LEGISLATIVE
INTENT SERVICE, INC.

712 Main Street, Suite 200, Woodland, CA 95695
(800) 666-1917 • Fax (530) 668-5866 • www.legintent.com

RECENT WISCONSIN CASES
EXCERPTED FOR LEGISLATIVE INTENT AND HISTORY

The following cases relating to Wisconsin law are not exhaustive on the issue of legislative intent and history. These are a few examples of recent court decisions excerpted for this topic in the state. ***You must review the entire court opinion to determine its applicability to your case.***

STATE V. BEAVER DAM AREA DEVELOPMENT CORP.
752 N.W.2D 295
WIS., 2008. JULY 11, 2008

¶ 31 "Quasi-governmental corporation" is defined in neither the statutes nor the case law interpreting the statutes. However, focusing strictly on the words chosen by the legislature, it is clear that "quasi-governmental corporation" means something other than a governmental corporation. Interpreting quasi-governmental corporation to include only governmental entities would render the term superfluous, contrary to the basic principle that we interpret statutes so as to avoid rendering language superfluous. *State v. Harenda Enterprises, Inc.*, 2008 WI 16, ¶ 54, 307 Wis.2d 604, 746 N.W.2d 25; *Hutson v. State Pers. Comm'n*, 2003 WI 97, ¶ 49, 263 Wis.2d 612, 665 N.W.2d 212.

32 Examining the vernacular understanding of "quasi" aids our analysis: "Having a likeness to something; resembling." *American Heritage Dictionary of the English Language*, 1482 (3rd ed.1992). Employing such understanding here, a quasi-governmental corporation would refer to an entity that has a likeness to or resembles a governmental corporation, but which is not a governmental corporation.

¶ 33 The history of the open meetings and public records statutes provides further guidance. The term "quasi-governmental corporation" was introduced into Wisconsin's open meetings law in 1976, when Wis. Stat. § 66.77 (1973-74) was repealed and replaced by §§ 19.81-19.98.[FN8] Section 66.77 provided that open meetings laws applied to a "governmental body" and included "municipal or quasi-municipal corporation[s]" within the definition of governmental body. Wis. Stat. § 66.77(2)(c)(1973-74). When the statute was replaced, the legislature discarded "municipal or quasi-municipal corporation" in favor of "governmental or quasi-governmental corporation." Chapter 476, Laws of Wisconsin 1975.

…

***302** ¶ 34 By changing the language, the legislature expanded the reach of the open meetings law. The import of this expansion is described by a leading treatise on municipal law. It explains that quasi-municipal corporations are those corporations that resemble a municipal corporation in some respect and which are public:

…

[6] 37 As noted, neither this court nor the court of appeals has interpreted "quasi-governmental corporation" within the meaning of §§ 19.82(1) and 19.32(1). However, the state attorney general has written several opinions on the issue.[FN9] Opinions of the attorney general are not binding as precedent, but they may be persuasive as to the meaning of statutes. *State v. Wachsmuth*, 73 Wis.2d 318, 323, 243 N.W.2d 410 (1976). The legislature has expressly charged the state attorney general with interpreting the open meetings and public records statutes, and provided that "[a]ny person may request advice from the attorney general as to the applicability" of the laws. Wis. Stat. §§ 19.98 and 19.39. Thus the interpretation advanced by the attorney general is of particular importance here.

FN9. *See* 73 Op. Att'y Gen. 53 (1984)(c)

…

[744 Based upon the statutory language, principles of statutory construction, the history of Wisconsin's open meetings and public records laws, and the interpretations of the Attorney General, we determine that quasi-governmental corporations are not limited to corporations created by acts of the government. Rather, a quasi-governmental corporation is a corporation that resembles a governmental corporation.

SANDS V. WHITNALL SCHOOL DIST.
754 N.W.2D 439
WIS., 2008. JULY 11, 2008

15 Statutory interpretation begins with the text of the statute; if the meaning of the statute is plain, this court ordinarily stops the inquiry. *State ex rel. Kalal v. Circuit Court for Dane County*, 2004 WI 58, ¶ 45, 271 Wis.2d 633, 681 N.W.2d 110 (citations omitted). "[S]tatutory language is interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results." *Id.*, ¶ 46. If a statute is ambiguous, i.e., capable of being understood in more than one way by reasonably well-informed persons, the court may examine external sources such as **legislative history** to determine the statute's meaning. *Id.*, ¶¶ 47-48. However, the court may also consult extrinsic sources "to confirm or verify a plain-meaning interpretation." *Id.*, ¶ 51.

…

¶ 27 To the extent that there may be any ambiguity created by the language of Wis. Stat. § 905.01's "inherent or implicit" privilege provision, we find guidance in the Judicial Council Committee's note to the statute. The Judicial Council note provides in pertinent part:

The phrase "or inherent or implicit in statute" is designed *to insure that the "work product" immunity rule and the interpretations of s. 19.21 [19.35] are unaffected.* The Wisconsin "work product" immunity rule like the federal rule originates in the discovery statutes. However, the federal rule has now been incorporated expressly in revised Rule 26(b)(3) of the Federal Rules of Civil Procedure. Wisconsin does not appear to be inconsistent with this manner of restricting privileges. Common law privileges, not originating in the constitution, could not be enlarged on a case by case basis. [Citations omitted.]

This section recognizes that there are other statutory privileges that are not included in this chapter. However, *they are provided for in other statutory provisions.* ...

***448** The right of a member of the public to inspect public documents as specified in s. 19.21 [19.35] (formerly s. 18.01) remains subject to the procedure outlined in *State ex rel. Youmans v. Owens*, 28 Wis.2d 672, 137 N.W.2d 470 (1965), modified and rehearing denied 28 Wis.2d 672, 139 N.W.2d 241 (1966) and *Beckon v. Emery*, 36 Wis.2d 510, 153 N.W.2d 501 (1967).

Judicial Council Committee's Note, 1974, Wis. Stat. § 905.01, 59 Wis.2d R101-102 (emphasis

added). This Judicial Council note reveals that the "inherent or implicit" language in the Rule is quite narrow in scope and was included by this court to preserve a particular work product privilege already recognized at the time this language was added to the statute, while leaving other privileges to be provided for more expressly in other statutory provisions (aside from privileges against Wis. Stat. § 19.35 open records requests that are still governed by a common law balancing test).

¶ 28 This Judicial Council note's discussion of the meaning of Wis. Stat. § 905.01's "inherent or implicit" language was explained by Justice Bradley's dissenting opinion in *Alt:*

…

¶ 58 The District's related argument, that the legislature's intent to create a discovery privilege in enacting Wis. Stat. § 19.85 can be inferred from the fact that, according to the District, the legislature balanced competing public interests and found that society's interest in making closed session discussions private outweighs society's interest in access to the content of such discussions, also fails. This argument is unsupported by any citation to **legislative history**, statutory or case law evincing such a decision by the legislature.

STATE V. GRUNKE
752 N.W.2D 769
WIS., 2008. JULY 09, 2008

FACTS

¶ 8 Because the statute was ambiguous, the court of appeals consulted its **legislative history**. *Id.*, ¶ 12. It concluded that the **legislative history** showed that subsection (7) of Wis. Stat. § 940.225 was enacted in response to *State v. Holt*, 128 Wis.2d 110, 382 N.W.2d 679 (Ct.App.1985).[FN6] *Grunke*, 305 Wis.2d 312, ¶ 12, 738 N.W.2d 137. Based on the reference to *Holt* in the **legislative history**, the court of appeals in *Grunke* concluded that § 940.225 applied to corpses only when the sexual assault victim was killed and sexually assaulted by the same perpetrator during a sequence of events and, accordingly, it did not apply to a sexual assault of a corpse when the defendant did not cause the death. *Id.*, ¶¶ 14-15. Therefore, the court concluded that the defendants could not be charged under § 940.225. *Id.*, ¶ 15.

FN6. In *State v. Holt*, 128 Wis.2d 110, 382 N.W.2d 679 (Ct.App.1985), the court of appeals concluded that to convict a defendant of first-degree sexual assault under the then current statutes, the State must prove that the victim was alive at the time of the sexual assault. *Id.* at 121, 382 N.W.2d 679.

…

¶ 11 The parties offer competing interpretations of Wis. Stat. § 940.225. The defendants argue that the statute is ambiguous and therefore we must rely on extrinsic sources, such as **legislative history**, to guide our interpretation. In contrast, the State argues that the language of the statute bears a plain meaning, rendering it unnecessary for us to consult **legislative history** to discern its meaning. Before examining the language of the statute, it is instructive to examine the parties' respective arguments in greater detail

…

¶ 15 The defendants argue that the surplusage of the element of consent and the absurd result of graduated penalties for having sexual contact or sexual intercourse with a corpse renders Wis. Stat. § 940.225 ambiguous. As a result, they argue we should consult **legislative history** to interpret the statute. They argue that the **legislative history** of subsection (7) indicates that it was enacted to relieve the State from being required to prove that the victim was alive when the sexual assault occurred in those circumstances in which the perpetrator sexually assaults and kills the victim in a

series of acts. Accordingly, the defendants contend we should construe subsection (7) as criminalizing the act of sexually assaulting and causing the death of a person who is alive ***774** at the beginning of the sexual assault, but dead when the assailant completes his crimes.

2. State's position

¶ 16 The State, in contrast, argues that Wis. Stat. § 940.225(7) is unambiguous; that by its terms the statute subjects individuals to criminal penalty for sexual assault "whether a victim is dead or alive at the time of the sexual contact or sexual intercourse." The State contends that the limited interpretation that the defendants offer is refuted by subsection (7)'s plain language. There is nothing in subsection (7) that suggests it applies only to those circumstances in which the perpetrator sexually assaults and kills the victim.

…

21 "[S]tatutory interpretation 'begins with the language of the statute. If the meaning of the statute is plain, we ordinarily stop the inquiry.' " *State ex rel. Kalal v. Circuit Court for Dane County*, 2004 WI 58, ¶ 45, 271 Wis.2d 633, 681 N.W.2d 110 (quoting *Seider v. O'Connell*, 2000 WI 76, 236 Wis.2d 211, 232, 612 N.W.2d 659). Plain meaning may be ascertained not only from the words employed in the statute, but from the context. *Id.*, ¶ 46. We interpret statutory language in the context in which those words are used; "not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and ***775** reasonably, to avoid absurd or unreasonable results." *Id.*

22 If the words chosen for the statute exhibit a "plain, clear statutory meaning," without ambiguity, the statute is applied according to the plain meaning of the statutory terms. *Id.*, ¶ 46 (quoting *Bruno v. Milwaukee County*, 2003 WI 28, ¶ 20, 260 Wis.2d 633, 660 N.W.2d 656). However, if a statute is "capable of being understood by reasonably well-informed persons in two or more senses[,]" then the statute is ambiguous, and we may consult extrinsic sources to discern its meaning. *Id.* at ¶¶ 47-48, 50. While extrinsic sources are usually not consulted if the statutory language bears a plain meaning, we nevertheless may consult extrinsic sources "to confirm or verify a plain-meaning interpretation." *Id.*, ¶ 51.

…

¶ 25 There is no statutory ambiguity or incompatibility between, on the one hand, a victim being incapable of consent because the victim is dead and, on the other hand, subsection (3)'s requirement that ***776** sexual intercourse occur "without the consent" of the victim. In order to achieve a conviction for third-degree sexual assault under Wis. Stat. § 940.225(3), the State must still prove the element "without consent" beyond a reasonable doubt; that endeavor is subject to a simple proof when the victim is a corpse.

…

The plain meaning of the statute does not create internal inconsistencies; nor, obviously, does the plain meaning confound the statute's clearly stated purpose. To the contrary, it is entirely possible to apply § 940.225(7) as ***778** written and be consistent with the plain meaning of the statute's punishment of those who have sexual contact or sexual intercourse with a dead person. *See, e.g., Suchomel v. Univ. of Wis. Hosp. & Clinics*, 2005 WI App 234, ¶ 28, 288 Wis.2d 188, 708 N.W.2d 13.

…

¶ 32 The defendants' third argument, that subsection (7) limits subsection (3) to only those circumstances in which the perpetrator kills and has sexual intercourse with the victim in a series of events, finds no support in the plain language of the statute. The defendants' argument is derived from *Holt* and from subsection (7)'s **legislative history**.

…

Although the court of appeals upheld Holt's conviction for sexual assault, shortly after the case was decided, the legislature enacted § 940.225(7). By enacting § 940.225(7), it appears that the legislature sought to close the loophole in the then current version of § 940.225 that Holt sought to exploit. A note contained in subsection (7)'s drafting file states: "Problem-don't want prosecution to fail because the DA [district attorney] has to prove that victim was alive at the time SA [sexual assault] took place-Have statute [so] that DA does not have to prove that victim was alive or dead." Drafting File for 1985 Wis. Act 134, *Analysis by the Legislative Reference Bureau* of 1985 A.B. 328, Legislative Reference Bureau, Madison, Wis.

¶ 34 While the parties agree that subsection (7) was enacted to remedy the problem identified in *Holt*, namely, proving that the victim was alive when the sexual assault occurred as part of a rape-murder, the language of subsection (7) does not so limit its application. Indeed, subsection (7), by its very terms, applies to all of Wis. Stat. § 940.225. The defendants direct us to no authority that stands for the proposition that, when the legislature enacts a statute to apply to a specific circumstance, the statute may be applied only to that circumstance. It is doubtful that such authority exists.

…

Furthermore, when the United States Supreme Court considered such a contention, it concluded, "The fact that [the legislature] may not have foreseen all of the consequences of a statutory enactment is not a sufficient reason for refusing to give effect to its plain meaning." *Union Bank v. Wolas*, 502 U.S. 151, 158, 112 S.Ct. 527, 116 L.Ed.2d 514 (1991). The plain language of § 940.225(7) is our guidepost; and by its terms, it is not limited to circumstances in which a perpetrator murders and sexually assaults the victim in a series of events.[FN14]

…

***779** ¶ 35 In addition, the **legislative history** supports, rather than confounds, our plain-meaning interpretation. *Kalal*, 271 Wis.2d 633, ¶ 51, 681 N.W.2d 110. The note referenced above to which the parties direct us does not constitute the full **legislative history** of subsection (7). A note in the legislative council file for the Committee on Judiciary and Consumer Affairs, to which Assembly Bill 328 creating Wis. Stat. § 940.225(7) was referred, states:

…

The legislative council file indicates that subsection (7) was enacted to punish those who engage in sexual contact or sexual intercourse with a dead victim, as well as a live victim. Therefore, the **legislative history** supports our interpretation that, by its plain meaning, subsection (7) is not so limited in meaning as the defendants contend.

…

¶ 37 In sum, by its plain terms, Wis. Stat. § 940.225 prohibits the conduct that the defendants are alleged to have attempted. Section 940.225(3) provides that "[w]hoever has sexual intercourse with a person without the consent of that person is guilty of a Class G felony," and § 940.225(7) provides that "[t]his section applies whether a victim is dead or alive at the time of the sexual contact or sexual intercourse." The language of the statute is clear on its face. A reasonably well-informed person would understand the statute to prohibit sexual intercourse with ***780** a dead person. In addition, the element of consent is not rendered superfluous by our interpretation. The State is obligated to prove beyond a reasonable doubt that the sexual intercourse was attempted without the victim's consent. Simplicity of proof does not make an element superfluous. *See, e.g., Dibble*, 257 Wis.2d 274, ¶¶ 13-15, 650 N.W.2d 908; *Dauer*, 174 Wis.2d 418, 431-32, 497 N.W.2d 766. Furthermore, applying the plain meaning of § 940.225 does not create absurd results. It is not absurd that one who sexually assaults a dead person could not be punished for first-degree or second-degree sexual assault; such punishments are simply factually unavailable in cases in which the victim is a dead person. Finally, the **legislative history** verifies that the plain meaning of §

940.225 is not so limited as the defendants assert. Accordingly, the defendants may be charged with attempted third-degree sexual assault pursuant to § 940.225(3).

…

41 ANN WALSH BRADLEY, J. (*dissenting*).

The majority reaches a desired result through an undesirable analysis. I acknowledge that this is heinous conduct and good public policy would indicate that this conduct should be criminalized.

¶ 42 The majority believes that § 940.225(3) clearly covers sexual assault of a corpse. It concludes that the language of the statute "is clear on its face." Majority op., ¶ 37. It determines that "a reasonably well-informed person would understand the statute to prohibit sexual intercourse with a dead person." *Id.*

¶ 43 Unlike the majority, I conclude that the circuit court judge and the court of appeals judges here are "reasonably well-informed" persons. They unanimously concluded that § 940.225 does *not* prohibit sexual intercourse with a corpse. They determined (1) that the language of the statute was ambiguous and, (2) that when the legislature enacted § 940.225(3), it did not intend that the statute cover the conduct here.[FN1] I agree.

FN1. We have previously determined that when courts reach contradictory interpretations of a statute, it "is indicative of ambiguity." *Teschendorf v. State Farm Ins. Cos.*, 2006 WI 89, ¶ 19, 293 Wis.2d 123, 717 N.W.2d 258 (citing *Stockbridge Sch. Dist. v. Dep't of Public Instruction Sch. Dist. Boundary Appeal Bd.*, 202 Wis.2d 214, 222, 550 N.W.2d 96 (1996)).

…

¶ 45 To begin, it is always suspicious to me when an opinion asserts that the meaning is plain and then proceeds to spend a multitude of pages explaining it. It is as though the lengthy explanation belies the assertion. If it is so plain, why is the explanation so complex and lengthy?

…

¶ 53 The **legislative history** of § 940.225 indicates that subsection (7) was enacted to address cases in which the prosecutor could not prove whether the victim of a sexual assault was alive or dead at the time of the assault. Subsection (7) was created by 1985 Wis. Act 134, which passed the legislature in February 1986.

¶ 54 The drafting records for the bill include a drafter's note articulating the problem that the act was intended to address. The note states "Problem-don't want prosecution to fail because the DA has to prove that the victim was alive at the time the [sexual assault] took place." It further states a desire to "Have [a] statute so that DA does not have to prove that victim was alive or dead." Legislative Reference Bureau drafting file for 1985 Wis. Act 134.

¶ 55 Further, the history indicates that a case involving murder and sexual assault prompted the legislation. Just prior to the time that 1985 Wis. Act 134 was enacted, the court of appeals decided *State v. Holt*, 128 Wis.2d 110, 382 N.W.2d 679 (Ct.App.1985). The defendant in *Holt* was charged with sexual assault and murder. He argued that he could not be convicted of sexual assault because of insufficient evidence that the victim was alive at the time of the sexual assault. *Id.* at 121, 382 N.W.2d 679. The court of appeals determined that in a rape-murder case where the sequence of events cannot be proved, the jury may, but is not required to, infer that the victim was alive during the assault. *Id.*

¶ 56 The notes regarding the legislation indicate that it was intended to solve a single problem: prosecuting sexual assault where it is unclear whether the victim was alive at the time of the assault. Nothing in the **legislative history** indicates that the legislature intended Wis. Stat. § 940.225 to operate as a necrophilia statute.[FN3]

FN3. I also note that the legislature has expressly included necrophilia in the definition of "sexual conduct" in Wisconsin's obscenity statutes. Wisconsin Stat. § 944.21(2)(e) states " '[s]exual conduct' means the commission of any of the following: ... necrophilia." This statutory language establishes that the legislature is aware of the conduct that constitutes necrophilia, has proscribed it as part of the obscenity statute, and has chosen not to proscribe it outside of the obscenity context.

¶ 57 The language of the statute is far from "plain." The majority's interpretation requires prosecutors to prove beyond a reasonable doubt that a corpse did not consent, and it renders subsection (7) superfluous, neither of which were intended by the legislature. Likewise, the **legislative history** indicates that the legislature intended § 940.225(7) to apply to cases involving murder and sexual assault, and not to cases of necrophilia. I therefore respectfully dissent.

TOWN OF MADISON V. COUNTY OF DANE
752 N.W.2D 260
WIS., 2008. JULY 09, 2008

17 When we interpret a statute, we begin with the text of the statute, and "[i]f the meaning of the statute is plain, we ordinarily stop the inquiry." *State ex rel. Kalal v. Circuit Court,* 2004 WI 58, ¶ 45, 271 Wis.2d 633, 681 N.W.2d 110 (citations omitted). Statutory language is generally given its common, ordinary and accepted meaning. *Id.* "We often consult a recognized dictionary to determine the common, accepted meaning of a word. However, when construing a word or phrase that is a legal term of art, we give the word or phrase its accepted legal meaning." *City of Milwaukee v. Washington,* 2007 WI 104, ¶ 32, 304 Wis.2d 98, 735 N.W.2d 111 (citations omitted). Further, we examine statutory language "in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results." *Kalal,* 271 Wis.2d 633, ¶ 46, 681 N.W.2d 110. If a statutory provision is ambiguous, i.e., "if reasonable minds could differ as to its meaning," *UFE Inc. v. LIRC,* 201 Wis.2d 274, 283, 548 N.W.2d 57 (1996) (citation omitted), we examine extrinsic sources, such as **legislative history**, to ascertain the legislative intent. *Kalal,* 271 Wis.2d 633, ¶ 43, 681 N.W.2d 110.

…

¶ 27 Turning first to the text of Wis. Stat. § 81.38, we observe that while the statutory language allows for the construction or repair of a "bridge on a highway maintainable by the town," making it clear that the bridge does not have to be preexisting for the town to request funding, it is unclear whether the "highway maintainable" must be preexisting where the bridge is to be constructed, or whether the bridge could be built before the "highway maintainable" exists under the statute.

…

¶ 28 Either interpretation is reasonable, and we therefore treat Wis. Stat. § 81.38 as ambiguous. *UFE Inc.,* 201 Wis.2d at 283, 548 N.W.2d 57. In this case, such ambiguity can be resolved by reference to the statutory history underlying the statute, read in conjunction with both § 81.38 and surrounding statutory language. *See Kalal,* 271 Wis.2d 633, ¶¶ 46-48, 681 N.W.2d 110.

¶ 29 Chapter 81 of the 2001-02 Wisconsin Statutes, of which Wis. Stat. § 81.38 is a part, is entitled "Town Highways." The majority of the surrounding statutory provisions in the chapter focus on highways. Consequently, the context of § 81.38 would suggest that the bridge aid statute is better understood as a subset of a chapter addressing the construction, maintenance, and repair of town highways.

…

32 The first time the language "on a highway maintainable by the town" appeared in Wisconsin's bridge aid statutes was in 1923, when the statute was rewritten to describe bridge aid as applying to the construction or repair of "any bridge *on a highway maintainable by the town* "

when the town has paid its statutorily required share. § 87.01, ch. 108, Laws of 1923 (emphasis added). Since 1923, when the "highway" language reappeared, more explicitly narrowing the scope of the statute, bridge aid funding has continued to be expressly limited to funding for a bridge "on a highway maintainable by the town." *See* Wis. Stat. §§ 81.38, 82.08. *See also Town of Grand Chute*, 269 Wis.2d 657, ¶ 2, ¶ 13 n. 5, 676 N.W.2d 540. Although a 2003 Act changed the phrase "highway maintainable" to "highway maintained," this amendment did not change the substantive meaning of the statute, as the court of appeals in this case correctly recognized:

Section 81.38(1) referred to a "highway *maintainable* by the town"; section 82.08(1)(2005-06) refers to a "highway ****270** maintained* by the town" (emphasis added). This revision was part of broader revisions to both § 81.38 and to the town highway statutes in general. *See generally* 2003 Wis. Act 214.... A prefatory note to the Act that amended and renumbered the town highway statutes states that, if an individual section's explanatory note "does not indicate a substantive change, none is intended." 2003 Wis. Act 214, Joint Legislative Council Prefatory Note 4. The note then goes on to state: "If a question arises about the effect of any modification made by this bill, the special committee intends that the revisions in this bill be construed to have the same effect as the prior statute." *Id.* The individual explanatory note accompanying the section that revised and renumbered § 81.38(1) attributes no significance to the change from "maintainable" to "maintained." *See* 2003 Wis. Act 214, § 141, note.

Town of Madison, 304 Wis.2d 402, ¶ 17 n. 4, 737 N.W.2d 16. Thus, as the court of appeals has noted, the legislature's prefatory note explaining the change from "maintainable" to "maintained," confirms the legislature's understanding that this is how the statute has been interpreted all along.

WATTON V. HEGERTY
751 N.W.2D 369
WIS., 2008. JULY 01, 2008

"[S]tatutory interpretation 'begins with the language of the statute. If the meaning of the statute is plain, we ordinarily stop the inquiry.' " *State ex rel. Kalal v. Circuit Court for Dane County*, 2004 WI 58, ¶ 45, 271 Wis.2d 633, 681 N.W.2d 110 (quoting *Seider v. O'Connell*, 2000 WI 76, 236 Wis.2d 211, 232, 612 N.W.2d 659). Plain meaning may be ascertained not only from the words employed in the statute, but from the context. *Id.*, ¶ 46. We interpret statutory language in the context in which those words are used; "not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results." *Id.*

15 If the words chosen for the statute exhibit a "plain, clear statutory meaning," without ambiguity, the statute is applied according to the plain meaning of the statutory terms. *Id.*, ¶ 46 (quoting *Bruno v. Milwaukee County*, 2003 WI 28, ¶ 20, 260 Wis.2d 633, 660 N.W.2d 656). However, if a statute is "capable of being understood by reasonably well-informed persons in two or more senses[,]" then the statute is ambiguous. *Id.* at ¶ 47. "It is not enough that there is a disagreement about the statutory meaning; the test for ambiguity examines the language of the statute 'to determine whether "well-informed persons should have become confused," that is, whether the statutory ... language reasonably gives rise to different meanings.' " *Id.* (quoting *Bruno*, 260 Wis.2d 633, ¶ 21, 660 N.W.2d 656). When a statute is ambiguous, we may consult extrinsic sources to discern its meaning. *Id.* at ¶¶ 48, 50. While extrinsic sources are usually not consulted if the statutory language bears a plain meaning, we nevertheless may consult extrinsic sources "to confirm or verify a plain-meaning interpretation." *Id.*, ¶ 51.

16 We begin with Wis. Stat. § 51.15, which describes the role of a police officer in creating a statement of

…

¶ 19 From the text of these statutory provisions, we observe the following relevant legislative directives: (1) a police officer may take a person into custody if the officer has reason to believe

the person is mentally ill, and it is substantially probable that the person will cause physical harm, Wis. Stat. § 51.15(1); (2) when an officer takes a person into custody under such circumstances, the officer fills out and signs a statement of emergency detention related to the individual and to the circumstances the officer witnessed that justify taking the person into custody, § 51.15(4); (3) the officer is obligated to either transport or arrange for the transport of such a person to a state treatment facility for evaluation, diagnosis and potential treatment, § 51.15(2); (4) records that are created in the course of providing services to persons for mental illness and maintained by the department or treatment facility are "registration records," Wis. Stat. § 51.30(1)(am); (5) "treatment records" include all "registration records" that are "maintained" by treatment facilities, § 51.30(1)(b); (6) "treatment records" must [FN13] remain confidential and are privileged, § 51.30(4)(a); and (7) "treatment records" may be released by court order, when the person to whom the records relate does not provide written informed consent***379*** authorizing their release, § 51.30(4)(b)4.

FN13. The legislature has established that "all treatment records *shall* remain confidential and are privileged." Wis. Stat. § 51.30(4)(a) (emphasis added.) We have "characterized ... 'shall' as mandatory unless a different construction is required by the statute to carry out the clear intent of the legislature." *Forest County v. Goode,* 219 Wis.2d 654, 663, 579 N.W.2d 715 (1998). Given the sensitivity of "treatment records" and the strong legislative "interest in keeping private the details of an individual's mental and emotional condition," *Billy Jo W. v. Metro*, 182 Wis.2d 616, 632, 514 N.W.2d 707 (1994), we conclude that "shall" has a mandatory meaning within § 51.30(4)(a).

…

FN16. Although the plain meaning of the open records law and of ch. 51 support our interpretation, we observe that the **legislative history** of the open records law also supports our interpretation. *See State ex rel. Kalal v. Circuit Court for Dane County*, 2004 WI 58, ¶ 51, 271 Wis.2d 633, 681 N.W.2d 110 (stating that we may consult legislative sources, even when a statute is not ambiguous, to "confirm or verify a plain-meaning interpretation"). Wisconsin's existing open records law, Wis. Stat. §§ 19.31-39, was created in 1981. The Legislative Reference Bureau's analysis of the bill creating the open records law stated that, while "the right of inspection is reinforced" by the bill, such a right is limited by "specific laws," such as chapter 51, forbidding access to certain records: This bill recodifies, clarifies and amplifies state law concerning access to public records.... Although there is a presumption in favor of public access, certain exceptions to the right of access have become accepted.... Such exceptions include instances in which records are expressly closed by specific laws.

Drafting File for ch. 335, Laws of 1981, *Analysis by the Legislative Reference Bureau* of 1981 S.B. 250, Legislative Reference Bureau, Madison, Wis.