



huu ay aht

ANCIENT SPIRIT, MODERN MIND

COMMUNITY SAFETY ACT

The Huu-ay-aht Legislature enacts this law to promote public order, peace and safety on Treaty Lands by authorizing the exclusion from Treaty Lands of individuals who pose a risk to public safety.

REGISTRY OF LAWS CERTIFICATION


I certify that the *Community Safety Act* was passed by Executive Council on:

March 23,2021


Chief Councillor, Robert Dennis

I certify that the *Community Safety Act* is enacted as law on:

March 23, 2021


Ta'yii Hawilth, Derek Peters

I certify that the *Community Safety Act* came into force on:

March 23, 2021


Law Clerk, Coraleah Bauer

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Note to Reader

The *Community Safety Act* sets out the legal framework to promote community safety on Treaty Lands.

Under this framework, the Executive Director will, for the purposes of promoting public safety, issue an order to exclude a person from entering or remaining on Treaty Lands under certain circumstances. Specifically, a person who has been convicted within the past five years of certain criminal offences, for which they have not received a pardon or record suspension, is subject to an order excluding them from Treaty Lands for five years from the date on which they were convicted.

The framework also includes an important role for the Hāwiih Council. A person subject to an exclusion order has the right to apply to the Hāwiih Council for a determination that they do not pose an unreasonable risk to public safety. In making its determination, the Hāwiih Council will consider relevant factors, including any submissions made by the individual subject to the order. The Hāwiih Council may also hear submissions from the person's family, dependents, victims and other impacted or potentially impacted community members. If the Hāwiih Council determines that a person subject to an exclusion order does not pose an unreasonable risk to public safety, the exclusion order will be rescinded or varied in accordance with Hāwiih Council's direction.

The Hāwiih Council can also make other orders, such as shortening the period of the exclusion order or requiring the person subject to the order to participate in a traditional healing process before they can return to the community.

The Hāwiih Council may also extend the period of an exclusion order if it determines that the person subject to the order continues to pose an unreasonable risk to public safety. The Hāwiih Council must provide written reasons for its decisions.

The Act also allows for the issuance of temporary exemptions from exclusion orders to enable a person subject to an exclusion order to enter Treaty Lands for specific purposes, such as to vote or for compassionate reasons.

The Legislature enacts as follows:

PART 1 - PURPOSE, DEFINITIONS AND APPLICATION

Purpose

- 1** The purpose of this Act is to promote public order, peace and safety on Treaty Lands by authorizing the exclusion of individuals from Treaty Lands in a manner that is fair, balanced and consistent with the Huu-ay-aht vision, values and sacred principles.

Definitions

- 2** In this Act:
 - “**excludable offence**” means a prescribed offence in respect of which a person has been sentenced as an adult and for which they have not received a pardon or a record suspension;
 - “**exclusion order**” means an order prohibiting an individual from entering or remaining on Treaty Lands made under section 6;
 - “**excluded person**” means a person who is the subject of an exclusion order;
 - “**information order**” means an order made under section 5 (1);
 - “**impacted individual**” includes a victim of an excluded person and an excluded person’s family and dependents;
 - “**prescribed offence**” means any offence prescribed by a regulation enacted under section 24;
 - “**registry**” means the Registry of Laws and Official Records established under the *Government Act*, HFNA 3/2011, s. 106;
 - “**serve**” means delivery of a document in accordance with section 19.

PART 2 - EXCLUSION ORDERS

Exclusion of persons posing a risk to public safety

- 3** The Executive Director must issue an exclusion order in accordance with this Part in respect of any person who has been convicted of an excludable offence in the past 5 years and who lives or spends time on Treaty Lands, or has indicated an intention to do so.

Confirmation of conviction

- 4** If the Executive Director receives credible information that a person has been convicted of an excludable offence, the Executive Director must seek confirmation of the conviction in the manner they deem appropriate, which may include
 - (a) obtaining court records, or
 - (b) issuing and serving an information order.

Criminal history information order

- 5**
- (1) The Executive Director may issue an information order in the prescribed form for the purpose of confirming credible information that a person has been convicted of an excludable offence.
 - (2) An information order must
 - (a) name the person the Executive Director has reason to believe has committed a prescribed offence,
 - (b) set out the nature of the prescribed offence giving rise to the order,
 - (c) require the named person to provide to the Executive Director, within 7 days of service:
 - (i) written acknowledgement in the prescribed form that the person has been convicted of one or more excludable offences and the particulars of those convictions, or
 - (ii) a solemn declaration in the prescribed form that the person has not been convicted of any excludable offence in the past 5 years.
 - (3) Upon issuance of an information order, the Law Clerk must, as soon as practicable, serve the excluded person with the order in accordance with section 19.
 - (4) Upon issuance of an information order, the Law Clerk must, as soon as practicable, place the order in the registry.
 - (5) If a person upon whom an information order is served in accordance with section 19 fails to provide the required documentation within 7 days of service, the Executive Director will consider the person to have been convicted of the excludable offence set out in the information order.

Exclusion order

- 6**
- (1) Upon confirmation under section 4 that a person has been convicted of an excludable offence, the Executive Director must issue an exclusion order in the prescribed form.
 - (2) An exclusion order must
 - (a) name the person to whom the order applies,
 - (b) set out the excludable offence giving rise to the order,
 - (c) indicate the date on which the exclusion order becomes effective,
 - (d) indicate how the recipient may seek to correct or update any information with respect to the excludable offence that is the subject of the order, and
 - (e) provide information with respect to how an excluded person may apply for a determination that they do not pose an unreasonable risk to public safety.

- (3) Unless rescinded or varied, an exclusion order becomes effective 21 days after it is issued.
- (4) Unless rescinded or varied, an exclusion order expires on the later of 5 years from the date of conviction for the offence giving rise to the order and one year from the date of issuance of the order.
- (5) Upon issuance of an exclusion order, the Law Clerk must, as soon as practicable, make best efforts to serve the excluded person with the order.
- (6) Upon issuance of an exclusion order, the Law Clerk must, as soon as practicable, place the order in the registry.

Rescinding an exclusion order

- 7 (1) If at any time the Executive Director becomes aware that an excluded person was not convicted or has received a pardon or a record suspension in respect of the prescribed offence giving rise to an exclusion order, the Executive Director will, in writing, immediately rescind the exclusion order.
- (2) Upon rescindment of an exclusion order, the Law Clerk must, as soon as practicable, make best efforts to serve the excluded person with the order.
- (3) Upon rescindment of an exclusion order, the Law Clerk must, as soon as practicable, place the document rescinding the order in the registry.

Urgent temporary exemption

- 8 (1) On the application of an excluded person, the Executive Director may, in urgent circumstances, grant an urgent temporary exemption from the terms of an exclusion order to enable the excluded person to access Treaty Lands on compassionate grounds.
- (2) In determining whether to issue an urgent temporary exemption, the Executive Director must consider
 - (a) the purpose for which the exemption is sought,
 - (b) the impact of granting the exemption on impacted individuals,
 - (c) the potential risks to public safety, and
 - (d) any other factors they consider relevant.

PART 3 - HEARINGS AND REVIEWS

Definitions

9 In this Part:

“**hearing**” means a hearing of an application under section 10 (3);

“**mitigation plan**” means a plan proposed by an excluded person and developed in consultation with an applicable government department to mitigate risks the excluded person may pose to public safety;

“**restorative program**” means a restorative justice program, healing circle or other program designed to promote the excluded person’s safe reintegration into their community, whether rooted in Huu-ay-aht’s traditional laws or otherwise.

Application to H̱aw̱iiẖ Council

- 10
- (1) An excluded person may apply, using the prescribed form, to the H̱aw̱iiẖ Council for a determination that they do not pose an unreasonable risk to public safety.
 - (2) Subject to a contrary order of the H̱aw̱iiẖ Council, an application under subsection (1) may not be made more than once every 12 months.
 - (3) Upon application made under subsection (1), the H̱aw̱iiẖ Council must conduct a hearing to determine whether the applicant poses an unreasonable risk to public safety.
 - (4) Upon application made under subsection (1), the Executive Director must provide to the H̱aw̱iiẖ Council all information and documents generated or collected in association with the issuance of the exclusion order that is the subject of the application.

Determinations by H̱aw̱iiẖ Council

- 11 In making a determination with respect to whether an excluded person poses an unreasonable risk to public safety, the H̱aw̱iiẖ Council must consider:
- (a) the time that has elapsed since the actions giving rise to the conviction and the excluded person’s behaviour during that time;
 - (b) the role of substance use in the offence and the excluded person’s current status with respect to substance use, including participation in any treatment program;
 - (c) the excluded person’s ties to the HUU-AY-AHT community;
 - (d) the potential impacts of the exclusion order on the excluded person, impacted individuals, and the HUU-AY-AHT community;
 - (e) the nexus between the offence and the potential risk posed by the person to people on Treaty Lands and to the HUU-AY-AHT community;
 - (f) any proposed mitigation plan;

- (g) participation of the individual in a restorative program;
- (h) any supports put in place by the excluded person's Hūu-ay-aht Maht Mahs;
- (i) whether the excluded person has a criminal history beyond the commission of the prescribed offence giving rise to the exclusion order;
- (j) whether the excluded person has a history of non-compliance with court orders;
- (k) any expressions of remorse or attempts to make restitution undertaken by the person; and
- (l) any other factors it considers relevant.

Timing

- 12**
- (1) Subject to subsection (2), unless otherwise agreed by the applicant, the Hāwiih Council must commence a hearing of an application under section 10 (1) within 3 months of the date of the application.
 - (2) If there is substantial delay on the part of the applicant at any stage in the process or if exceptional circumstances exist, the Hāwiih Council may set the commencement of a hearing for a date later than 3 months after the date of application.
 - (3) Within 60 days of the conclusion of a hearing under subsection (1), the Hāwiih Council must issue a determination and provide written reasons for its determination.

Mandatory review

- 13**
- (1) The Hāwiih Council must conduct a hearing to review an exclusion order within the year prior to when the order is set to expire and determine whether the excluded person continues to pose an unreasonable risk to public safety.
 - (2) In reviewing an exclusion order under subsection (1), the Hāwiih Council must consider the factors set out in section 11.

Orders of the Hāwiih Council

- 14**
- (1) The Hāwiih Council may make an interim order in an application under this Act.
 - (2) Subject to subsection (3), at the conclusion of a hearing, the Hāwiih Council may, by written order
 - (a) affirm the exclusion order,
 - (b) rescind the exclusion order,
 - (c) vary the exclusion order, and
 - (d) make any other order it considers just in relation to the exclusion from Treaty Lands of the excluded person.

- (3) If, at the conclusion of a review hearing, the Hāwiih Council determines that the excluded person continues to pose an unreasonable risk to public safety, the Hāwiih Council must extend the exclusion order for a period not to exceed 5 years that it considers appropriate in the circumstances.
- (4) For greater certainty, an exclusion order extended under subsection (2) is subject to further review under section 13 and extension under subsection (1).

Procedures for hearings

- 15**
- (1) At the Hāwiih Council's discretion, a hearing may be conducted orally or in writing, or a combination of both.
 - (2) In conducting a hearing, the Hāwiih Council must
 - (a) serve notice of the hearing on the excluded person,
 - (b) direct the Law Clerk to provide public notice of the hearing, and
 - (c) allow the excluded person and any impacted individuals to make submissions.
 - (3) In conducting a hearing, the Hāwiih Council may
 - (a) provide notice of the hearing to any impacted individuals or to any other person the Hāwiih Council considers appropriate, and
 - (b) allow any other person it considers appropriate to make submissions.

Temporary exemptions from exclusion orders

- 16**
- (1) Upon application in the prescribed form, the Hāwiih Council may order a temporary exemption from an exclusion order
 - (a) on compassionate grounds,
 - (b) to enable the excluded person to attend a cultural event,
 - (c) to enable the excluded person to have contact with a child pursuant to a court order or agreement made under the *Child, Family and Community Services Act* (British Columbia),
 - (d) for the purposes of voting in a Hūu-ay-aht election, and
 - (e) in any other circumstances in which the Hāwiih Council considers it just and appropriate to do so.
 - (2) In determining whether to order a temporary exemption under subsection (1), the Hāwiih Council must consider
 - (a) the purpose for which the exemption is sought,
 - (b) the impact of granting the exemption on impacted individuals,

- (c) the potential risks to public safety, and
- (d) any other factors it considers relevant.

Form of temporary exemption

- 17** A temporary exemption order under section 16 must be in writing and must include the following information:
- (a) the duration of the exemption, including any specific date(s) on which the exemption is valid,
 - (b) the specific area(s) of Treaty Lands that the excluded person is permitted to access, and
 - (c) any other conditions and restrictions that the Hāwīih Council considers advisable.

Implementation of orders

- 18** (1) The Hāwīih Council may give direction to the Executive Director in orders made under this Part.
- (2) Upon issuance of an order or written reasons under this Part, the Law Clerk must, within 5 days,
- (a) place the document in the registry, and
 - (b) arrange for service of the document on the person that is the subject of the order.

PART 4 - SERVICE OF DOCUMENTS**Service of documents**

- 19** (1) A document required to be served under this Act may be served as follows:
- (a) by personal service on the named person;
 - (b) by mailing a copy to the last known residential or business address of the named person;
 - (c) by delivering a copy to the last known residential or business address of the named person;
 - (d) if the person is represented by legal counsel and legal counsel consents to accept service on behalf of the person, by delivery to the person's legal counsel;
 - (e) if the person has provided the Hūu-ay-aht government with an email address, by emailing the document to that address;

- (f) if, after making reasonable efforts, the Huu-ay-aht government does not have an address or last known address for the person, by giving public notice of the document; and
 - (g) by another prescribed method.
- (2) A document delivered under subsection (1) (c) or (d) is deemed to have been received by the named person on the day following the day on which it is delivered.
 - (3) A document sent by email under subsection (1) (e) is deemed to have been received by the named person on the day following the day on which it is sent.
 - (4) A document of which public notice is given under subsection 1 (f) is deemed to have been received by the named person 3 days after public notice is given.

PART 5 - OFFENCES

Offences

20 In this Part:

“**exigent circumstances**” has the meaning assigned to it in section 529.3 (2) of the *Criminal Code* (Canada).

Offences

- 21** (1) Any excluded person with knowledge that an exclusion order has been issued against them who fails to comply with the terms of the exclusion order commits an offence punishable on summary conviction.
- (2) Any person who provides false information in a solemn declaration under section 5 (2) (c) (ii) commits an offence punishable on summary conviction.

Trespass

22 An excluded person who enters or remains on Treaty Lands contrary to the terms of an exclusion order is in trespass.

Powers of peace officers

- 23** (1) A peace officer may arrest without warrant a person whom the peace officer finds committing an offence under this Act.
- (2) A peace officer in the performance of their duties under this Act may enter a dwelling house without a warrant for the purposes of arresting or apprehending a person if
 - (a) the peace officer has reasonable grounds to believe that an excluded person is present in the dwelling house, contrary to an exclusion order, and
 - (b) exigent circumstances make it impracticable to obtain a warrant.

- (3) For greater certainty, nothing in this Part limits the powers of peace officers authorized under the *Offence and Law Enforcement Act*, HFNA 12/2011.

PART 6 - GENERAL PROVISIONS

Prescribed offences

- 24** Within 3 months after the enactment of this Act, Executive Council must enact a regulation setting out the offences that will, in the absence of a pardon or a record suspension, give rise to an exclusion order under this Act.

Exclusion order policy regulation

- 25** (1) Within one year after the enactment of this Act, Executive Council must, by regulation, adopt an exclusion order policy with the purpose mitigating the negative impacts of exclusion orders on the Hui-ay-aht community and to promote both public safety and the reintegration of citizens into the Hui-ay-aht community.
- (2) Before a regulation is enacted under subsection (1), the Law and Policy Development Committee must consult with the Citizen Development Committee, Hui Council, Child and Family Wellness Department, Community Services Department, Nananiqsu and citizens.
- (3) Consultation under subsection (2) will address the potential inclusion of the following matters in the exclusion order policy regulation:
- (a) the provision of support to families impacted by exclusion orders,
 - (b) requirements for regular reporting by government to citizens on the impacts of exclusion orders on the Hui-ay-aht community,
 - (c) the development and implementation of mitigation plans, and
 - (d) the development and implementation of restorative programs.

Hui Council procedures

- 26** The Hui Council has the power to control its own processes and may make rules respecting practice and procedure in respect of its consideration of matters under this Act.

Power to make regulations

- 27** (1) Executive Council may make regulations referred to in section 39 of the *Interpretation Act*, HFNA 14/2011.
- (2) Without limiting subsection (1), Executive Council may make regulations
- (a) prescribing offences for the purposes of section 24,
 - (b) adopting an exclusion order policy for the purposes of section 25, and

(c) prescribing forms for the purposes of this Act.

Amendments to this Act

28 An amendment of this Act made after March 31, 2023 must be approved by the People's Assembly before that amendment is brought into force.

Commencement

29 This Act comes into force on the date of its enactment.