# WISCONSIN TOWN LAW CONFERENCE 2021

# WHY TOWNS SHOULD BE PAYING ATTENTION TO THE LEGAL, SOCIAL AND POLITICAL DEBATE OVER POLICING AND THE DOCTRINE OF QUALIFIED IMMUNITY

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Although most Wisconsin towns do not have a police department, all towns have interaction with law enforcement and all town employees and officials are protected in civil rights actions by the doctrine of qualified immunity. This topic will address the nuts and bolts of the legal issues associated with and the debate over police shootings and other law enforcement activity, calls for defunding or reallocation of resources, and the doctrine of qualified immunity.

## I. TOWNS AND LAW ENFORCEMENT

### A. Statutory Authority for Law Enforcement in a Town:

1. Town Boards may provide for law enforcement per Wis. Stat. § 60.56(1)(a), either by establishing its own department, joining with another town, contracting or creating a combined protective services department (under Wis. Stat. § 60.553). Under Wis. Stat. § 60.56(2), the town board may appropriate money to fund law enforcement services.

### B. Statutory Authority for Local Government Cooperation:

1. Generally, pursuant to Wis. Stat. § 59.03(2) for Counties and Wis. Stat. § 66.0301(2) for all other municipalities and local government entities: Since 1927, for Wis. Stat. § 59.03 (formerly s. 59.083) and since 1939, for Wis. Stat. § 66.0301 (formerly § 66.30), the Legislature authorizes broad discretion and flexibility to municipalities (and many other entities) to reach cooperation agreements subject only to the lawful powers and duties of the contracting municipalities. Section 66.0301 "shall be interpreted liberally in favor of cooperative action between municipalities and between municipalities and Indian tribes and bands in this state." § 66.0301(2).

2. Agreements under these statutes essentially operate as contracts. See, e.g., Racine v. Town of Mt. Pleasant, 61 Wis. 2d 495, 213 N.W.2d 60 (1973) ("Any municipality may contract with another municipality for the receipt or furnishing of services or the joint exercise of any power or duty required or authorized by statute." The relationship of the town and the city under such an arrangement is strictly that of contracting parties); Village of McFarland v. Town of Dunn, 82 Wis.2d 469, 263 N.W.2d 167 (1978) (extending to contracts to provide law enforcement services under Wis. Stat. § 66.0301).

### C. Legal Authority Involving Jurisdictional Issues for Law Enforcement Activity:

1. **General Rule:** The general rule is that officers of particular counties or municipalities have no authority to arrest, as officers, outside of the geographical or political subdivision in which they are officers. *See* Brodhead, D & Lafave, W, *Arrest Without Warrant in Wisconsin*, 1959 Wis. L. Rev. 489.

2. **As a Private Citizen:** In the absence of statutory or common law authority, arrests made outside the boundaries of the political subdivision would be as a private citizen subjecting the officers to liability imposed on any person who acts without the protection of official capacity. *See* Otis, Municipal Corporations, *Powers of Town Officers*, 1947 Wis. L. Rev. 401; *City of Waukesha v. Gorz*, 166 Wis.2d 243, 479 N.W.2d 221 (App. 1991) (an officer traveling outside his or her jurisdiction may have the authority to stop and detain as a private citizen for crimes committed in the officer's presence).

3. **Arrests Outside of Requests for or Agreements for Assistance:**

   a. Arrests under Fresh Pursuit

      - For purposes of civil and criminal liability, any peace officer outside his or her territorial jurisdiction is considered to be acting in an official capacity, while in fresh pursuit, making the arrest or transporting. Wis. Stat. §175.40(3).

      - Officer may follow and arrest when in "fresh pursuit" if he or she has acted:

         i. without unnecessary delay;

         ii. where pursuit is continuous and uninterrupted; and

         iii. where time from commission of offense and commencement of pursuit is reasonable. *See City of Brookfield v. Collar*, 148 Wis.2d 839, 843, 436 N.W.2d 911 (Ct. App. 1989) (third factor was "very short, spanning several minutes at most.") *See also State v. Haynes*, 2001 WI App 266, 248 Wis. 2d 724, 638 N.W.2d 82 (In addition to issuing a citation for an observed violation, an officer, after observing a traffic violation and pursuing the defendant into another jurisdiction where the stop was made, was entitled to question the defendant beyond the purpose for which the stop was made and to issue citations for other violations when additional suspicious factors came to the officer's attention during the stop.).

   b. Officers whose jurisdiction may have a boundary highway are authorized to enforce the law on the entire width or intersection of the highway. Wis. Stat. § 175.40(4); *City of Brookfield v. Berghauer*, 170 Wis. 2d 603, 489 N.W. 2d 695 (App. 1992) (this subsection permits enforcement of one municipality's ordinance on the entire width of a boundary highway).

c. Emergencies/Felonies

- Officers may arrest or provide aid and assistance anywhere in the state if on duty and on official business, if taking action that would be authorized in their territorial jurisdiction and when responding to an emergency situation that poses a significant threat to life or bodily harm or acts that the officer believes, on reasonable grounds, constitute a felony. Wis. Stat. § 175.40(6)(a).

- The employing agency must adopt policies and the officer must comply with those policies, including an agency policy on notification to and cooperation with the law enforcement agency of another jurisdiction regarding arrests made and other actions taken in the other jurisdiction. Wis. Stat. §175.40(6)(b) & (d).

- For purposes of civil and criminal liability such officers are considered to be acting in an official capacity. §175.40(6)(c).

4. **Mutual Assistance Statutes:**

a. Wis. Stat. § 66.0313 – "Law Enforcement; Mutual Assistance":

- Chapter 380 of Laws of 1947 created Wis. Stat. § 66.0513 to assure officers acting outside their authorized jurisdiction would be paid wages and benefits. The request for the legislation came from the Milwaukee Policeman's Association. The bill was to "provide that peace officers who are required to serve outside the city, village or town limits shall be fully protected as to wage salary, pension and service rights…."

- "Law enforcement agency" has the meaning given in § 165.83(1)(b) and includes tribal law enforcement agency. Under § 165.83(1)(b), "law enforcement agency" means a governmental unit of one or more persons employed full time by the state or a political subdivision of the state for the purpose of preventing and detecting crime and enforcing state laws or local ordinances, employees of which unit are authorized to make arrests for crimes while acting within the scope of their authority."

- The operative language is under § 66.0313(2): "Except as provided in sub. (4), upon the request of any law enforcement agency, including county law enforcement agencies as provided in s. 59.28 (2), the law enforcement personnel of any other law enforcement agency may assist the requesting agency within the latter's jurisdiction, notwithstanding any other jurisdictional provision. For purposes of ss. 895.35 and 895.46, law enforcement personnel, while acting in response to a request for assistance, shall be deemed employees of the requesting agency and, to the extent that

those sections apply to law enforcement personnel and a law enforcement agency acting under or affected by this section, ss. 895.35 and 895.46 shall apply to tribal law enforcement personnel and a tribal law enforcement agency acting under or affected by this section." Thus, under the mutual aid statute, the requesting agency is responsible for defending a responding officer in a civil action arising out of the officer's response and for indemnifying the officer for the amount of any civil penalties imposed or damages awarded in such an action. The responding agency is responsible for personnel costs (such as the salary and benefits of the responding officer) and other costs (such as damage to equipment), but may bill the requesting agency for these costs.

b. Section 895.35(1) covers reimbursement for expenses: "Whenever in any city, town, village, school district, technical college district or county charges of any kind are filed or an action is brought against any officer thereof in the officer's official capacity, or to subject any such officer, whether or not the officer is being compensated on a salary basis, to a personal liability growing out of the performance of official duties, and such charges or such action is discontinued or dismissed or such matter is determined favorably to such officer, or such officer is reinstated, or in case such officer, without fault on the officer's part, is subjected to a personal liability as aforesaid, such city, town, village, school district, technical college district or county may pay all reasonable expenses which such officer necessarily expended by reason thereof. Such expenses may likewise be paid, even though decided adversely to such officer, where it appears from the certificate of the trial judge that the action involved the constitutionality of a statute, not theretofore construed, relating to the performance of the official duties of said officer."

c. Wis. Stat. § 66.0513 – "Police Pay When Acting Outside County or Municipality":

- Subsection 1 states: "Any chief of police, sheriff, deputy sheriff, county traffic officer or other peace officer of any city, county, village or town, who is required by command of the governor, sheriff or other superior authority to maintain the peace, or who responds to the request of the authorities of another municipality, to perform police or peace duties outside territorial limits of the city, county, village or town where the officer is employed, is entitled to the same wage, salary, pension, worker's compensation, and all other service rights for this service as for service rendered within the limits of the city, county, village or town where regularly employed."

- Subsection 2 states: "All wage and disability payments, pension and worker's compensation claims, damage to equipment and clothing, and medical expense arising under sub. (1) shall be paid by the city, county, village or town regularly employing the officer. Upon making the payment the city, county, village or town shall be reimbursed by the state, county or other political subdivision whose officer or agent commanded the services out of which the payments arose."

**5. <u>Fourth Amendment Allows Broad Law Enforcement Activities</u>:**

a. The law permits officers to make warrantless arrests, searches and seizures if they have probable cause. Officers have probable cause to arrest if the facts and circumstances within their knowledge were sufficient to warrant a reasonably prudent man in believing the suspect had violated the law. Determining probable cause requires a consideration of the totality of the circumstances. See *Purtell v. Mason*, 527 F.3d 615 (7th Cir. 2008) (probable cause barred § 1983 claim); *Maryland v. Pringle*, 540 U.S. 366, 371 (2003) (probable cause standard is a "practical, nontechnical conception" that deals with the "factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians act" and is "a fluid concept" that is "not readily, or even usefully reduced to a neat set of legal rules.").

b. "If an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence, he may, without violating the Fourth Amendment, arrest the offender." *Atwater v. Lago Vista*, 532 U.S. 318, 354 (2001).

c. As to use of force, including deadly force, the Supreme Court rejected the existence of a "generic right to be free from excessive force, grounded . . . in basic principles of § 1983 jurisprudence." All claims that law enforcement officers have used excessive force – deadly or not – during an arrest are analyzed under the Fourth Amendment and its "reasonableness" standard. *Graham v. Connor*, 490 U.S. 386 (1989). Three factors are relevant in determining the reasonableness of force: (1) the severity of the crime at issue; (2) whether the suspect poses an immediate threat to the safety of the officers or others; and (3) whether a suspect is actively resisting or attempting to evade arrest by flight. *Id*. at 395. In articulating these factors, the Court did not state these were the only factors for the reasonableness inquiry. Reasonableness requires a balancing of interests, evaluating the circumstances present at the time of the officer's act, and allowing the officers some deference because they often must make "split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation." *Id*. "The Supreme Court further has counseled that it is reasonable for a law enforcement officer to use deadly force if an objectively reasonable officer in the same circumstances would conclude that the suspect posed a threat of death or serious physical injury to the officer or to others."

*Marion v. City of Corydon, Indiana*, 559 F.3d 700, 705 (7th Cir.2009), citing *Tennessee v. Garner*, 471 U.S. 1, 11–12 (1985).

d. Certain policies and practices give rise to § 1983 liability, including failure to adopt policies necessary to prevent constitutional violations. The failure to conduct an internal investigation into an officer involved in a shooting may be de facto unconstitutional. See *Estate of Fields v. Nawotka*, 2008 WL 7467704, No. 03-CV-1450 (E.D. Wis. 2008). A municipality may be held liable for failing to adequately train its police officers "only where the failure to train amounts to deliberate indifference to the rights of persons with whom the police come into contact." *City of Canton v. Harris*, 489 U.S. 378, 388 (1989). Proof of deliberate indifference can take the form of either: (1) "in light of the duties assigned to specific officers or employees the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights that the policymakers of the city can reasonably be said to have been deliberately indifferent to the need"; or (2) a repeated pattern of constitutional violations makes "the need for further training . . . plainly obvious to the city policymakers." *Jenkins v. Bartlett*, 487 F.3d 482, 492 (7th Cir. 2007). A court may find deliberate indifference when a completed pattern of constitutional violations makes the need for further training plainly obvious to the city policy makers, such as where there is a failure to provide additional training or to exercise greater supervision in light of several incidents in which officers exercise deadly force.

6. **<u>Traffic Stops and Other Public Disturbances Involving Law Enforcement</u>:**

a. ***Jackson v. Bloomfield Police Dep't*, No. 17-C-1515, 2018 WL 5297819 (E.D. Wis. Oct. 25, 2018), aff'd, 764 F. App'x 557 (7th Cir. 2019):** Pro se plaintiff commenced an action under 42 U.S.C. § 1983 alleging that an officer of the Bloomfield Police Department illegally arrested him on private property for driving while intoxicated. Plaintiff also alleged that the officer stole money from him and falsified evidence of his guilt. However, plaintiff did not pursue a claim for damages against the officer in his individual capacity. Instead, plaintiff pursued claims against other individuals and entities that were associated with his arrest and subsequent prosecution, namely, the Bloomfield Police Department and the chief of the department. Ultimately, the Bloomfield Police Department was dismissed as a defendant in the case.

b. ***Cesar Jesus Gonzalo Del Rio v. Marshall Police Department*, Case No. 20-cv-493 (W.D. Wis. 6/3/21):** On May 20, 2020, defendant Marshall Police Department ("MPD") Officer Joseph Nickel pulled over a vehicle driven by plaintiff Cesar Jesus Gonzalo Del Rio (hereinafter "Gonzalo"), believing that he lacked a valid driver's license. That traffic stop lasted approximately 30 minutes, during most of which Officer Nickel tried to obtain, and Gonzalo refused to provide, his license. Instead, Gonzalo repeatedly charged Nickel with stopping him unjustifiably. Ultimately, however, Gonzalo provided his driver's

license; Nickel confirmed that his license was suspended; and Gonzalo was cited for operating with a suspended license in violation of Wis. Stat. § 343.44. The entirety of Nickel's interaction with Gonzalo was captured by his body camera. In the court's dismissal order, the court stated: "Perhaps plaintiff Gonzalo is right in immediately assuming that Officer Nickel intentionally picked him out for a license check because of his race, but he offers no evidence that Officer Nickel had engaged in such selective enforcement, on May 20 in particular, or when engaged in routine license plate checks more generally. Nor are his last-minute, conclusory allegations in a proposed amended complaint sufficient to support a finding that Officer Nickel's actions on May 20 was a larger practice of harassment by the MPD. In the end, since the evidence before this court on summary judgment does not permit a reasonable jury to find that Nickel lacked reasonable suspicion to initiate the traffic stop nor that he unnecessarily lengthened the traffic stop, the court will grant defendants' motion for summary judgment in full, enter judgment in defendants' favor and close this case.").

c. ***Gonzalez v. Village of West Milwaukee and City of Chilton*, 2010 WL 1904977 (E.D. Wis. May 11, 2010), aff'd, 671 F.3d 649 (2012):** In *Gonzalez*, the plaintiff openly carried a handgun on a thigh holster in a Menards in West Milwaukee and on another occasion in a Walmart in Chilton. In both cases, it is alleged that management called police who responded to each store, detained the plaintiff and arrested him for disorderly conduct. In both cases, plaintiff alleged that stopping, detaining and arresting violated the Fourth Amendment. The court held that the officers had probable cause. "Both officers had reason to believe that plaintiff had or was engaged in disruptive conduct under circumstances in which such conduce tended to provoke a disturbance. No reasonable person would dispute that waling into a retail store openly carrying a firearm is highly disruptive conduct which is virtually certain to create a disturbance. This is so because when employees and shoppers in retail stores see a person carrying a lethal weapon, they are likely to be frightened and possibly even panicky. Many employees and shoppers are to think that the person with the gun is either deranged or about to commit a felony or both. Further, it is almost certain that someone will call the police. And when police respond to a "man with a gun" call, they have no idea what the armed individual's intentions are. The volatility inherent in such a situation could easily lead to someone being seriously injured or killed." On appeal, the Seventh Circuit noted that "the district court's probable-cause holding did not adequately account for the effect of the state constitutional right to bear arms on the crime of disorderly conduct in Wisconsin." Although the court noted that "the circumstances of Gonzalez's openly carrying a firearm were on the whole enough to give the officers reason to believe that persons of ordinary and reasonable sensibility would be disturbed," it also stated that matters were "not so straightforward. . . ." Specifically, the court referred to the unsettled nature of Wisconsin's law on openly carrying a firearm at the time of Gonzalez's arrest. Instead, the court held that qualified immunity was the proper basis on

which to decide the probable cause issue, holding that "[t]o the extent that any mistakes about probable cause were made, they were entirely understandable."

**7. <u>Other Law Enforcement Litigation Examples for Towns</u>:**

a. ***Cyrus v. Town of Mukwonago*, 624 F.3d 856 (7th Cir. 2010):** Parents of an arrestee brought § 1983 action against the Town of Mukwonago and one of its lieutenant officers alleging the arrestee's death was caused by excessive force in violation of the Fourth Amendment. The district court granted the defendants' motion for summary judgment, holding that the amount of force used to apprehend Cyrus was reasonable under the circumstances. The Seventh Circuit reversed, holding that there were material facts in dispute about the extent to which the arrestee attempted to evade officers and the actual amount of force the lieutenant used to bring about his arrest. The evidence conflicted, most importantly, on how many times the arrestee was tased. The lieutenant testified that he deployed his Taser five or six times, and the autopsy report confirmed as much. But the Taser's internal computer registered twelve trigger pulls, suggesting that more than six shocks may have been used. On a Fourth Amendment excessive-force claim, the court held that these are key factual disputes not susceptible of resolution on summary judgment.

b. ***Easley v. Kirmsee*, 235 F. Supp. 2d 945 (E.D. Wis. 2002), aff'd, 382 F.3d 693 (7th Cir. 2004):** Christopher Easley was shot and killed by Town of Geneva police officer, David Kirmsee. At the time of the shooting, Easley was acting under the influence of alcohol and had cut himself several times with a knife, resulting in loss of blood. Law enforcement officers from Lake Geneva, Geneva Township, Linn Township, and Walworth County had been dispatched to the Easley home in response to a 911 call from Christopher's mother Cynthia. When the officers located Christopher in a subdivision in the City of Geneva, they ordered him to drop the knife he was displaying. When Christopher charged Officer Kirmsee with the knife, the officer shot him. The deceased's mother filed a § 1983 lawsuit against Kirmsee and Geneva Township, among others, in which she claimed the Defendants violated Christopher's rights under the Fourth and Eighth Amendments and the Equal Protection Clause of the Fourteenth Amendment. She also claimed that they were liable for battery, for breach of the duty to hire, train, and supervise, and for wrongful death under Wisconsin law. *Id.* The Defendants denied liability and moved for summary judgment on the grounds that no material facts were in dispute and that they are entitled to judgment as a matter of law. The court agreed, and found that under the undisputed facts, the defendants were entitled to summary judgment. Regarding the Fourth Amendment claim in particular, the court found that all the officer defendants, in their individual capacities, were entitled to summary judgment based on qualified immunity because the force used against Easley was reasonable and the officers did not violate the his Fourth Amendment rights. *Id.* at 964-65.

c. ***Jacoby v. Dudley*, 2014 WI App 120, 2014 WL 4976611 (unpublished):** Plaintiff was being followed by a man who had been chasing him and threatening to kill him. Plaintiff called 911 and subsequently stopped a police officer who happened to be traveling to another call. The officer told plaintiff to wait because another squad was on its way and then left. After the officer left, the stalker came out, causing plaintiff to run into the road and collide with a car. According to the police department's code of conduct, police officers are required to "place the safety of others before our own and accept our moral responsibility to take action against injustice and wrongdoing. Police members are expected to take prudent risks on behalf of the public." Officers were also required to "treat the public . . . with courtesy and professionalism." The officer violated a ministerial duty in how he failed to respond to plaintiff. The officer made no effort to determine the details of the threats. By example, he did not even ask plaintiff whether he knew the man threatening him.

**8. <u>Public Meetings Issues Involving Law Enforcement</u>:**

a. In *Sandefur v. Village of Hanover Park*¸ a correctional officer with a handgun concealed in his jacket (Sandefur) addressed a village board at a public meeting in a "very animated" way. When village officials became aware of the handgun, two village police officers escorted him out of the meeting where they searched him, examined his credentials and removed his handgun. During this search, Sandefur was "a bit loud," upset, and "agitated," and he was ultimately told to leave the premises under threat of arrest for trespassing and was prohibited from finishing his presentation before the board. The court noted that it was well-settled that the village had significant interest in maintaining order and public safety at its meetings, thus the initial decision to remove Sandefur was appropriate. The court also held the decision to keep Sandefur from the meeting to be appropriate because allowing a loud, agitated, and armed back into the meeting could have further disrupted the meeting. Additionally, the village left sufficient alternative channels of communication open when it told Sandefur he could speak at the next meeting or could write or e-mail the board members. 10-CV-5851, 2012 WL 2062594 (N.D. Ill. June 7, 2012).

In *Jones v. Heyman*, the mayor attempted to confine a speaker to an agenda item in a city commission meeting, and had the speaker removed by police when the speaker appeared to become disruptive; the court held that the mayor's action constituted a reasonable time, place, and manner regulation, and did not violate the speaker's First Amendment rights. 888 F.2d 1328 (11th Cir. 1989).

**9. <u>Land Use Involving Law Enforcement -- Hoeppner v. the Town of Stettin and Hoeppner v. Marathon County</u>:**

Roger and Marjorie Hoeppner were involved in litigation involving the Town of Stettin from 2008-2014 over violations of the Town's zoning ordinances and to abate a nuisance. The Town had filed a lawsuit against the Hoeppners seeking judicial enforcement of Town ordinances related to pieces of farm equipment, vehicles, and other rubbish on the Hoeppners' property. On multiple occasions, the circuit court ordered the Hoeppners' compliance with Town ordinances and court orders – even going so far as to hold Roger Hoeppner in contempt and ordering Marathon County to assist in the removal of rubbish from the Hoeppners' property.

The Hoeppners continued to have conflicts with the Town of Stettin outside of the courtroom – and the Marathon County Sheriff's Office was often called to settle these disputes. During a court-ordered clean-up of the property in 2011 (assisted by MCSO) Roger Hoeppner was arrested for obstructing and resisting an officer after becoming angry and belligerent and refusing to remove his vehicle, which he had parked in the middle of the eastbound lane outside his home. During another court-ordered inspection of the property in 2012, Scott Hoeppner was arrested for disorderly conduct after threatening officers. Scott was inside the home and extended his arms in such a way as to gesture that he was shooting a gun at officers. On at least twelve occasions, MCSO was called to Town of Stettin Town meetings to provide additional security due to incidents involving Roger and Scott Hoeppner.

The Hoeppners continued to resist attempts by the Town – and by the court – to bring his property into compliance. This culminated with an $86,000 judgment against the Hoeppners and a court-issued Writ of Execution, which commanded Marathon County Sheriff's Office to remove large pieces of property from the Hoeppners' land. This included forklifts, cars, tractors, lawn mowers, semi-trailers and other large items.

On October 2, 2014, the Sheriff's Department sought to satisfy the Writ of Execution, deploying multiple deputies and using a Bearcat, among other vehicles. Two deputies attempted contact with the Hoeppners at the residence while the remaining officers and Bearcat remain in the staging area. No contact was made but movement was seen inside the home. Roger Hoeppner called 9-1-1 and was informed that officers were there to satisfy the Writ. Hoeppner came out of his home, walked past the deputies and began taking photographs of the officers, pointing fingers, and yelling. He refused to calm down and stop walking away from them and, consequently, he was arrested for disorderly conduct. MCSO deputies seize Roger's phone and camera. During Roger's transport in a MCSO squad car, he suggests that he could pay the judgment if deputies take him to a bank. After consultation, he was taken to the bank and he paid the judgment.

In the ensuing federal civil rights lawsuit, four claims were brought against MCSO: (1) defendants deployed unreasonable physical force in enforcing the writ of execution; (2) deputies arrested him without probable cause; (3) defendants seized and destroyed his cell phone and camera; and (4) defendants confiscated his cell phone and camera to prevent him from recording their activities (in violation of the First Amendment). The court found triable issues of facts on most of the claims, but dismissed the claim involving the level of force used in enforcing the writ of execution.

On the legal defense of qualified immunity, the court found plaintiffs had failed to show that the defendants violated clearly established law that prohibited the level of force deployed in executing the Writ. However, qualified immunity did not protect the deputies on the remaining claims because the court found disputes of fact about Hoeppner's conduct that day. "If I construe the facts in plaintiff's favor, a reasonable jury could find that defendants did not have even arguable probable cause to arrest plaintiff for disorderly conduct. At the time, it was clearly established that Wisconsin's disorderly conduct laws criminalize only violent, abusive, indecent, profane, boisterous or unreasonably loud conduct where there is a 'real possibility that this disturbance or disruption will spill over and disrupt the peace, order or safety of the surrounding community as well.'… Under plaintiff's version of events, no reasonable officer would have concluded that plaintiff was engaging in disorderly conduct. Therefore, defendants are not entitled to qualified immunity on plaintiff's false arrest claim." Similarly, on the First Amendment claim, the court ruled: "Plaintiff denies that he was interfering with the deputies' attempts to enforce the writ and says that his picture-taking presented no safety risk at all. If plaintiff's version of events is true, defendants' confiscation of plaintiff's property and his subsequent arrest was not a reasonable time, place and manner restriction and violated his First Amendment rights."

**10. <u>Traffic Control Involving Law Enforcement</u>:**

a. ***Lodl v. Progressive N. Ins. Co.*, 2002 WI 71, 253 Wis. 2d 323:** A passenger in a vehicle that was struck broadside in an intersection without operative traffic control signals during a storm brought an action against the Town of Pewaukee, a town police officer who was present at time of accident, and the Town's insurer. The Waukesha County Circuit Court granted defendants' motion for summary judgment, on statutory immunity grounds. The passenger appealed. The Court of Appeals reversed and remanded with directions. The Wisconsin Supreme Court ultimately held that the situation at the intersection, while admittedly dangerous, nonetheless allowed for the exercise of officer discretion as to the mode of response, and therefore did not give rise to a ministerial duty to perform manual traffic control. Accordingly, the known danger exception to municipal and public officer immunity under Wis. Stat. § 893.80(4) did not apply.

## II. THE WELLSPRING OF THE CURRENT NATIONAL DEBATE INVOLVING LAW ENFORCEMENT

**A.** High profile police shootings and other deaths in custody, from Michael Brown (St. Louis) and Eric Garner (New York City) in 2014 to Breonna Taylor (Louisville), George Floyd (Minneapolis) and Jacob Blake (Kenosha) in 2020.

**B.** "What we are dealing with now is directly connected to the past and the present. It has been a long trail of mistreatment and devaluation of our lives that has led to the emotional outbursts you've seen on television. …Police brutality has been our lived experience since slave patrols turned into police departments. Black people have been dealing with police brutality in Milwaukee for decades. …. These things add up to constant distrust and anger at the police department in our city." "*We Must Listen Carefully to What Our Community is Saying*," The Municipality Magazine, Reggie Jackson (Wisconsin Historian and Co-Owner of Nurturing Diversity Partners) (League of Wisconsin Municipalities August 2020)

**C.** Contributing Factors: growth of criminal laws and police officer responsibilities, social media and smartphones, protests, media and watchdog accounts and databases, politics, state statutory requirements for independent investigations, socioeconomic issues, as well as the growing awareness of police practices, legal standards governing use of force and qualified immunity and the impact of mental health, the war on drugs and incarceration.

**D.** Police officers provide citizens with services that go well-beyond enforcing laws or maintaining public safety and order: around-the-clock emergency responders, mediators, referral agents, counselors, youth mentors, crime prevention actors and much more. Growing need to effectively respond to individuals with mental illnesses. Because police are not mental health experts, and because an individual's mental/emotional issue may not be easily identifiable, the possibility that police officers will be unaware that they are encountering a mentally ill subject is high—especially in rapidly evolving circumstances.

**E.** Growth of various social and/or political movements and nonprofit centers for advocacy, reform and justice – from Black Lives Matter to Change.org.

## III. CURRENT LITIGATION TRENDS AGAINST LAW ENFORCEMENT

**A.** Use of Force: deadly force, taser, decentralizations/takedowns, strikes
**B.** First Amendment activity
**C.** Other police work/activity: Stops, seizures, detentions; high speed pursuits

## IV. CALLS TO "DEFUND THE POLICE"

**A.** The concept of defunding is not new. For years, such calls have been made at the national level for defunding Customs Enforcement (ICE) and Customs and Border Protection (CBP).

**B.** Differing viewpoints/meanings:

1. For some, it means withdrawing all police services, whether towards full elimination or to re-create new law enforcement services or intermunicipal agencies. See, e.g., "Can Police be Defunded?," Allison Dikanovic, Wisconsin Center for Investigative Journalism (7/26/20) ("But many local and national advocates eye a more ambitious goal: to abolish police over time. Abolitionists see reallocation as the first step toward dismantling policing and prison institutions, replacing them with neighborhood-based public safety models.") (available at https://urbanmilwaukee.com/2020/07/26/can-police-be-defunded/).

2. For others, it means shifting resources to other budget priorities – like mental health, crisis intervention or workforce development – that are perceived to be in need of increased funding and perceived to be more effective in addressing crime or poverty.

**C.** Some statistics from the Wisconsin Policy Forum ("A High Level Look at Police Funding Trends in Wisconsin," Focus #12, June 2020 available at https://wispolicyforum.org/research/a-high-level-look-at-police-funding-trends-in-wisconsin/):

1. For Madison and Milwaukee, "the vast majority of spending is on salaries, wages, and benefits for department staff. Consideration of that spending"

2. "From 2015 to 2020, Madison's police department operating budget increased by $18.5 million (27.1%), from $68.3 million to $86.8 million, compared to an inflation increase of just over 10%. Of that increase, $15.1 million (81.9%) was accounted for by increases to salaries, wages, and benefits of all staff. Similarly, across the same years, Milwaukee increased its budgeted police operations spending by $48.8 million (19.6%), from $248.6 million to $297.4 million (see Figure 4). Spending on salaries, wages, and benefits of all staff increased by $50.4 million to comprise 94.6% of total department operating spending, accounting for more than the total increase in spending – meaning that other items such as special funds, equipment purchases, and general operating expenditures have seen slight declines over that time period."

3. For Wisconsin in general, "over the past three decades, law enforcement and police protection spending have continued to be the foremost spending priority in municipal budgets, receiving one out of every five operating and capital dollars spent by municipalities in the state. We have shown further that law enforcement spending as a percentage of overall municipal spending in Wisconsin grew by 2.2 percentage points from 1986 to 2018."

4. "In 1986, municipalities spent about $353 million on law enforcement (both operating and capital); this rose to $1.28 billion in 2018, an increase of 262% in raw dollars and nearly 60% after accounting for inflation."

5. "Law enforcement spending comprised 17.8% of total municipal operating and capital spending in 1986 and was somewhat higher at 20.0% in 2018, although the percentage has trended downward since peaking at 22.1% in 2013"

6. "In 1986, counties spent just under $127 million on law enforcement, or 9.1% of total spending (both operating and capital). Health and human services (42.3%) and general government spending (16.2%) both took up a larger portion of county budgets statewide. By 2018, law enforcement spending rose to $549 million and 10.6% of county budgets"

7. Comparing Wisconsin against national statistics, "Once all local governments are accounted for, including entities like counties, school districts, and special districts, the gap narrows: 6.6% of all local government operating spending in Wisconsin goes to police protection versus 6.3% nationwide. If state spending is considered, then the trend reverses: 3.7% of all state and local operating spending in Wisconsin goes to police protection, compared to 4.0% nationwide. The takeaway is that Wisconsin's municipal governments appear to devote a higher proportion of their budgets to police than the national average, but this is balanced by Wisconsin's lower proportional spending at the county and state levels."

8. "Once other local governments are considered, police protection in Wisconsin ranks third in local spending behind K-12 education and public welfare. This is consistent with the picture in the rest of the country as well, as police protection ranks second, third, or fourth as a proportion of all local budgets in 45 of 50 states."

**D. Sheriff -- an Elected Constitutional Officer:** The Office of Sheriff is created by the Wisconsin Constitution (Article VI, Section 4). It is an elected office in each county with a four-year term. Consequently, the Sheriff is a constitutional officer who is the Chief Law Enforcement Officer of the County. "If the duty is one of those immemorial principal and important duties that characterized and distinguished the office of sheriff at common law, the sheriff 'chooses his own ways and means of performing it.'" *See Wisconsin Prof'l Police Ass'n v. Dane County*, 149 Wis. 2d 699, 710, 439 N.W.2d 625 (Ct. App. 1989). For example, the sheriff's general law enforcement powers including the maintenance of "law and order" are constitutionally protected. *Manitowoc County v. Local* 986B, 168 Wis. 2d 819, 830, 484 N.W.2d 534 (1992) (per curiam)

(reassignment of deputy from patrol to undercover drug investigations); *Washington County v. Deputy Sheriff's Ass'n,* 192 Wis. 2d 728, 741, 531 N.W.2d 468 (Ct. App. 1995) (assigning municipal officers to patrol Harleyfest is part of the sheriff's constitutionally protected duties). Such constitutionally protected duties would also include execution of or effectuation of orders issued by the courts is part of the sheriff's constitutionally protected duty of attendance upon the court, as well as transportation of prisoners. "Duties of the sheriff that are excluded from constitutional protection have been described as 'internal management and administrative duties' or 'mundane and common administrative duties.' Examples of "internal management and administrative duties" are: (1) preparation of food for inmates in the jail; (2) hiring and firing procedures of deputy sheriffs; (3) day-to-day scheduling of overtime and emergency coverage and limited-term employee coverage other than court officers; and (4) money-generating transport of federal prisoners in the county's jail under a rental contract with the federal government." *Washington County v. Washington County Deputy Sheriff's Association*, 2009 WI App 116, ¶ 22, 320 Wis. 2d 570, 772 N.W.2d 697

## E. Local Police Departments:

1. For cities, they cannot abolish its police department unless they contract with the sheriff to provide "law enforcement services in all parts of the city," per Wis. Stat. § 62.13(2s). Among the issues to be addressed (by Council Resolution), the contract with the sheriff must include "[a] description of the level of law enforcement and the number of deputies that the county will provide to the city and the amount that the city will pay for the services in excess of the city's portion of the county's law enforcement levy." § 62.13(2s)(c)(2). Under Wis. Stat. §§ 62.13(2e), (2g) and (2m), a city may provide police services by a combined protective services department, contract for police protective services or create a joint police department with another city.

2. For villages, the statutes similarly require police protective services. Abolishing a police department can be found in Wis. Stat. § 61.65(1)(a)(4) and similarly requires contracting the county sheriff for such services. The Village would have to follow the rules applicable to cities under § 62.13(2s). Villages may also have a marshal with law enforcement duties, Wis. Stat. § 61.28(2), as well as constables empowered to act similarly, Wis. Stat. § 61.29(3), and their discontinuation is under Wis. Stat. § 61.195.

3. For towns, the statutes are unclear about abolishing a police department. A town cannot "establish" a police department without official action. *Christian v. Town of Emmett*, 163 Wis. 2d 277, 471 N.W.2d 252 (Ct. App. 1991); Wis. Stat. § 60.56(1). It stands to reason that abolishing the police department requires equal action. As a general rule, a change or termination of a previous action by a governing body must be accomplished by means of an equal or greater "dignity." A Town Constable can have law enforcement duties, per § 60.22(4), and "[a]bolition of the office is effective at the end of the term of the person serving in the office." § 60.10(1)(b)(4).

**F.** "Various persons or bodies share responsibility and authority for oversight of Wisconsin police departments: The chief executive (mayor or manager or village board); the police chief; the police and fire commission if statutorily required or, if not statutorily required, something that approximates the police and fire commission for disciplinary purposes; and the governing body (common council or village board)." "Oversight of Municipal Police Departments in Wisconsin," The Municipality Magazine, Claire Silverman (Legal Counsel), League of Wisconsin Municipalities (August 2020) at p. 23.

**G.** "Generally speaking, the governing body has wide latitude to enact legislation governing the police department and to exercise budgetary control over the department but should be cautious in legislating on technical matters where law enforcement has special expertise or training without understanding the effect of any laws on the department. Additionally, some matters may be beyond the purview of the governing body or subject to special procedures." *Id*. at p. 25. "While municipal governing bodies have great latitude to shape and guide police departments and set priorities through legislation and funding, their authority is also limited in important ways. Most notably, governing bodies cannot exercise powers reserved to the police and fire commission." *Id*.

**H. Police and Fire Commission (PFC):** PFCs date back to 1885, with Milwaukee being one of the first in the country. "One of the primary purposes for the legislative act providing for the creation of the board was to remove the administration of fire and police departments from city politics and to place it in the hands of impartial and nonpolitical citizen boards." *Conway v. Bd. of Police and Fire Comm'rs of City of Madison*, 2003 WI 53, ¶ 41, 262 Wis. 2d 1, 662 N.W.2d 335 (2003); *State v. Hartwig*, 201 Wis. 450, 230 N.W. 42 (1930) ("the legislative act providing for the creation of the fire and police commission was enacted for the purpose of taking the administration of fire and police departments out of city politics, in order that test of fitness for the position of fireman and policeman might be ability to serve the city, rather than ability to advance the political interests of the administration in power."). Wisconsin Statute § 62.13(1) and (2)(a) require cities with populations over 4000 to establish a board of police and fire commissioners. Similar rules apply to villages. § 61.65(1)(am)(1). "It is essentially a civil service body with exclusive jurisdiction over hiring, promotions, and discipline16 of police officers, firefighters, and department chiefs." "Oversight of Municipal Police Departments in Wisconsin," Silverman at p. 25. PFC's may have "optional powers," if approved by referendum, "[t]o organize and supervise the fire and police, or combined protective services, departments and to prescribe rules and regulations for their control and management." § 62.13(6)(a)(1).

## V. QUALIFIED IMMUNITY

### A. Nature of Qualified Immunity Doctrine:

Qualified immunity is a judicially created legal doctrine that shields government officials performing discretionary duties from civil liability in cases involving the deprivation of statutory or constitutional rights. Government officials are entitled to qualified immunity so long as their actions do not violate "clearly established statutory or constitutional rights of which a reasonable person would have known." Qualified immunity reflects the Supreme Court's balance between the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they act reasonably.

Qualified immunity is available for local and state government officials (administrators, managers, elected officials, law enforcement officers, social workers, and others).

### B. History of Qualified Immunity Doctrine:

In the wake of the Civil War during the Reconstruction Era, Congress sought to respond to "the reign of terror imposed by the Klan upon black citizens and their white sympathizers in the Southern States." *Briscoe v. LaHue*, 460 U. S. 325, 337 (1983). Congress passed a statute variously known as the "Ku Klux Act of 1871, the Civil Rights Act of 1871, and the Enforcement Act of 1871." Section 1, now codified, as amended, at 42 U. S. C. § 1983, provided:

> "any person who, under color of any law, statute, ordinance, regulation, custom, or usage of any State, shall subject, or cause to be subjected, any person within the jurisdiction of the United States to the deprivation of any rights, privileges, or immunities secured by the Constitution of the United States, shall . . . be liable to the party injured in any action at law, suit in equity, or other proper proceeding for redress . . . ."

In the 1950s, the Supreme Court first began to ask whether the common law in 1871 would have accorded immunity to an officer for a tort analogous to the plaintiff's claim under § 1983. The Court recognized absolute immunity for legislators because it concluded Congress had not "impinge[d] on a tradition [of legislative immunity] so well grounded in history and reason by covert inclusion in the general language" of § 1983. *Tenney v. Brandhove*, 341 U. S. 367, 376 (1951). It was not until 1967 that the Court extended a qualified defense of good faith and probable cause to police officers sued for unconstitutional arrest and detention. *Pierson v. Ray*, 386 U. S. 547, 557 (1967). In *Pierson*, the Court held that a police officer acting in good faith was not liable for a false arrest. The Warren Court had two reasons for giving qualified immunity in that case. First, the Court wrote that courts had been granting qualified immunity for many years prior to § 1983, and that Congress did not specifically ban qualified immunity in that section. The Warren Court then expanded that qualified immunity to acts undertaken by public officials in "good faith." Second, and perhaps more important to the Warren Court, the Supreme Court feared that police would not seek to arrest suspects or do their jobs as diligently if they feared being held liable. "A policeman's lot is not so unhappy that he must choose between being charged with dereliction of

duty if he does not arrest when he has probable cause, and being mulcted in damages if he does," Chief Justice Earl Warren wrote. *Pierson*, 386 U.S. at 555.

Fifteen years later in *Harlow v. Fitzgerald*, the Court—while again recognizing that the common law afforded government officials some level of immunity to "shield them from undue interference with their duties and from potentially disabling threats of liability"—distinguished qualified immunity from absolute immunity. The Supreme Court explained that absolute immunity provides complete immunity from civil liability and is usually extended to, for example, the President of the United States, legislators, judges, and prosecutors acting in their official duties. Absolute immunity, according to the Court, provides high-level officials a "greater protection than those with less complex discretionary responsibilities." However, for other government officials, qualified immunity is still necessary, in the Court's view, to balance "the importance of a damages remedy to protect the rights of citizens" with "the need to protect officials who are required to exercise their discretion and the related public interest in encouraging the vigorous exercise of official authority." *Harlow*, 457 U.S. 800, 807 (1982). Thus, the Court replaced the previous "good faith" test and established the modern "objective test," granting qualified immunity to those government officials whose conduct "does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Id.* at 818.

### C. <u>Legal Standard for Establishing Qualified Immunity</u>:

Whether a right is clearly established depends on whether the contours of a right are sufficiently clear so that every reasonable officer would have understood that what he or she is doing violates that right. When conducting this analysis, courts look to see whether it is beyond debate that existing legal precedent establishes the illegality of the conduct. In other words,

> The doctrine of qualified immunity shields officials from civil liability so long as their conduct "does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." A clearly established right is one that is "sufficiently clear that every reasonable official would have understood that what he is doing violates that right." "We do not require a case directly on point, but existing precedent must have placed the statutory or constitutional question beyond debate." "Put simply, qualified immunity protects all but the plainly incompetent or those who knowingly violate the law."

*Mullenix v. Luna*, 136 S. Ct. 305, 308 (2015) (*quoting*, in order, *Pearson*, 555 U.S. at 231; *Reichle v. Howards*, 132 S. Ct. 2088, 2093 (2012); *Ashcroft v. al-Kidd*, 131 S. Ct. 2074, 2083 (2011); *Malley v. Briggs*, 475 U.S. 335, 341 (1986)). Indeed, officials can still be on notice that their conduct violates established law even in novel factual circumstances. *Hope v. Pelzer*, 536 U.S. 730, 741 (2002). Especially when "the violation [is] so obvious that [the Court's] own [] cases give respondents fair warning that their conduct violated the Constitution. *Id.* See also *Safford Unified Sch. Dist. No. 1 v. Redding*, 557 U.S. 364, 377–78 (2009) ("officials can still be on notice that their conduct violates established law ... in novel factual circumstances."); *Leiser v. Kloth*, 933 F.3d 696, 702 (7th Cir. 2019), cert. denied, 140 S. Ct. 2722 (2020) ("If no existing precedent puts

the conduct beyond debate, we next consider if this is one of the rare cases, like *Hope*, where the state official's alleged conduct is so egregious that it is an obvious violation of a constitutional right."). Even then, the plaintiff must still show "some settled authority that would have shown a reasonable officer in [these officers'] position that [their] alleged actions violated the Constitution." *Leiser*, 933 F.3d at 702 (citing *Mullenix v. Luna*, 577 U.S. 7 (2015)). In other words, they must show that "a general constitutional rule already identified in the decisional law ... appl[ies] with obvious clarity to the specific conduct in question," *United States v. Lanier*, 520 U.S. 259, 271 (1997), so that "a reasonable person necessarily would have recognized it as a violation of the law," *Leiser*, 933 F.3d at 701.

### D. Current Debate Concerning Qualified Immunity:

United States Supreme Court Justice Clarence Thomas has recently advocated for reconsidering the Court's qualified immunity jurisprudence, arguing that the modern doctrine bears little resemblance to the common law immunity and instead represents a "freewheeling policy choice" that the Court lacks the power to make and usurps the role of Congress.[1] Similarly, Justice Sonia Sotomayor, dissenting in several cases in which the Court found officers were entitled to qualified immunity, expressed her disfavor with the modern approach, fearing its application essentially provides an absolute shield for law enforcement officers and "renders the protections of the Fourth Amendment hollow."[2] In fact, some statistics may support this hypothesis. According to one recent study, appellate courts have shown an increasing tendency to grant qualified immunity, particularly in excessive force cases. From 2005 to 2007, for example, 44 percent of courts favored police in excessive force cases. That number jumped to 57 percent in excessive force cases decided from 2017 to 2019.[3]

Critics say the doctrine has led to law enforcement officers being able to violate the rights of citizens without repercussion or accountability, that it makes the Fourth Amendment "hollow," and that the Supreme Court has created an unconstrained policy. Statistically in police excessive force cases, from 2005 to 2007, 44 percent of courts granted qualified immunity in excessive force cases. That number jumped to 57 percent in excessive force cases decided from 2017 to 2019. The critics say the fear of rampant lawsuits against police are overblown. Many municipalities indemnify their officers, meaning the city would pay for any settlement, not the officers themselves. The current doctrine as applied today in courts leads to hairsplitting and it is often impossible for plaintiffs to meet the burden.

Proponents emphasize the important role it plays in allowing law enforcement the flexibility to make judgment calls in rapidly evolving situations. And, without a liability shield, public officials would be constantly sued and second-guessed in courts. "Local governments are complex organizations that require expertise in personnel, planning, finance, and intergovernmental relations and an administrative structure that provides coordination of municipal services." https://www.wcma-wi.org/81/About-Professional-Municipal-Management. Government officials

*Special thanks to Marquette Law School Student Greg Procopio – 3L, Class 2022.

[1] *See*, *e.g.*, *Ziglar v. Abbasi et al.*, 137 S.Ct. 1843 (2017) (Thomas, J., dissenting); *Baxter v. Brad Bracey, et al.*, 140 S.Ct. 1862 (Mem) (2020) (Thomas, J., dissenting from the denial of certiorari).

[2] *See*, *e.g.*, *Kisela v. Hughes*, 138 S.Ct. 1148 (2018) (per curiam) (Sotomayor, J., dissenting).

[3] https://www.reuters.com/investigates/special-report/usa-police-immunity-scotus/

and employees, not just law enforcement, take comfort knowing the doctrine protects all but the plainly incompetent or those who knowingly violate the law, which gains some national traction because some jurisdictions may not indemnify, thereby leaving them at risk of personal financial liability.

Meanwhile, the individual states have started to take up the issue themselves. While states cannot modify qualified immunity at the federal level, they do have the authority to pass their own state-level civil rights laws—without qualified immunity. That is exactly the approach that Colorado took in June 2020. As part of its comprehensive "Law Enforcement Integrity and Accountability Act" (which passed by overwhelmingly bipartisan margins), Colorado created a civil action against law enforcement officers who violate people's constitutional rights, and expressly provided that "qualified immunity is not a defense to liability." A similar Bill has been signed into law in New Mexico as well, making it the second state in the nation to eliminate qualified immunity.[4] Illinois and California are also moving towards this end. As of April 23, 2021, Illinois House Bill 1727, known as "the Bad Apples in Law Enforcement Accountability Act," has been re-referred to the Legislative Rules Committee.[5] If passed, Illinois will be the third state to legislate qualified immunity out of existence. Likewise, the California Legislature has introduced a Bill that would amend its current Civil Code to eliminate qualified immunity.[6]

## VI. OTHER EFFECTS ON LOCAL GOVERNMENTS

**A.** Fiscal: insurance; increased suits and settlements/verdicts; mutual aid; body cameras; protests; etc.

**B.** Policies and training - Growing demand for policies and training on certain types of encounters: mentally ill or emotionally disturbed persons; de-escalation; banning chokeholds, strangleholds, shootings without warnings, etc. Certain policies and practices can give rise to civil rights liability, including failure to adopt policies necessary to prevent constitutional violations. See, e.g., *Canton v. Harris,* 489 U.S. 378 (1989) (inadequacy of police training may serve as the basis for civil rights liability where the failure to train in a relevant respect amounts to deliberate indifference to the constitutional rights of persons with whom the public employee regularly comes into contact); *Estate of Fields v. Nawotka*, 2008 WL 7467704 (E.D. Wis. 2008) (failure to formulate a policy for and conduct an internal review of an officer involved shooting may be de facto unconstitutional).

[4] New Mexico HB 0004; Titled NM Civil Rights Act. Signed into Law on April 7, 2021.
[5] The Bad Apples in Law Enforcement Accountability Act of 2021 provides that a peace officer subjecting another person to the deprivation of individual rights is liable to the person for appropriate relief; excludes sovereign immunity, statutory immunity, and statutory damages for claims brought under this provision; provides that qualified immunity is not a defense to liability under this provision; allows attorney's fees and costs to be awarded to the plaintiff; provides that civil actions brought under this provision must be commenced within 5 years after the cause of action accrues; requires units of local government to make public disclosures regarding judgments or settlements awarded under this provision; determines what information is not required to be disclosed by the unit of local government.
[6] As of July 14, 2012, SB 2 has been re-referred to the Assembly Appropriations Committee.

**C.** Labor and Employment: Increased issues with internal investigations; hiring, firing, supervision; retention and recruitment

**D.** Police & Fire Commissions: PFCs date back to 1885, with Milwaukee being one of the first in the country. "One of the primary purposes for the legislative act providing for the creation of the board was to remove the administration of fire and police departments from city politics and to place it in the hands of impartial and nonpolitical citizen boards." C*onway v. Bd. of Police and Fire Comm'rs of City of Madison*, 2003 WI 53, ¶ 41; *State v. Hartwig*, 201 Wis. 450, 230 N.W. 42 (1930). Wisconsin Statute § 62.13(1) and (2)(a) require cities with populations over 4000 to establish a PFC. Similar rules apply to villages. § 61.65(1)(am)(1). "It is essentially a civil service body with exclusive jurisdiction over hiring, promotions, and discipline16 of police officers, firefighters, and department chiefs." "*Oversight of Municipal Police Departments in Wisconsin*," Claire Silverman (Municipality Magazine, August 2020) p. 25. PFC's can have "optional powers" (by referendum) "[t]o organize and supervise the fire and police, or combined protective services, departments and to prescribe rules and regulations for their control and management." § 62.13(6)(a)(1).

**E.** Civilian Oversight Boards and Community Oriented Policing: Focus can be policies and training for use of force, but other goals like Crisis Intervention Teams (community partnership of law enforcement, mental health and addiction professionals, individuals who live with mental illness and/or addiction disorders, their families and other advocates) or implementation of President's Task Force on 21st Century Policing (six main "pillars": Building Trust and Legitimacy, Policy and Oversight, Technology and Social Media, Community Policing and Crime Reduction, Officer Training and Education, and Officer Safety and Wellness).