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ANCIENT SPIRIT, MODERN MIND

Ḥaw̓iiḥ Council

January 23, 2025

PUBLIC NOTICE is hereby given that:

The Ḥaw̓iiḥ Council is conducting a review hearing in relation to the exclusion order issued against David Bird under section 13(1) of the *Community Safety Act.*

The purpose of the review hearing is to consider whether the exclusion order, which is set to expire on February 19, 2025, should be extended and, if so, on what terms.

The review will be held in writing.

Further information, including how members of the public can request to participate, is provided on the following page.

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Information about the hearing

Under the *Community Safety Act,* the Ḥaw̓iiḥ Council is required to conduct a hearing to review an exclusion order within the year in which the exclusion order expires (a "review hearing").

Mr. Bird is subject to an exclusion order that expires on February 19, 2025. The exclusion order was issued because on February 19, 2020, Mr. Bird was convicted of the offences of forcible confinement under section 279 of the Criminal Code and assault with a weapon under section 267 of the Criminal Code.

Mr. Bird made an application to the Ḥaw̓iiḥ Council for a determination that he did not pose an unreasonable risk to public safety and asked that the exclusion order issued against him be cancelled or varied.

On November 7, 2024, the Ḥaw̓iiḥ Council conducted a hearing to consider Mr. Bird's application. On November 19, 2024, the Ḥaw̓iiḥ Council determined that Mr. Bird continued to pose an unreasonable risk to public safety and ordered that the exclusion remained in place.

The Ḥaw̓iiḥ Council is now required to conduct a review hearing to decide whether to extend the order for a further period of up to five years, vary the terms of the order or cancel the order.

If you wish to participate, please provide your written comments to Acting Law Clerk Alexis Young at lawclerk@huuayaht.org **on or before February 12, 2025.**

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Information about Exclusion Orders under the Community Safety Act

A number of questions have been raised by citizens about exclusion orders under the *Community Safety Act* (the "Act"). The Ḥawiiḥ Council provides the following information to give citizens a better understanding of exclusion orders and the matters that will be at issue in the hearings conducted under the Act.

When is an exclusion order issued?

Under section 3 of the Act, if the Executive Director knows that a person who lives or spends time on treaty lands, or who intends to, has been convicted of an *excludable offence* in the past 5 years, she must issue an exclusion order to that person. The Executive Director does not have any discretion in deciding whether to do so.

What is an excludable offence?

Excludable offences are set out in the *Community Safety Regulation*. These are criminal offences that Executive Council decided, with the input of the Ḥawiiḥ Council, are indicative of potential danger to the Huu-ay-aht community. A categorized list of these offences is attached.

What is the effect of an exclusion order?

A person who is the subject of an exclusion order is not allowed to enter Huu-ay-aht treaty lands. They may apply to the Executive Director for a temporary exemption from the order in urgent situations.

What is the role of the Ḥawiiḥ Council in relation to exclusion orders?

People who are subject to an exclusion order can apply to the Ḥawiiḥ Council for a determination that they do not pose an unreasonable risk to public safety. The Ḥawiiḥ Council will then conduct a hearing to make this determination. At the conclusion of the hearing, the Ḥawiiḥ Council may decide to keep the order in place, they may cancel the order, or they may allow the excluded person to enter on treaty lands under certain conditions. The list of factors that the Council will consider in reaching its determination is set out on the following page.

What is a review hearing?

Most exclusion orders are issued for a period of 5 years from the date of the conviction that gave rise to the exclusion order. In the year before an exclusion order expires, the Ḥawiiḥ Council is required to review the exclusion order and consider whether an

individual subject to an order continues to pose an unreasonable risk to public safety. If so, they must extend the length of the order. At a review hearing, Ḥawiiḥ Council may also lift the order completely or vary it, including by permitting an individual to be on treaty lands subject to conditions.

Factors to be considered by the Ḥawiiḥ Council

Under section 11 of the Act, in making a determination with respect to whether an excluded person poses an unreasonable risk to public safety, the Ḥawiiḥ 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 Huu-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.

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Ḥaw̓iiḥ Council

EXCLUDABLE OFFENCES UNDER THE COMMUNITY SAFETY ACT
prescribed under the *Community Safety Regulation*, s. 8

Offences committed under the following provisions of the *Criminal Code* RSC 1985 c. C-46, as amended from time to time, will give rise to an exclusion order unless the person has received a record suspension or pardon in respect of the offence:

Sexual offences

- subsection 7(4.1) (offence in relation to sexual offences against children committed outside Canada)
- section 151 (sexual interference)
- section 152 (invitation to sexual touching)
- section 153 (sexual exploitation)
- section 153.1 (sexual exploitation of person with disability)
- section 155 (incest)
- subsection 160(2) (compelling the commission of bestiality)
- subsection 160(3) (bestiality in presence of or by a child)
- section 163.1 (child pornography)
- section 170 (parent or guardian procuring sexual activity)
- section 171.1 (making sexually explicit material available to child)
- section 172.1 (luring a child)
- section 172.2 (agreement or arrangement — sexual offence against child)
- subsection 173(1) (indecent acts)
- subsection 173(2) (exposure)
- section 271 (sexual assault)
- section 272 (sexual assault with a weapon threats to a third party or causing bodily harm)
- section 273 (aggravated sexual assault)
- subsection 286.1(2) (obtaining sexual services for consideration from person under 18 years)
- subsection 286.2(1) (material benefit from sexual services)
- subsection 286.2(2) (material benefit from sexual services provided by person under 18 years)
- subsection 286.3(1) (procuring)
- subsection 286.3(2) (procuring — person under 18 years)
- section 293.2 (marriage under age of 16 years)

Other offences against the person

- section 182 (dead body — neglect to perform duty improper or indecent interference)
- section 235 (murder)

- section 236 (manslaughter)
- section 239 (attempt to commit murder)
- section 244 (discharging firearm with intent)
- section 244.1 (causing bodily harm with intent — air gun or pistol)
- paragraph 245(a) (administering noxious thing with intent to endanger life or cause bodily harm)
- section 246 (overcoming resistance to commission of offence)
- section 264 (criminal harassment)
- section 264.1 (uttering threats)
- section 266 (assault)
- section 267 (assault with a weapon or causing bodily harm)
- section 268 (aggravated assault)
- section 269 (unlawfully causing bodily harm)
- section 270 (assaulting a peace officer)
- section 270.01 (assaulting peace officer with weapon or causing bodily harm)
- section 270.02 (aggravated assault of peace officer)
- section 279.1 (hostage taking)
- section 344 (robbery)
- section 346 (extortion)
- section 423 (intimidation)

Dangerous activities

- section 244.2 (discharging firearm — recklessness)
- subsection 247(1) (traps likely to cause bodily harm)
- subsection 247(2) (traps — causing bodily harm)
- subsection 247(3) (traps — in a place kept or used for committing other indictable offence)
- section 262 (impeding attempt to save life)
- subsection 431.2(2) (explosive or other lethal device)
- section 433 (arson with disregard for human life)
- section 435 (arson for fraudulent purpose)
- section 436 (arson by negligence)
- section 436.1 (possession of incendiary material)
- subsection 438(1) (interfering with saving of a wrecked vessel)
- subsection 439(2) (interfering with a marine signal)

Criminal negligence

- section 220 (cause death by criminal negligence)
- section 221 (cause bodily harm by criminal negligence)

Offences involving trafficking and abduction of persons

- subsection 273.3(2) (removal of a child from Canada)
- section 279 (kidnapping and forcible confinement)
- section 279.01 (trafficking in persons)
- section 279.011 (trafficking — person under 18 years)
- subsection 279.02(1) (material benefit — trafficking)
- subsection 279.02(2) (material benefit — trafficking of person under 18 years)
- subsection 279.03(1) (withholding or destroying documents — trafficking)
- subsection 279.03(2) (withholding or destroying documents — trafficking of person under 18 years)
- section 280 (abduction of person under 16)
- section 281 (abduction of person under 14)

Offences related to criminal organizations

- section 467.11 (participation in activities of criminal organization)
- section 467.111 (recruitment of members — criminal organization)
- section 467.12 (commission of offence for criminal organization)
- section 467.13 (instructing commission of offence for criminal organization)

Offences related to piracy, hijacking, terrorism

- section 75 (piratical acts)
- section 76 (hijacking)
- section 77 (endangering safety of aircraft or airport)
- section 78.1 (seizing control of ship or fixed platform)
- subsection 81(1) (using explosives)
- section 82.3 (possession, etc., of nuclear material, radioactive material or device)
- section 82.4 (use or alteration of nuclear material, radioactive material or device)
- section 82.5 (commission of indictable offence to obtain nuclear material, etc.)
- section 82.6 (threats)
- section 83.18 (participation in activity of terrorist group)
- section 83.181 (leaving Canada to participate in activity of terrorist group)
- section 83.19 (facilitating terrorist activity)
- section 83.191 (leaving Canada to facilitate terrorist activity)
- section 83.2 (commission of offence for terrorist group)
- section 83.201 (leaving Canada to commit offence for terrorist group)
- section 83.202 (leaving Canada to commit offence that is terrorist activity)
- section 83.21 (instructing to carry out activity for terrorist group)
- section 83.22 (instructing to carry out terrorist activity)
- section 83.221 (counselling commission of terrorism offence)
- section 83.23 (harbouring or concealing)

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ANCIENT SPIRIT, MODERN MIND

Ḥaw̓iiḥ Council

Drug offences

Offences committed under the following provisions of the *Controlled Drugs and Substances Act* SC 1996 c. 19, as amended from time to time, if prosecuted by indictment for which the maximum punishment is imprisonment for five years or more, unless the conviction is subject to a record suspension or pardon:

- section 5 (trafficking in substance and possession for purpose of trafficking)
- section 6 (importing and exporting)
- section 7 (production of substance)