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Date: March 1, 2016

To: Hector Colon, Director
Milwaukee County Department of Health & Human Services

cc: Interested Parties

From: Paul Bargren *PS CF*
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Colleen Foley
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Re: Milwaukee County Board Resolution No. 16-113

You asked for the Opinion of this Office regarding Milwaukee County Board Resolution 16-113, item 7 on the Judiciary, Safety and General Services Committee's March 3, 2016 agenda.

The resolution includes a number of provisions that conflict with state law, are unenforceable or in violation of basic constitutional rights.

Resolution 16-113:

Resolution 16-113 requires as a Milwaukee County policy matter that the County Executive provide informational reports to the Board before the County (or its agent or contractor) places a registered sex offender in the community. The stated purpose is "advising the public of the location of the placement".

The resolution also calls on the County Executive to provide that same report and notice to the Office of the Sheriff for purposes of public safety, including for persons charged but not convicted of a sex offense.

Additionally, Resolution 16-113 contains a look-back requirement for informational reports on registered sex offenders placed in the community in the past 18 months. The resolution requires that the individual sex offender not be specifically identified.

Analysis:

Notice Before Community Placement:

Resolution 16-113's pre-relocation notification provision cannot be enforced.

The State legislature enacted the Sex Offender Registry Program (SORP) to establish uniform, statewide sex offender reporting requirements. Per Wis. Stat. §59.03(1), titled "Administrative Home Rule", every county may exercise any organizational or administrative power, subject only to the constitution and any enactment of the legislature which is of statewide concern and which uniformly affects every county. SORP makes sex offender registration a matter of statewide concern. *See* Wis. Stat. §301.45.

The State Department of Corrections (DOC) maintains SORP and allows for the collection and dissemination of sex offender information to the public. SORP also provides educational information for individuals and communities on sexual violence protection issues. *See* <http://doc.wi.gov/community-resources/wi-sex-offender-registry>

SORP provides home address information for adult sex offenders required to register to live in the community. In particular, it requires that an individual on the registry provide the DOC with updated information within 10 days *after* an address change occurs. Wis. Stat. §301.45(4)(a). The DOC is notified of the address change *before* the move occurs when the registrant is still on probation, parole or extended supervision. Wis. Stat. §301.45(4)(b).

Case law provides a limited addition to dissemination of sex offender information related to DOC's oversight authority. *See State ex rel. Kaminski v. Schwarz*, 2001 WI 94, 245 Wis. 2d 310, 630 N.W.2d 164 (Wis. Stat. §§301.45 and 301.46 do not prohibit a probation agent from disseminating SORP information by requiring a probationer to inform immediate neighbors of sex offender conviction).

Because the State legislature has deemed sex-offender notification a matter of statewide concern, the County's notification requirements cannot exceed the statutory requirements and the limited *Kaminsky* provision. Because the statutes do not provide for pre-relocation notification, Resolution 16-113's pre-relocation notification provision cannot be enforced.

Notice to the Sheriff:

Resolution 16-113 requires the County Executive to notify the Sheriff before a sex offender's release to the community. But State law already provides for immediate, electronic notification to local law enforcement of a resident's registration and for any updates, including relocation.

Whenever an individual enters the registry, DOC makes the data immediately available to the police chief of any community and the sheriff of any county in which the registrant resides, works, or attends school. That information is available through a direct electronic data transfer system. Wis. Stat. §301.46(2). That system immediately provides any updated information to local law enforcement. Wis. Stat. 301.46(2)(c). The police chief or sheriff may then share information with the general public if necessary to protect the public. Wis. Stat. §301.46(2)(e).

State law dictates when and how notification occurs. As noted, the timing is dependent upon whether the offender is still in the custody of the Department of Corrections due to parole, probation or extended supervision. Law enforcement has discretion to notify the public. The SORP website is accessible to the public and relocation updates appear on the system the same

day the update is provided. A requirement that the Executive provide this information is redundant and, most likely, would not be as efficient as the electronic system already available.

Notice based on a Charge or Arrest before Conviction:

The resolution unconstitutionally discriminates against individuals based on arrest record or filing of charges.

Resolution 16-113 calls for notice to the Sheriff based on a criminal charge alone, regardless of conviction. The presumption of innocence is the bedrock of our democracy. It derives from the 5th, 6th and 4th amendments to the United States Constitution. "A defendant has certain constitutional rights and is presumed innocent until proven guilty." *State v. Reed*, 256 Wis.2d 1019, 1026 (Ct. App. 2002). In "our constitutional system, [] every man is presumed innocent until guilt is established." *Speiser v. Randall*, 357 U.S. 513, 533 (1958) (Douglas, J., concurring).

And Wisconsin law prohibits discrimination based on arrest record. An "arrest record" includes, but is not limited to, "information indicating that an individual has been questioned, apprehended, taken into custody or detention, held for investigation, arrested, **charged with**, indicted or tried for any felony, misdemeanor or other offense pursuant to any law enforcement or military authority." Wis. Stat. § 111.32(1) (emphasis added).

Notice of Retroactive Placements:

Resolution 16-113 redundantly requires that the informational report include all registered sex offenders placed in the community in the past 18 months, but not identify the individual. As noted, that information is readily available via the SORP website or through local law enforcement. *See* Wis. Stat. 301.46(5) (citizen may submit a request for information, specifically citing individual by name, in a form and manner prescribed by the police chief or sheriff).

Any of the following entities also may request, in a form and manner specified by the DOC, information about specific SORP individuals: a public or private elementary or secondary school; a licensed child care provider; a group home; a shelter; a foster home; a county department; a child welfare agency; the Boy Scouts, Girl Scouts, etc. *See* Wis. Stat. 301.46(4)(a).

Additionally, some local law enforcement provide their own websites on community SORP registrants. The City of Franklin Police Department's website for example provides the SORP registrant's photo, name, and home, work, and school address for every single SORP registrant in the community. *See* <http://www.franklinwi.gov/Home/Departments/Police/SexOffenders/Offenders2.htm>.

Conclusion:

Resolution 16-113 establishes notifications for sex offender registration contrary to the State's uniform protocol. Notification based on arrest record is discriminatory. And retroactive placement information is already available to the public through SORP, the DOC, and local law enforcement.

This Opinion is being issued publicly and may be shared as you see fit.

