the lease as part of a scheme for the state to acquire title to or the use of a facility without utilizing state general obligation bonding. 62 Atty. Gen. 296.

Improving land or improve water under sub. (2) (a) 1. requires an undertaking that improves the quality or condition of the land or water, but does not require that physical structures be involved. 81 Atty. Gen. 114.

Vote on fiscal bills; quorum. SECTION 8. On the passage in either house of the legislature of any law which imposes, continues or renews a tax, or creates a debt or charge, or makes, continues or renews an appropriation of public or trust money, or releases, discharges or commutes a claim or demand of the state, the question shall be taken by yeas and nays, which shall be duly entered on the journal; and three−fifths of all the members elected to such house shall in all such cases be required to constitute a quorum therein.

Section 70.11 (8m), Stats. 1967, imposed a tax on property not previously taxed, and since no roll call votes appear on the legislative journals, it was not validly passed. State ex rel. General Motors Corp. v. Oak Creek, 49 Wis. 2d 299, 182 N.W.2d 481.

Past decisions of the court consistently tend to limit the definition of what is a fiscal law and not every bill with a minimal fiscal effect requires a recorded vote. 60 Atty. Gen. 245.

The taking of yea and nay votes and the entry on the journals of the senate and assembly can be complied with by recording the total aye vote together with a listing of the names of those legislators who voted no, were absent or not voting or were paired on the question. Art. V, sec. 10; Art. VIII, sec. 8; Art. XII, sec. 1 discussed. 63 Atty. Gen. 346.

Evidences of public debt. SECTION 9. No scrip, certificate, or other evidence of state debt, whatsoever, shall be issued, except for such debts as are authorized by the sixth and seventh sections of this article.

The limit on recovery from governmental tortfeasors in former s. 81.15, 1965 stats., and s. 895.43 [now s. 893.80], is not invalid under this section. Stanhope v. Brown County, 90 Wis. 2d 823, 280 N.W.2d 711 (1979).

Internal improvements. SECTION 10. [*As amended Nov. 1908, Nov. 1924, April 1945, April 1949, April 1960, April 1968, and April 1992*] Except as further provided in this section, the state may never contract any debt for works of internal improvement, or be a party in carrying on such works.

(1) Whenever grants of land or other property shall have been made to the state, especially dedicated by the grant to particular works of internal improvement, the state may carry on such particular works and shall devote thereto the avails of such grants, and may pledge or appropriate the revenues derived from such works in aid of their completion.

(2) The state may appropriate money in the treasury or to be thereafter raised by taxation for:

(a) The construction or improvement of public highways.

(b) The development, improvement and construction of airports or other aeronautical projects.

(c) The acquisition, improvement or construction of veterans' housing.

(d) The improvement of port facilities.

(e) The acquisition, development, improvement or construction of railways and other railroad facilities.

(3) The state may appropriate moneys for the purpose of acquiring, preserving and developing the forests of the state. Of the moneys appropriated under the authority of this subsection in any one year an amount not to exceed two−tenths of one mill of the taxable property of the state as determined by the last preceding state assessment may be raised by a tax on property. [*1905 J.R. 11, 1907 J.R. 18, 1907 c. 238, vote Nov. 1908; 1921 J.R. 29S, 1923 J.R. 57, 1923 c. 289, vote Nov. 1924; 1943 J.R. 37, 1945 J.R. 3, vote April 1945; Spl. S. 1948 J.R. 1, 1949 J.R. 1, vote April 1949; 1957 J.R. 58, 1959 J.R. 15, vote April 1960; 1965 J.R. 43, 1967 J.R. 25, vote April 1968; 1989 J.R. 52, 1991 J.R. 9, vote April 1992*]

The Housing Authority Act does not make the state a party to carrying on works of public improvement. State ex rel. Warren v. Nusbaum, 59 Wis. 2d 391, 208 N.W.2d 780.

The Solid Waste Recycling Authority Act does not contravene the Art. VIII, sec. 10 prohibition against state participation in internal improvements. Wisconsin Solid Waste Recycling Auth. v. Earl, 70 Wis. 2d 464, 235 N.W.2d 648.

The housing assistance program under 560.04 (3), 1985 stats., violated the ban on state involvement in "internal improvements." Development Dept. v. Building Commission, 139 Wis. 2d 1, 406 N.W.2d 728 (1987).

State participation in a proposed convention center in the City of Milwaukee would not violate either the "public purpose" doctrine or the internal improvements prohibitions of art. VIII, sec. 10, so long as such participation is directed solely to the clearly identifiable portion of the center allocated to use as a state−operated tourist information center or some similar state governmental function. A state tax operable only in 2 or 3 counties would not be a proper means of operational financing of such a center. 58 Atty. Gen. 119.

The secretary of the department of transportation, while acting as agent for airport sponsors, pursuant to s. 114.32, can give the required assurance to the Federal Aviation Administration and provide replacement housing without violating Art. VIII, sec. 10. 60 Atty. Gen. 225.

A vocational, technical and adult education district has authority to purchase buildings for administration purposes or student dormitory housing, and in doing so would not violate the constitutional ban on works of internal improvement. 60 Atty. Gen. 231.

Chapter 108, laws of 1973, creating a small business investment company fund, contemplates the appropriation of public funds for a valid public purpose, not for works of internal improvement, and is constitutional. 62 Atty. Gen. 212.

Subject to certain limitations, the lease of state office building space to commercial enterprise serving both state employees and the general public is constitutional. Such leases do not require bidding. 69 Atty. Gen. 121.

Dredging a navigable waterway to alleviate periodic flooding is not a prohibited "work of internal improvement." 69 Atty. Gen. 176.

The state's issuance of general obligation bonds to fund private construction for pollution abatement purposes does not violate Art. VIII, secs. 3 and 10, or the public purpose doctrine. 74 Atty. Gen. 25.

A new look at internal improvements and public purpose rules. Eich. 1970 WLR 1113.

Transportation Fund. SECTION 11 [*As created Nov. 2014*] All funds collected by the state from any taxes or fees levied or imposed for the licensing of motor vehicle operators, for the titling, licensing, or registration of motor vehicles, for motor vehicle fuel, or for the use of roadways, highways, or bridges, and from taxes and fees levied or imposed for aircraft, airline property, or aviation fuel or for railroads or railroad property shall be deposited only into the transportation fund or with a trustee for the benefit of the department of transportation or the holders of transportation−related revenue bonds, except for collections from taxes or fees in existence on December 31, 2010, that were not being deposited in the transportation fund on that date. None of the funds collected or received by the state from any source and deposited into the transportation fund shall be lapsed, further transferred, or appropriated to any program that is not directly administered by the department of transportation in furtherance of the department's responsibility for the planning, promotion, and protection of all transportation systems in the state except for programs for which there was an appropriation from the transportation fund on December 31, 2010. In this section, the term "motor vehicle" does not include any all−terrain vehicles, snowmobiles, or watercraft. [*2011 J.R. 4, 2013 J.R. 1, vote Nov. 2014*]

ARTICLE IX.

EMINENT DOMAIN AND PROPERTY OF THE STATE

Jurisdiction on rivers and lakes; navigable waters. SECTION 1. The state shall have concurrent jurisdiction on all rivers and lakes bordering on this state so far as such rivers or lakes shall form a common boundary to the state and any other state or territory now or hereafter to be formed, and bounded by the same; and the river Mississippi and the navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highways and forever free,

as well to the inhabitants of the state as to the citizens of the United States, without any tax, impost or duty therefor.

The boating registration law does not violate this section. State v. Jackman, 60 Wis. 2d 700, 211 N.W.2d 480.

There is no constitutional barrier to the application of s. 30.18, regulating diversion of water, to nonnavigable waters. Omernik v. State, 64 Wis. 2d 6, 218 N.W.2d 734.

The term "forever free" does not refer to physical obstructions but to political regulations that would hamper the freedom of commerce. Capt. Soma Boat Line v. Wisconsin Dells, 79 Wis. 2d 10, 255 N.W.2d 441.

A fisherman who violated Minnesota and Wisconsin fishing laws while standing on the Minnesota bank of the Mississippi was subject to Wisconsin prosecution. State v. Nelson, 92 Wis. 2d 855, 285 N.W.2d 924 (Ct. App. 1979)

An ordinance that provided for exclusive temporary use of a portion of a lake for public water exhibition licensees did not offend the public trust doctrine. State v. Village of Lake Delton, 93 Wis. 2d 78, 286 N.W.2d 622 (Ct. App. 1979).

It is appropriate to extend the public trust doctrine to include navigable waters and the shores appurtenant to ensure public access and free use of the waters. State v. Town of Linn, 205 Wis. 2d 426, 556 N.W.2d 394 (Ct. App. 1996), 95–3242.

A cause of action cannot be based only on a general allegation of a violation of the public trust doctrine. Borsellino v. DNR, 2000 WI App 27, 232 Wis. 2d 430, 605 N.W.2d 255, 99–1220.

There is no constitutional foundation for public trust jurisdiction over land, including non–navigable wetlands, that is not below the ordinary high water mark of a navigable lake or stream. Article IX, Section 1, does not vest the state with constitutional trust powers to "protect" scenic beauty by regulating non–navigable land bordering lakes and rivers. Rock–Koshkonong Lake District v. Department of Natural Resources, 2013 WI 74, 350 Wis. 2d 45, 833 N.W.2d 800, 08–1523.

Riparian rights are the bundle of private property rights that may be conferred upon a property owner by virtue of the owner's contiguity to a navigable body of water, subject to and limited to some extent by the public trust doctrine. Common law riparian rights may include: the right to reasonable use of the waters for domestic, agricultural, and recreational purposes; the right to use the shoreline and have access to the waters; the right to any lands formed by accretion or reliction; the right to have water flow to the land without artificial obstruction; the limited right to intrude onto the lakebed to construct devices for protection from erosion; and the right, conditioned by statute, to construct a pier or structure in aid of navigation. Movrich v. Lobermeier, 2018 WI 9, 379 Wis. 2d 269, 905 N.W.2d 807, 15–0583.

Under the public trust doctrine the state holds the beds underlying navigable waters in trust for all of its citizens. The public rights protected under the public trust doctrine include boating, swimming, fishing, hunting, and preserving scenic beauty. The doctrine traditionally applies to all areas within the ordinary high water mark of the body of water. The public trust doctrine is a limit on riparian rights. Wisconsin common law has established that the right to place structures for access to navigable water is qualified, subordinate, and subject to the paramount interest of the state and the paramount rights of the public in navigable waters. This is true even when the bed is privately held, as long as the body of water is public, navigable, and created by use of public waters. Movrich v. Lobermeier, 2018 WI 9, 379 Wis. 2d 269, 905 N.W.2d 807, 15–0583.

Portages have lost the protection of the public trust doctrine under this section. 75 Atty. Gen. 89.

That the Waters Shall be Forever Free: Navigating Wisconsin's Obligations Under the Public Trust Doctrine and the Great Lakes Compact. Johnson–Karp. 94 MLR 414 (2010).

A Breach of Trust: *Rock–Koshkonong Lake District v. State Department of Natural Resources* and Wisconsin's Public Trust Doctrine. Mittal. 98 MLR 1468 (2015).

A New Must of the Public Trust: Modifying Wisconsin's Public Trust Doctrine to Accommodate Modern Development While Still Serving the Doctrine's Essential Goals. Derus. 99 MLR 447 (2015).

Wisconsin's Public Trust Doctrine: A New Framework for Understanding the Judiciary's Role in Protecting Water Resources. Schinner. 2015 WLR 1129.

The "Invisible Lien": Public Trust Doctrine Impact on Real Estate Development in Wisconsin. Harrington. Wis. Law. May 1996.

Territorial property. SECTION 2. The title to all lands and other property which have accrued to the territory of Wisconsin by grant, gift, purchase, forfeiture, escheat or otherwise shall vest in the state of Wisconsin.

Ultimate property in lands; escheats. SECTION 3. The people of the state, in their right of sovereignty, are declared to possess the ultimate property in and to all lands within the jurisdiction of the state; and all lands the title to which shall fail from a defect of heirs shall revert or escheat to the people.

ARTICLE X.

EDUCATION

Superintendent of public instruction. SECTION 1. [*As amended Nov. 1902 and Nov. 1982*] The supervision of public instruction shall be vested in a state superintendent and such other officers as the legislature shall direct; and their qualifications, powers, duties and compensation shall be prescribed by law. The state superintendent shall be chosen by the qualified electors of the state at the same time and in the same manner as members of the supreme court, and shall hold office for 4 years from the succeeding first Monday in July. The term of office, time and manner of electing or appointing all other officers of supervision of public instruction shall be fixed by law. [*1899 J.R. 16, 1901 J.R. 3, 1901 c. 258, vote Nov. 1902; 1979 J.R. 36, 1981 J.R. 29, vote Nov. 1982*]

This section confers no more authority upon school officers than that delineated by statute. Fortney v. School District, 108 Wis. 2d 167, 321 N.W.2d 225 (1982).

The legislature may not give any "other officer" authority equal or superior to that of the State Superintendent of Public Instruction. Thompson v. Craney, 199 Wis. 2d 674, 546 N.W.2d 123 (1996), 95–2168.

The State Superintendent of Public Instruction's supervisory authority under this section is an executive function. However, the state superintendent's powers and duties are set by the legislature. The state superintendent, therefore, has two different sources for its authority. The source for the state superintendent's rulemaking authority is legislative delegation. Because rulemaking is not "supervision of public instruction" within the meaning of this section, it is of no constitutional concern whether the governor is given equal or greater legislative authority than the state superintendent in rulemaking. Koschkee v. Taylor, 2019 WI 76, 387 Wis. 2d 552, 929 N.W.2d 600, 17–2278.

School fund created; income applied. SECTION 2. [*As amended Nov. 1982*] The proceeds of all lands that have been or hereafter may be granted by the United States to this state for educational purposes (except the lands heretofore granted for the purposes of a university) and all moneys and the clear proceeds of all property that may accrue to the state by forfeiture or escheat; and the clear proceeds of all fines collected in the several counties for any breach of the penal laws, and all moneys arising from any grant to the state where the purposes of such grant are not specified, and the 500,000 acres of land to which the state is entitled by the provisions of an act of congress, entitled "An act to appropriate the proceeds of the sales of the public lands and to grant pre–emption rights," approved September 4, 1841; and also the 5 percent of the net proceeds of the public lands to which the state shall become entitled on admission into the union (if congress shall consent to such appropriation of the 2 grants last mentioned) shall be set apart as a separate fund to be called "the school fund," the interest of which and all other revenues derived from the school lands shall be exclusively applied to the following objects, to wit:

(1) To the support and maintenance of common schools, in each school district, and the purchase of suitable libraries and apparatus therefor.

(2) The residue shall be appropriated to the support and maintenance of academies and normal schools, and suitable libraries and apparatus therefor. [*1979 J.R. 36, 1981 J.R. 29, vote Nov. 1982*]

The clear proceeds of fines imposed, at least 50 percent under s. 59.20 (8) [now s. 59.25 (3) (j)] after the accused forfeits a deposit by nonappearance, must be sent to the state treasurer for the school fund. 58 Atty. Gen. 142.

Money resulting from state forfeitures action under ss. 161.555 [now s. 961.555] and 973.075 (4) must be deposited in the school fund. Money granted to the state after a federal forfeiture proceeding need not be. 76 Atty. Gen. 209.

District schools; tuition; sectarian instruction; released time. SECTION 3. [*As amended April 1972*] The legislature shall provide by law for the establishment of district schools, which shall be as nearly uniform as practicable; and such schools shall be free and without charge for tuition to all children between the ages of 4 and 20 years; and no sectarian instruction shall be allowed therein; but the legislature by law may, for the purpose of religious instruction outside the district schools, authorize the release of students during regular school hours. [*1969 J.R. 37, 1971 J.R. 28, vote April 1972*]

The constitution does not require that school districts be uniform in size or equalized valuation. Larson v. State Appeal Board, 56 Wis. 2d 823, 202 N.W.2d 920 (1973).

Public schools may sell or charge fees for the use of books and items of a similar nature when authorized by statute without violating this section. Board of Education v. Sinclair, 65 Wis. 2d 179, 222 N.W.2d 143 (1974).

Use of the word "shall" in s. 118.155, making cooperation by school boards with programs of religious instruction during released time mandatory rather than discretionary, does not infringe upon the inherent powers of a school board. State ex rel. Holt v. Thompson, 66 Wis. 2d 659, 225 N.W.2d 678 (1975).

School districts are not constitutionally compelled to admit gifted four−year old children into kindergarten. Zweifel v. Joint District No. 1, 76 Wis. 2d 648, 251 N.W.2d 822 (1977).

The mere appropriation of public monies to a private school does not transform that school into a district school under this section. Jackson v. Benson, 218 Wis. 2d 835, 578 N.W.2d 602 (1998), 97−0270.

The school finance system under ch. 121 is constitutional under both this section and article I, section 1. Students have a fundamental right to an equal opportunity for a sound basic education. Uniform revenue−raising capacity among districts is not required. Vincent v. Voight, 2000 WI 93, 236 Wis. 2d 588, 614 N.W.2d 388, 97−3174.

The due process clause of the 14th amendment includes the fundamental right of parents to make decisions concerning the care, custody, and control of their children, including the right to direct the upbringing and education of children under their control, but that right is neither absolute nor unqualified. Parents do not have a fundamental right to direct how a public school teaches their child or to dictate the curriculum at the public school to which they have chosen to send their child. Larson v. Burmaster, 2006 WI App 142, 295 Wis. 2d 333, 720 N.W.2d 134, 05−1433.

The state and its agencies, except the Department of Public Instruction, constitutionally can deny service or require the payment of fees for services to children between age 4 and 20 who seek admission to an institution or program because school services are lacking in their community or district. 58 Atty. Gen. 53.

VTAE schools [now technical colleges] are not "district schools" within the meaning of this section. 64 Atty. Gen. 24.

Public school districts may not charge students for the cost of driver education programs if the programs are credited towards graduation. 71 Atty. Gen. 209.

Having established the right to an education, the state may not withdraw the right on grounds of misconduct absent fundamentally fair procedures to determine if misconduct occurred. Attendance by the student at expulsion deliberations is not mandatory; all that is required is the student have the opportunity to attend and present the student's case. Remer v. Burlington Area School District, 149 F. Supp. 2d 665 (2001).

Intrastate Inequalities in Public Education: The Case for Judicial Relief Under the Equal Protection Clause. Silard & White. 1970 WLR 7.

School Law—The Constitutional Mandate for Free Schools. 1971 WLR 971.

Annual school tax. SECTION 4. Each town and city shall be required to raise by tax, annually, for the support of common schools therein, a sum not less than one−half the amount received by such town or city respectively for school purposes from the income of the school fund.

Income of school fund. SECTION 5. Provision shall be made by law for the distribution of the income of the school fund among the several towns and cities of the state for the support of common schools therein, in some just proportion to the number of children and youth resident therein between the ages of four and twenty years, and no appropriation shall be made from the school fund to any city or town for the year in which said city or town shall fail to raise such tax; nor to any school district for the year in which a school shall not be maintained at least three months.

State university; support. SECTION 6. Provision shall be made by law for the establishment of a state university at or near the seat of state government, and for connecting with the same, from time to time, such colleges in different parts of the state as the interests of education may require. The proceeds of all lands that have been or may hereafter be granted by the United States to the state for the support of a university shall be and remain a perpetual fund to be called "the university fund," the interest of which shall be appropriated to the support of the state university, and no sectarian instruction shall be allowed in such university.

Vocational education is not exclusively a state function. Village of West Milwaukee v. Area Board of Vocational, Technical & Adult Education, 51 Wis. 2d 356, 187 N.W.2d 387 (1971).

Commissioners of public lands. SECTION 7. The secretary of state, treasurer and attorney general, shall constitute a board of commissioners for the sale of the school and university lands and for the investment of the funds arising therefrom. Any two of said commissioners shall be a quorum for the transaction of all business pertaining to the duties of their office.

Sale of public lands. SECTION 8. Provision shall be made by law for the sale of all school and university lands after they shall have been appraised; and when any portion of such lands shall be sold and the purchase money shall not be paid at the time of the sale, the commissioners shall take security by mortgage upon the lands sold for the sum remaining unpaid, with seven per cent interest thereon, payable annually at the office of the treasurer. The commissioners shall be authorized to execute a good and sufficient conveyance to all purchasers of such lands, and to discharge any mortgages taken as security, when the sum due thereon shall have been paid. The commissioners shall have power to withhold from sale any portion of such lands when they shall deem it expedient, and shall invest all moneys arising from the sale of such lands, as well as all other university and school funds, in such manner as the legislature shall provide, and shall give such security for the faithful performance of their duties as may be required by law.

The legislature may direct public land commissioners to invest monies from the sale of public lands in student loans but may not direct a specific investment. 65 Atty. Gen. 28.

Discussing state reservation of land and interests in lands under this section, s. 24.11 (3), and former ch. 452, laws of 1911. 65 Atty. Gen. 207.

ARTICLE XI.

CORPORATIONS

Corporations; how formed. SECTION 1. [*As amended April 1981*] Corporations without banking powers or privileges may be formed under general laws, but shall not be created by special act, except for municipal purposes. All general laws or special acts enacted under the provisions of this section may be altered or repealed by the legislature at any time after their passage. [*1979 J.R. 21, 1981 J.R. 9, vote April 1981*]

Former s. 499.02 (4), 1973 stats., providing that the Solid Waste Recycling Authority's existence may not be terminated while it has outstanding obligations, does not violate the Wisconsin Constitution's reserved power provisions because: 1) the authority is not a corporation created pursuant to this section, and this section is directed only to laws enacted under the provisions of this section; and 2) any attempt to terminate the authority while it has outstanding obligations would contravene the impairment of contract clauses of both the U.S. and Wisconsin Constitutions. Wisconsin Solid Waste Recycling Authority v. Earl, 70 Wis. 2d 464, 235 N.W.2d 648 (1975).

Creation of the citizens utility board is constitutional. 69 Atty. Gen. 153.

Property taken by municipality. SECTION 2. [*As amended April 1961*] No municipal corporation shall take private property for public use, against the consent of the owner, without the necessity thereof being first established in the manner prescribed by the legislature. [*1959 J.R. 47, 1961 J.R. 12, vote April 1961*]

Municipal home rule; debt limit; tax to pay debt. SECTION 3. [*As amended Nov. 1874, Nov. 1912, Nov. 1924, Nov. 1932, April 1951, April 1955, Nov. 1960, April 1961, April 1963, April 1966, and April 1981*] **(1)** Cities and villages organized pursuant to state law may determine their local affairs and government, subject only to this constitution and to such enactments of the legislature of statewide concern as with uniformity shall affect every city or every village. The method of such determination shall be prescribed by the legislature.

(2) No county, city, town, village, school district, sewerage district or other municipal corporation may become indebted in an amount that exceeds an allowable percentage of the taxable property located therein equalized for state purposes as provided by the legislature. In all cases the allowable percentage shall be 5 percent except as specified in pars. (a) and (b):

(a) For any city authorized to issue bonds for school purposes, an additional 10 percent shall be permitted for school purposes only, and in such cases the territory attached to the city for school purposes shall be included in the total taxable property supporting the bonds issued for school purposes.

(b) For any school district which offers no less than grades one to 12 and which at the time of incurring such debt is eligible for the highest level of school aids, 10 percent shall be permitted.

(3) Any county, city, town, village, school district, sewerage district or other municipal corporation incurring any indebtedness under sub. (2) shall, before or at the time of doing so, provide for the collection of a direct annual tax sufficient to pay the interest on such debt as it falls due, and also to pay and discharge

the principal thereof within 20 years from the time of contracting the same.

(4) When indebtedness under sub. (2) is incurred in the acquisition of lands by cities, or by counties or sewerage districts having a population of 150,000 or over, for public, municipal purposes, or for the permanent improvement thereof, or to purchase, acquire, construct, extend, add to or improve a sewage collection or treatment system which services all or a part of such city or county, the city, county or sewerage district incurring the indebtedness shall, before or at the time of so doing, provide for the collection of a direct annual tax sufficient to pay the interest on such debt as it falls due, and also to pay and discharge the principal thereof within a period not exceeding 50 years from the time of contracting the same.

(5) An indebtedness created for the purpose of purchasing, acquiring, leasing, constructing, extending, adding to, improving, conducting, controlling, operating or managing a public utility of a town, village, city or special district, and secured solely by the property or income of such public utility, and whereby no municipal liability is created, shall not be considered an indebtedness of such town, village, city or special district, and shall not be included in arriving at the debt limitation under sub. (2). [*1872 J.R. 11, 1873 J.R. 4, 1874 c. 37, vote Nov. 1874; 1909 J.R. 44, 1911 J.R. 42, 1911 c. 665, vote Nov. 1912; 1921 J.R. 39S, 1923 J.R. 34, 1923 c. 203, vote Nov. 1924; 1929 J.R. 74, 1931 J.R. 71, vote Nov. 1932; 1949 J.R. 12, 1951 J.R. 6, vote April 1951; 1953 J.R. 47, 1955 J.R. 12, vote April 1955; 1957 J.R. 59, 1959 J.R. 32, vote Nov. 1960; 1959 J.R. 35, 1961 J.R. 8, vote April 1961; 1961 J.R. 71, 1963 J.R. 8, vote April 1963; 1963 J.R. 44, 1965 J.R. 51 and 58, vote April 1966; 1979 J.R. 43, 1981 J.R. 7, vote April 1981*]

Authorizing municipalities to issue revenue bonds to finance industrial development projects is not an improper delegation of authority in a matter of statewide concern. When the purchase price of property to be acquired is payable exclusively from income or profits to be derived from the property purchased and a mortgage or lien attaches only to that property, no debt is created in violation of this section. State ex rel. Hammermill Paper Co. v. La Plante, 58 Wis. 2d 32, 205 N.W.2d 784 (1973).

This section does not invalidate provisions of the Solid Waste Recycling Authority Act dealing with required use of the authority's facilities, user charges, and condemnation powers, since the purpose of the act involves a matter of statewide concern. Wisconsin Solid Waste Recycling Authority v. Earl, 70 Wis. 2d 464, 235 N.W.2d 648 (1975).

The provision of s. 144.07 (1m) [now s. 281.34 (1m)] that voids a Department of Natural Resources sewerage connection order if electors in an affected town area reject annexation to the city ordered to extend sewerage service, represents valid legislative balancing and accommodation of two statewide concerns, urban development and pollution control. City of Beloit v. Kallas, 76 Wis. 2d 61, 250 N.W.2d 342 (1977).

No conflict was found between an ordinance and a statute dealing with related subject matter when the former was paramountly in the local interest and the latter was of statewide concern. State ex rel. Michalek v. LeGrand, 77 Wis. 2d 520, 253 N.W.2d 505 (1977).

Discussing coexisting ordinances and statutes prohibiting the same conduct. State v. Karpinski, 92 Wis. 2d 599, 285 N.W.2d 729 (1979).

Refusal by a city to provide sewerage service to a portion of a town unless inhabitants agreed to annexation of that portion did not violate antitrust law. Town of Hallie v. City of Chippewa Falls, 105 Wis. 2d 533, 314 N.W.2d 321 (1982).

A city ordinance that regulated lending practices of state chartered savings and loans with regard to discrimination was preempted by state statutes. Anchor Savings & Loan Ass'n v. Equal Opportunities Commission, 120 Wis. 2d 391, 355 N.W.2d 234 (1984).

Liberally construing home rule authority, a city is not authorized to institute a public safety officer program. Local Union No. 487 v. City of Eau Claire, 147 Wis. 2d 519, 433 N.W.2d 578 (1989).

Antitrust law demonstrates the legislature's intent to subordinate a city's home–rule authority to its provisions. Unless legislation at least impliedly authorizes a city's anticompetitive action, the city has violated antitrust law. American Medical Transport of Wisconsin, Inc. v. Curtis–Universal, Inc., 154 Wis. 2d 135, 452 N.W.2d 575 (1990).

A school district did not incur indebtedness by entering into a lease–purchase agreement for a new school when the district, by electing not to appropriate funds for the following fiscal year's rental payment, had the option to terminate the agreement with no future payment obligation. Dieck v. Unified School District, 165 Wis. 2d 458, 477 N.W.2d 613 (1991).

Tax increment financing bonds that a city proposed to issue under s. 66.46 [now s. 66.1105] constituted debt under this section and were subject to the city's debt limits. City of Hartford v. Kirley, 172 Wis. 2d 191, 493 N.W.2d 45 (1992).

The fact that the regulation of sex offenders is a matter of statewide concern does not preclude municipalities from using their home–rule powers to impose further restrictions consistent with those imposed by the state. An ordinance regulating an area of statewide concern is preempted only if: 1) the legislature has expressly withdrawn the power of municipalities to act; 2) the ordinance logically conflicts with state legislation; 3) the ordinance defeats the purpose of state legislation; or 4) the ordinance violates the spirit of state legislation. City of South Milwaukee v. Kester, 2013 WI App 50, 347 Wis. 2d 334, 830 N.W.2d 710, 12–0724.

While the home rule amendment authorizes municipal regulation over matters of local concern and protects that regulation against conflicting state law, state law will still preempt that municipal regulation if it with uniformity affects every city or every village. Madison Teachers, Inc. v. Walker, 2014 WI 99, 358 Wis. 2d 1, 851 N.W.2d 337, 12–2067.

Whether a particular statute relates to a matter of statewide concern is for the courts to determine on a case–by–case basis. Generally, state legislation falls into three categories: 1) those involving matters exclusively of statewide concern; 2) those involving matters entirely of local character; and 3) those that encompass both state and local concerns. When legislation falls under the third category, the court must determine whether state or local concerns are paramount and conduct its analysis accordingly. Milwaukee Police Ass'n v. City of Milwaukee, 2015 WI App 60, 364 Wis. 2d 626, 869 N.W.2d 522, 14–0400.

The uniformity requirement in sub. (1) does not simply mean that a legislative enactment applying to all municipalities passes the test. The language used in the state constitution is "affects," not "applies," indicating that a more substantive analysis is required. Enactments of the legislature that do not affect all cities uniformly are to be subordinate to legislation of cities within their constitutional field. Legislative pronouncements of statewide concern are not controlling, and it is the judiciary that has been charged with the ultimate determination of what is a matter of statewide concern. Milwaukee Police Ass'n v. City of Milwaukee, 2015 WI App 60, 364 Wis. 2d 626, 869 N.W.2d 522, 14–0400.

The scope of legislative activity covered by "ordinances" and "resolutions" extends to formal and informal enactments that address matters both general and specific, in a manner meant to be either temporary or permanent, and which can be characterized as administrative or otherwise. The court will treat a municipality's legislative device as an ordinance or resolution, regardless of how it may be denominated, so long as it functions within the scope of this definition. There is no legislative action a municipality could take that would not come within the ambit of "ordinance" or "resolution." Consequently, if a statute removes the authority of a municipality's governing body to adopt an ordinance or resolution on a particular subject, the governing body loses all legislative authority on that subject. Wisconsin Carry, Inc. v. City of Madison, 2017 WI 19, 373 Wis. 2d 543, 892 N.W.2d 233, 15–0146.

A 1947 law authorized 1st class cities to assume responsibility for the Employee Retirement System (ERS) under home rule, providing that the city did not amend or alter the ERS to modify the annuities, benefits, or other rights of ERS members. Milwaukee's amendment to its charter ordinance that changed the board size and member voting rights of the ERS was an improper exercise of home rule because it modified "other rights" of members, contrary to state law. Milwaukee Police Ass'n v. City of Milwaukee, 2018 WI 86, 383 Wis. 2d 247, 914 N.W.2d 597, 15–2375.

An agreement to purchase park land whereby a county is to make deferred payments from an existing nonlapsing account, sufficient to cover the entire obligation, secured by mortgaging the property to the grantor, would not create an obligation within the ambit of ch. 67 nor constitute a debt in the context of this section. 63 Atty. Gen. 309.

Local government units cannot include the value of tax–exempt manufacturing machinery and specific processing equipment and tax exempt merchants' stock–in–trade, manufacturers' materials and finished products, and livestock in their property valuation totals for non–tax purposes, such as for municipal debt ceilings, tax levy limitations, shared tax distributions, and school aid payments. 63 Atty. Gen. 465.

There is no constitutional prohibition against increasing either municipal tax rate limitations or increasing the municipal tax base. However, a constitutional amendment would be required to increase municipal debt limitations. 63 Atty. Gen. 567.

Discussing "home rule." 69 Atty. Gen. 232.

Contrasting home rule applicability to libraries and library systems. 73 Atty. Gen. 86.

The housing of out–of–state prisoners by the state, a county, or a municipality may only be as authorized by statute, which is currently limited to the Interstate Corrections Compact, s. 302.25. OAG 2–99.

Conflicts Between State Statute and Local Ordinance in Wisconsin. Solheim. 1975 WLR 840.

Acquisition of lands by state and subdivisions; sale of excess. SECTION 3a. [*As created Nov. 1912 and amended April 1956*] The state or any of its counties, cities, towns or villages may acquire by gift, dedication, purchase, or condemnation lands for establishing, laying out, widening, enlarging, extending, and maintaining memorial grounds, streets, highways, squares, parkways, boulevards, parks, playgrounds, sites for public buildings, and reservations in and about and along and leading to any or all of the same; and after the establishment, layout, and completion of such improvements, may convey any such real estate thus acquired and not necessary for such improvements, with reservations concerning the future use and occupation of such real estate, so as to protect such public works and improvements, and their environs, and to preserve the view, appearance, light, air, and usefulness of such public works. If the governing body of a county, city, town or village elects to accept a gift or dedication of land made on condition that the land be devoted to a special purpose and the condition subsequently becomes impossible or impracticable, such governing

body may by resolution or ordinance enacted by a two−thirds vote of its members elect either to grant the land back to the donor or dedicator or his heirs or accept from the donor or dedicator or his heirs a grant relieving the county, city, town or village of the condition; however, if the donor or dedicator or his heirs are unknown or cannot be found, such resolution or ordinance may provide for the commencement of proceedings in the manner and in the courts as the legislature shall designate for the purpose of relieving the county, city, town or village from the condition of the gift or dedication. [*1909 J.R. 38, 1911 J.R. 48, 1911 c. 665, vote Nov. 1912; 1953 J.R. 35, 1955 J.R. 36, vote April 1956*]

A purchase of land by a city for industrial development that is leased with an option to buy or to renew the lease with a minimal rent did not violate this section. State ex rel. Hammermill Paper Co. v. La Plante, 58 Wis. 2d 32, 205 N.W.2d 784 (1973).

General banking law. SECTION 4. [*As created Nov. 1902 and amended April 1981*] The legislature may enact a general banking law for the creation of banks, and for the regulation and supervision of the banking business. [*1899 J.R. 13, 1901 J.R. 2, 1901 c. 73, vote Nov. 1902; 1979 J.R. 21, 1981 J.R. 9, vote April 1981*]

Referendum on banking laws. SECTION 5. [*Repealed Nov. 1902; see 1899 J.R. 13, 1901 J.R. 2, 1901 c. 73, vote Nov. 1902.*]

ARTICLE XII.

AMENDMENTS

Constitutional amendments. SECTION 1. Any amendment or amendments to this constitution may be proposed in either house of the legislature, and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals, with the yeas and nays taken thereon, and referred to the legislature to be chosen at the next general election, and shall be published for three months previous to the time of holding such election; and if, in the legislature so next chosen, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the legislature to submit such proposed amendment or amendments to the people in such manner and at such time as the legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments by a majority of the electors voting thereon, such amendment or amendments shall become part of the constitution; provided, that if more than one amendment be submitted, they shall be submitted in such manner that the people may vote for or against such amendments separately.

It is within the discretion of the legislature to submit several distinct propositions to the electorate as one constitutional amendment if they relate to the same subject matter and are designed to accomplish one general purpose. Milwaukee Alliance Against Racist & Political Repression v. Elections Board, 106 Wis. 2d 593, 317 N.W.2d 420 (1982).

Unless a constitutional amendment provides otherwise, it takes effect upon the certification of a statewide canvass of the votes as provided in s. 7.70 (3) (h). The legislature has the authority under this section to adopt reasonable election laws to provide that state constitutional amendments are effective after canvass and certification. State v. Gonzales, 2002 WI 59, 253 Wis. 2d 134, 645 N.W.2d 264, 01−0224.

In order to constitute more than one amendment in violation of this section, the propositions submitted must relate to more than one subject, and have at least two distinct and separate purposes not dependent upon or connected with each other. The constitution grants the legislature considerable discretion in the manner in which amendments are drafted and submitted to the people. An otherwise valid amendment will be construed as more than one amendment only in exceedingly rare circumstances. The propositions need only relate to the same subject and tend to effect or carry out one general purpose. The general purpose of an amendment may be deduced from the text of the amendment itself and from the historical context in which the amendment was adopted. McConkey v. Van Hollen, 2010 WI 57, 326 Wis. 2d 1; 783 N.W.2d 855, 08−1868.

The two propositions contained in the amendment creating article XIII, section 13, plainly relate to the subject of marriage. The general purpose of the marriage amendment is to preserve the legal status of marriage as between only one man and one woman. Both propositions in the marriage amendment relate to and are connected with this purpose. Therefore, the marriage amendment does not violate the separate amendment rule of this section. McConkey v. Van Hollen, 2010 WI 57, 326 Wis. 2d 1; 783 N.W.2d 855, 08−1868.

The taking of yea and nay votes and the entry on the journals of the senate and assembly can be complied with by recording the total aye vote together with a listing of the names of those legislators who voted no, were absent or not voting, or were paired on the question. Discussing this section; article V, section 10; and article VIII, section 8. 63 Atty. Gen. 346.

The legislature must resubmit a proposed amendment to the people when the previous referendum was voided by court order, notwithstanding an appeal therefrom. 65 Atty. Gen. 42.

Symposium: Is the Wisconsin Constitution Obsolete? 90 MLR 407 (Spring 2007).

Constitutional conventions. SECTION 2. If at any time a majority of the senate and assembly shall deem it necessary to call a convention to revise or change this constitution, they shall recommend to the electors to vote for or against a convention at the next election for members of the legislature. And if it shall appear that a majority of the electors voting thereon have voted for a convention, the legislature shall, at its next session, provide for calling such convention.

ARTICLE XIII.

MISCELLANEOUS PROVISIONS

Political year; elections. SECTION 1. [*As amended Nov. 1882 and April 1986*] The political year for this state shall commence on the first Monday of January in each year, and the general election shall be held on the Tuesday next succeeding the first Monday of November in even−numbered years. [*1881 J.R. 16A, 1882 J.R. 3, 1882 c. 290, vote Nov. 1882; 1983 J.R. 30, 1985 J.R. 14, vote April 1986*]

Dueling. SECTION 2. [*Repealed April 1975; see 1973 J.R. 10, 1975 J.R. 4, vote April 1975.*]

Eligibility to office. SECTION 3. [*As amended Nov. 1996*] **(1)** No member of congress and no person holding any office of profit or trust under the United States except postmaster, or under any foreign power, shall be eligible to any office of trust, profit or honor in this state.

(2) No person convicted of a felony, in any court within the United States, no person convicted in federal court of a crime designated, at the time of commission, under federal law as a misdemeanor involving a violation of public trust and no person convicted, in a court of a state, of a crime designated, at the time of commission, under the law of the state as a misdemeanor involving a violation of public trust shall be eligible to any office of trust, profit or honor in this state unless pardoned of the conviction.

(3) No person may seek to have placed on any ballot for a state or local elective office in this state the name of a person convicted of a felony, in any court within the United States, the name of a person convicted in federal court of a crime designated, at the time of commission, under federal law as a misdemeanor involving a violation of public trust or the name of a person convicted, in a court of a state, of a crime designated, at the time of commission, under the law of the state as a misdemeanor involving a violation of public trust, unless the person named for the ballot has been pardoned of the conviction. [*1993 J.R. 19, 1995 J.R. 28*]

The 1996 amendment of this section was not an ex post facto law and was not in violation of the federal equal protection or due process clauses. Swan v. LaFollette, 231 Wis. 2d 633, 605 N.W.2d 640 (Ct. App. 1999), 99−0127.

A convicted felon who has been restored to his civil rights, pursuant to s. 57.078 [now s. 304.078] is barred from the office of notary public by this section unless pardoned. 63 Atty. Gen. 74.

This section does not bar a "congressional home secretary" from serving as a member of the Natural Resources Board. 64 Atty. Gen. 1.

A felony conviction and sentencing of a state senator creates a vacancy in the office without any action by the senate. 65 Atty. Gen. 264.

Nonpardoned felons may not serve as sheriffs, deputy sheriffs, patrolmen, policemen, or constables as these officers are "public officers" and they hold an "office of trust, profit or honor in this state" under this section. 65 Atty. Gen. 292.

Great seal. SECTION 4. It shall be the duty of the legislature to provide a great seal for the state, which shall be kept by the secretary of state, and all official acts of the governor, his approbation of the laws excepted, shall be thereby authenticated.

Residents on Indian lands, where to vote. SECTION 5. [*Repealed April 1986; see 1983 J.R. 30, 1985 J.R. 14, vote April 1986.*]

Legislative officers. SECTION 6. The elective officers of the legislature, other than the presiding officers, shall be a chief clerk and a sergeant at arms, to be elected by each house.

Division of counties. SECTION 7. No county with an area of nine hundred square miles or less shall be divided or have any part stricken therefrom, without submitting the question to a vote of the people of the county, nor unless a majority of all the legal voters of the county voting on the question shall vote for the same.

Removal of county seats. SECTION 8. No county seat shall be removed until the point to which it is proposed to be removed shall be fixed by law, and a majority of the voters of the county voting on the question shall have voted in favor of its removal to such point.

Election or appointment of statutory officers. SECTION 9. All county officers whose election or appointment is not provided for by this constitution shall be elected by the electors of the respective counties, or appointed by the boards of supervisors, or other county authorities, as the legislature shall direct. All city, town and village officers whose election or appointment is not provided for by this constitution shall be elected by the electors of such cities, towns and villages, or of some division thereof, or appointed by such authorities thereof as the legislature shall designate for that purpose. All other officers whose election or appointment is not provided for by this constitution, and all officers whose offices may hereafter be created by law, shall be elected by the people or appointed, as the legislature may direct.

Vacancies in office. SECTION 10. [*As amended April 1979*] **(1)** The legislature may declare the cases in which any office shall be deemed vacant, and also the manner of filling the vacancy, where no provision is made for that purpose in this constitution.

(2) Whenever there is a vacancy in the office of lieutenant governor, the governor shall nominate a successor to serve for the balance of the unexpired term, who shall take office after confirmation by the senate and by the assembly. [*1977 J.R. 32, 1979 J.R. 3, vote April 1979*]

A felony conviction and sentencing of a state senator creates a vacancy in the office without any action by the senate. 65 Atty. Gen. 264.

Passes, franks and privileges. SECTION 11. [*As created Nov. 1902 and amended Nov. 1936*] No person, association, copartnership, or corporation, shall promise, offer or give, for any purpose, to any political committee, or any member or employe thereof, to any candidate for, or incumbent of any office or position under the constitution or laws, or under any ordinance of any town or municipality, of this state, or to any person at the request or for the advantage of all or any of them, any free pass or frank, or any privilege withheld from any person, for the traveling accommodation or transportation of any person or property, or the transmission of any message or communication.

No political committee, and no member or employee thereof, no candidate for and no incumbent of any office or position under the constitution or laws, or under any ordinance of any town or municipality of this state, shall ask for, or accept, from any person, association, copartnership, or corporation, or use, in any manner, or for any purpose, any free pass or frank, or any privilege withheld from any person, for the traveling accommodation or transportation of any person or property, or the transmission of any message or communication.

Any violation of any of the above provisions shall be bribery and punished as provided by law, and if any officer or any member of the legislature be guilty thereof, his office shall become vacant.

No person within the purview of this act shall be privileged from testifying in relation to anything therein prohibited; and no person having so testified shall be liable to any prosecution or punishment for any offense concerning which he was required to give his testimony or produce any documentary evidence.

Notaries public and regular employees of a railroad or other public utilities who are candidates for or hold public offices for which the annual compensation is not more than three hundred dollars to whom no passes or privileges are extended beyond those which are extended to other regular employees of such corporations are excepted from the provisions of this section. [*1899 J.R. 8, 1901 J.R. 9, 1901 c. 437, vote Nov. 1902; 1933 J.R. 63, 1935 J.R. 98, vote Nov. 1936*]

This section does not apply to a county ordinance granting special reserved parking privileges in a county ramp to county employees. Dane County v. McManus, 55 Wis. 2d 413, 198 N.W.2d 667 (1972).

Discussing this section. 77 Atty. Gen. 237.

Recall of elective officers. SECTION 12. [*As created Nov. 1926 and amended April 1981*] The qualified electors of the state, of any congressional, judicial or legislative district or of any county may petition for the recall of any incumbent elective officer after the first year of the term for which the incumbent was elected, by filing a petition with the filing officer with whom the nomination petition to the office in the primary is filed, demanding the recall of the incumbent.

(1) The recall petition shall be signed by electors equalling at least twenty−five percent of the vote cast for the office of governor at the last preceding election, in the state, county or district which the incumbent represents.

(2) The filing officer with whom the recall petition is filed shall call a recall election for the Tuesday of the 6th week after the date of filing the petition or, if that Tuesday is a legal holiday, on the first day after that Tuesday which is not a legal holiday.

(3) The incumbent shall continue to perform the duties of the office until the recall election results are officially declared.

(4) Unless the incumbent declines within 10 days after the filing of the petition, the incumbent shall without filing be deemed to have filed for the recall election. Other candidates may file for the office in the manner provided by law for special elections. For the purpose of conducting elections under this section:

(a) When more than 2 persons compete for a nonpartisan office, a recall primary shall be held. The 2 persons receiving the highest number of votes in the recall primary shall be the 2 candidates in the recall election, except that if any candidate receives a majority of the total number of votes cast in the recall primary, that candidate shall assume the office for the remainder of the term and a recall election shall not be held.

(b) For any partisan office, a recall primary shall be held for each political party which is by law entitled to a separate ballot and from which more than one candidate competes for the party's nomination in the recall election. The person receiving the highest number of votes in the recall primary for each political party shall be that party's candidate in the recall election. Independent candidates and candidates representing political parties not entitled by law to a separate ballot shall be shown on the ballot for the recall election only.

(c) When a recall primary is required, the date specified under sub. (2) shall be the date of the recall primary and the recall election shall be held on the Tuesday of the 4th week after the recall primary or, if that Tuesday is a legal holiday, on the first day after that Tuesday which is not a legal holiday.

(5) The person who receives the highest number of votes in the recall election shall be elected for the remainder of the term.

(6) After one such petition and recall election, no further recall petition shall be filed against the same officer during the term for which he was elected.

(7) This section shall be self−executing and mandatory. Laws may be enacted to facilitate its operation but no law shall be enacted to hamper, restrict or impair the right of recall. [*1923 J.R. 73, 1925 J.R. 16, 1925 c. 270, vote Nov. 1926; 1979 J.R. 41, 1981 J.R. 6, vote April 1981*]

The recall of city officials is of statutory origin. Beckstrom v. Kornsi, 63 Wis. 2d 375, 217 N.W.2d 283 (1974).

This section applies to members of Congress. 68 Atty. Gen. 140.

This section requires a separate petition for the recall of each individual incumbent elective officer. A petition for the recall of an incumbent governor under sub. (1) requires the filing officer to call a recall election for that incumbent's office, provided that the terms of this section have been met. A recall election of a lieutenant governor shall be called only if a petition for recall is filed for that incumbent elected officer, in which case voters shall vote separately for that office. OAG 4−11.

Marriage. SECTION 13. [*As created Nov. 2006*] Only a marriage between one man and one woman shall be valid or recognized as a marriage in this state. A legal status identical or substantially similar to that of marriage for unmarried individuals shall not be valid or recognized in this state. [*2003 J.R. 29, 2005 J.R. 30, vote Nov. 2006*]

Note: In *Wolf v. Walker*, Case No. 14−cv−64−bbc, the United States District Court for the Western District of Wisconsin declared that "art. XIII, § 13 of the Wisconsin Constitution violates plaintiffs' fundamental right to marry and their right to equal protection of laws under the Fourteenth Amendment to the United States Constitution." Affirmed. 766 F.3d 648. U.S. Seventh Circuit Court of Appeals, Case No. 14−2526, issued September 4, 2014.

The two propositions contained in the amendment creating this section plainly relate to the subject of marriage. The general purpose of the marriage amendment is to preserve the legal status of marriage as between only one man and one woman. Both propositions in the marriage amendment relate to and are connected with this purpose. Therefore, the marriage amendment does not violate the separate amendment rule of article XII, section 1. McConkey v. Van Hollen, 2010 WI 57, 326 Wis. 2d 1; 783 N.W.2d 855, 08−1868.

Chapter 770, the domestic partnership law, is constitutional, based on the presumption of constitutionality, the plaintiffs' failure to meet the burden of proof, and the evidence reviewed. The plain language of the amendment prohibits only a status "identical or substantially similar to" marriage, and by implication it does not prohibit what is not identical or substantially similar thereto. There are important statutory distinctions in the way the state treats marriage and domestic partnerships and important differences in the lists of benefits and obligations that inhere in the two types of relationships. Appling v. Walker, 2014 WI 96, 358 Wis. 2d 132, 853 N.W.2d 888, 11−1572.

Same−sex couples may exercise the fundamental right to marry in all states. The right to marry is a fundamental right inherent in the liberty of the person, and under the due process and equal protection clauses of the 14th amendment couples of the same−sex may not be deprived of that right and that liberty. Obergefell v. Hodges, 576 U.S. 644, 135 S. Ct. 2584, 192 L. Ed. 2d 609 (2015).

There is no lawful basis for a state to refuse to recognize a lawful same−sex marriage performed in another state on the ground of its same−sex character. Obergefell v. Hodges, 576 U.S. 644, 135 S. Ct. 2584, 192 L. Ed. 2d 609 (2015).

Same−Sex Divorce and Wisconsin Courts: Imperfect Harmony? Thorson. 92 MLR 617 (2009).

ARTICLE XIV.

SCHEDULE

Effect of change from territory to state. SECTION 1. That no inconvenience may arise by reason of a change from a territorial to a permanent state government, it is declared that all rights, actions, prosecutions, judgments, claims and contracts, as well of individuals as of bodies corporate, shall continue as if no such change had taken place; and all process which may be issued under the authority of the territory of Wisconsin previous to its admission into the union of the United States shall be as valid as if issued in the name of the state.

Territorial laws continued. SECTION 2. 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.

Territorial fines accrue to state. SECTION 3. [*Repealed Nov. 1982; see 1979 J.R. 36, 1981 J.R. 29, vote Nov. 1982.*]

Rights of action and prosecutions saved. SECTION 4. [*Repealed Nov. 1982; see 1979 J.R. 36, 1981 J.R. 29, vote Nov. 1982.*]

Existing officers hold over. SECTION 5. [*Repealed Nov. 1982; see 1979 J.R. 36, 1981 J.R. 29, vote Nov. 1982.*]

Seat of government. SECTION 6. [*Repealed Nov. 1982; see 1979 J.R. 36, 1981 J.R. 29, vote Nov. 1982.*]

Local officers hold over. SECTION 7. [*Repealed Nov. 1982; see 1979 J.R. 36, 1981 J.R. 29, vote Nov. 1982.*]

Copy of constitution for president. Section 8. [*Repealed Nov. 1982; see 1979 J.R. 36, 1981 J.R. 29, vote Nov. 1982.*]

Ratification of constitution; election of officers. SECTION 9. [*Repealed Nov. 1982; see 1979 J.R. 36, 1981 J.R. 29, vote Nov. 1982.*]

Congressional apportionment. SECTION 10. [*Repealed Nov. 1982; see 1979 J.R. 36, 1981 J.R. 29, vote Nov. 1982.*]

First elections. SECTION 11. [*Repealed Nov. 1982; see 1979 J.R. 36, 1981 J.R. 29, vote Nov. 1982.*]

Legislative apportionment. SECTION 12. [*Repealed Nov. 1982; see 1979 J.R. 36, 1981 J.R. 29, vote Nov. 1982.*]

Common law continued in force. SECTION 13. Such parts of the common law as are now in force in the territory of Wisconsin, not inconsistent with this constitution, shall be and continue part of the law of this state until altered or suspended by the legislature.

Enactment of s. 905.01 is an alteration or suspension of the common law. Davison v. St. Paul Fire & Marine Insurance Co., 75 Wis. 2d 190, 248 N.W.2d 433 (1977).

The common law privilege to forcibly resist an unlawful arrest is abrogated. State v. Hobson, 218 Wis. 2d 350, 577 N.W.2d 825 (1998), 96−0914.

This section does not codify English common law circa 1776, but preserves law that by historical understanding is subject to continuing evolution under the judicial power. The supreme court court has authority not only to alter but also to abrogate the common law when appropriate. The court's responsibility for altering or abolishing a common law rule does not end due to legislative failure to enact a statute to the contrary. State v. Picotte, 2003 WI 42, 261 Wis. 2d 249, 661 N.W.2d 381, 01−3063.

Officers, when to enter on duties. SECTION 14. [*Repealed Nov. 1982; see 1979 J.R. 36, 1981 J.R. 29, vote Nov. 1982.*]

Oath of office. SECTION 15. [*Repealed Nov. 1982; see 1979 J.R. 36, 1981 J.R. 29, vote Nov. 1982.*]

Implementing revised structure of judicial branch. SECTION 16. [*As created April 1977; as affected Nov. 1982, (1), (2), (3), and (5) repealed.*]

(4) [*Amended Nov. 1982*] The terms of office of justices of the supreme court serving on August 1, 1978, shall expire on the July 31 next preceding the first Monday in January on which such terms would otherwise have expired, but such advancement of the date of term expiration shall not impair any retirement rights vested in any such justice if the term had expired on the first Monday in January. [*1975 J.R. 13, 1977 J.R. 7, vote April 1977; 1979 J.R. 36, 1981 J.R. 29, vote Nov. 1982*]