

CITY OF MILWAUKEE

Form CA-43

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October 12, 2005

Honorable
Common Council
City Hall, Room 205

Re: Proposed Ordinance Relating to Community Notification of Sex Offenders

Dear Council Members:

This letter is in regards to the proposed ordinance relating to the community notification of sex offenders. A concern is raised regarding its legality and enforceability.

The proposed ordinance requires that when the state notifies the police department, pursuant to Wis. Stat. § 301.46, of the release date of a sex offender, the chief of police shall notify the city clerk in writing of the residence of the sex offender within the city. The city clerk is directed to notify in writing residents within a 1,000-foot radius of the premises where a sex offender is to reside.

Under Wis. Stat. § 301.46 (2)(e), the Wisconsin Legislature has granted police chiefs discretion to disclose any information they have access to under the statute about any registered sex offender to a victim, an organization, or the general public if, in the opinion of the police chief, the information is necessary to protect the public. An ordinance mandating the police chief to notify the city clerk in writing of the residence of a sex offender living in Milwaukee is contrary to the explicit granting of discretion to the police chief by the state legislature on a matter of public safety—that being to determine when disclosure of sex offender locations are necessary to protect the public. As a municipal ordinance contradictory to state law is unenforceable, we are unable to provide our signature for the proposed ordinance.

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The proposed ordinance may be revised to require the City Clerk to periodically request information from the Police Chief, in the interests of public safety. The section of the proposed ordinance requiring the City Clerk to notify residents in writing may remain the same.

If you have any further questions regarding this matter, please feel free to contact our office.

Very truly yours,



GRANT E. WANGLEY
City Attorney



ELOISA DE LEON
Assistant City Attorney

c: Ronald Leonhardt
EDL:edl
97698

2005 Assembly Bill 99

Date of enactment: May 2, 2005
Date of publication*: May 16, 2005

2005 WISCONSIN ACT 5

AN ACT to amend 301.46 (2) (e), 301.46 (2m) (c), 301.46 (5) (b) (intro.) and 301.46 (5) (c) (intro.) of the statutes; relating to: individuals registered as sex offenders based upon a juvenile delinquency adjudication and registered sex offenders who are children.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 301.46 (2) (e) of the statutes is amended to read:

301.46 (2) (e) A police chief or sheriff may provide any of the information to which he or she has access under this subsection, ~~other than information specified in subs. (4) (ag) and (5) (e),~~ to an entity in the police chief's community or the sheriff's county that is entitled to request information under sub. (4), to any person requesting information under sub. (5) or to members of the general public if, in the opinion of the police chief or sheriff, providing that information is necessary to protect the public.

SECTION 2. 301.46 (2m) (c) of the statutes is amended to read:

301.46 (2m) (c) A police chief or sheriff who receives a bulletin under this subsection may provide any of the information in the bulletin, ~~other than information~~

~~specified in subs. (4) (ag) and (5) (e),~~ to an entity in the police chief's community or the sheriff's county that is entitled to request information under sub. (4), to any person requesting information under sub. (5) or to members of the general public if, in the opinion of the police chief or sheriff, providing that information is necessary to protect the public.

SECTION 4. 301.46 (5) (b) (intro.) of the statutes is amended to read:

301.46 (5) (b) (intro.) If the department or a police chief or sheriff provides information under par. (a), the department, subject to par. (c), or the police chief or sheriff shall, ~~subject to par. (e),~~ provide all of the following concerning the person specified in the request under par. (a) 2.:

SECTION 5m. 301.46 (5) (c) (intro.) of the statutes is amended to read:

301.46 (5) (c) (intro.) The department ~~or a police chief or sheriff~~ may not provide any of the following under par. (a):

* Section 991.11, WISCONSIN STATUTES 2003-04 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].