

**POKAGON BAND OF POTAWATOMI INDIANS
CHILD SAFETY ZONE ACT**

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CHAPTER 1

Section 1.01 Short Title

This Act shall be known and may be cited as the "Child Safety Zone Act".

Section 1.02 Authority

The Tribal Council enacts this Act pursuant to Article III, Sections 1 and 2 of the Constitution, the legislative powers of the Tribal Council as enumerated in Article IX, subsections 2(a) and 2(d) of the Constitution and in accordance with the duties the Tribal Council stated in Article IX, subsections 1(a), 1(c), and 1(d) of the Constitution.

Section 1.03 Findings and Purpose

The purpose of this Act is to protect and promote the health, safety, and welfare of the Band by designating areas within the Reservation where Sex Offenders may not be present because Minors often congregate or play in such areas. In furtherance thereof, the Tribal Council finds and recognizes the following guiding principles of this Act:

- (a) The sovereign powers of the Band extend to the Reservation and all Persons subject to the jurisdiction of the Band;
- (b) The Tribal Council is empowered under the Constitution, has a sacred obligation, and a compelling interest to protect and promote the health, safety, and welfare of the Band, including Minors within the Reservation;
- (c) There are areas within the Reservation that are intended primarily for use by Minors, are used primarily by Minors, or are where Minors often congregate or play;
- (d) Sex Offenders present a threat to the health, safety, and welfare of the Minors;
- (e) The Tribal Council desires to reduce the risk of threat to the health, safety, and welfare of Minors by limiting, to the fullest extent possible, the opportunity for a Sex Offender to approach or otherwise come in contact with Minors;
- (f) Within areas of the Reservation where Minors often congregate or play, the Tribal Council desires to prohibit Sex Offenders from entering or Loitering; and
- (g) The Tribal Council deems this Child Safety Zone Act necessary and prudent to achieve the foregoing.

Section 1.04 Applicability

This Act shall apply to all Persons within the Reservation.

Section 1.05 Construction

(a) To the extent reasonable, this Act shall be read and interpreted in a manner that is consistent with the Constitution, but in the event of any inconsistency, the provisions of the Constitution shall control.

(b) This Act shall be liberally construed in order to accomplish its purpose as set forth in Section 1.03 of this Chapter.

Section 1.06 Severability

(a) If any provision of this Act, or the application thereof to any Person or circumstance, shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Act, which shall continue in full force and effect.

(b) To the extent this Act conflicts with any provision of any Band law or any resolution or motion of the Tribal Council or any rule, regulation, policy or procedure of the Band, the provisions of this Act shall govern and the conflicting provisions are hereby superseded and repealed.

Section 1.07 Effective Date

This Act shall become effective on the date of its enactment.

Section 1.08 Definitions

As used in this Act:

(a) “Band” or “Pokagon Band” means the Pokagon Band of Potawatomi Indians, a sovereign Indian nation.

(b) “Child Safety Zone” means those areas of the Reservation described in Subsection 2.01(a) of this Act.

(c) “Constitution” means the Constitution of the Band, as amended.

(d) “Child Care Center” means as defined in subsection 2.06(a) of the Health and Safety Act and includes the buildings, facilities, improvements, and any parking lots servicing such.

(e) “Department of Housing and Community Development” means the Band’s Department of Housing and Community Development.

(f) “Department of Natural Resources” means the Band's Department of Natural Resources.

(g) “Election Board” means the entity established pursuant to Article VI, subsection (d), and Article XIII, subsection 2 (a) of the Constitution, with authority to oversee and conduct Pokagon Band elections.

(h) “Government Manager” means the Government Manager of the Pokagon Band.

(i) “Health and Safety Act” means this Health and Safety Act, as amended.

(j) “Indian” means any Person who is enrolled in a federally recognized Indian tribe; who is recognized as a Canadian Indian; or who has such status under federal law.

(k) “Loiter” means remaining for a period of time and under circumstances that a reasonable person would determine is for the primary purpose of observing or contacting a Minor or Minors.

(l) “Minor” means any Person who is under eighteen (18) years of age.

(m) “Parks and Recreational Areas” means recreational or athletic use areas, including but not limited to campgrounds, playgrounds, hockey and skating rinks, basketball courts, softball and baseball fields, lacrosse fields, swimming areas, soccer fields, gymnasiums, sports field, and includes the building, facilities, improvements, and any parking lots servicing such.

(n) “Person” means any natural person, regardless of whether an Indian.

(o) “Reservation” – means, under 25 U.S.C. § 1300j-5 or other applicable federal law:

(1) all lands, the title to which is held in trust by the United States for the benefit of the Pokagon Band of Potawatomi Indians; and

(2) all lands proclaimed by the Secretary of the Interior to be part of the Band’s Reservation.

The term “Reservation” includes any rights-of-way running through the Reservation.

(p) “School” means any educational facility that provides educational instruction to Minors in grades pre-Kindergarten through twelve and includes the building, facilities, improvements, and any parking lots servicing such.

(q) “Sex Offender” means any Person who is registered or required to register as a sex offender in any federal, state, tribal, or other jurisdiction. Provided that, “Sex Offender” shall not include any Person who was convicted of an offense involving sexual intercourse, penetration, contact or conduct, if the Person establishes that: (1) the victim was at least thirteen (13) years of age; and (2) the Person was not more than four (4) years older than the victim; (3) an element of the offense did not include threat, force,

coercion, violence, or position of authority, and (4) the offense is the only offense for which the Person is registered or required to register as a sex offender.

(r) “Temporary Designated Areas” means an area or areas of the Reservation where a specific event is scheduled to occur, and due to the nature of such event, Minors are expected to be present in order to socialize, play, or learn.

(s) “Tribal Council” means the Tribal Council of the Band established under Article X of the Constitution as the governing body of the Band.

(t) “Tribal Court” means the Band’s Tribal Court.

(u) “Tribal Police” means the Band’s Tribal Police.

CHAPTER 2

Section 2.01 Child Safety Zones

(a) The following locations within the Reservation, including a radius of three hundred (300) feet of such locations, are hereby designated as Child Safety Zones:

- (1) Child Care Centers,
- (2) Parks and Recreational Areas,
- (3) Schools, and
- (4) Temporary Designated Areas.

(b) Temporary Designated Areas may be designated by resolution of the Tribal Council or by memorandum of the Band’s Government Manager. Any designation of an area of the Band’s Reservation as a Temporary Designated Area shall contain a brief description of the location, and the date(s) and the time(s) that such area is a Temporary Designated Area. A copy of any such designation shall be provided to the Tribal Police, Department of Housing and Community Development, Department of Natural Resources, and the Government Manager.

Section 2.02 Prohibition

Except as provided in subsection 2.03 of this Act, a Sex Offender may not enter a Child Safety Zone.

Section 2.03 Exceptions

(a) A Sex Offender may enter a Child Safety Zone for the sole purpose of:

- (1) Voting in an election conducted by the Band’s Election Board, provided the Sex Offender shall leave the Child Safety Zone immediately after voting;

- (2) Dropping off or picking up his or her Minor child from School, a Child Care Center, or a Parks and Recreational Area, provided that the Sex Offender shall leave the Child Safety Zone immediately after dropping off or picking up his or her Minor child;
 - (3) Meeting with a Person employed within a Child Safety Zone whose job duties or responsibilities involve the Sex Offender's Minor child, and the purpose of the meeting involves the Sex Offender's Minor child; provided that the Sex Offender shall leave the Child Safety Zone immediately after the meeting has ended;
 - (4) Participating in any religious or spiritual services offered by the Band within the Child Safety Zone, provided that the Sex Offender shall leave the Child Safety Zone immediately after the services have ended;
 - (5) Obtaining government services from the Band, provided that the Sex Offender shall leave the Child Safety Zone immediately after obtaining such services;
 - (6) Attending a meeting of the Tribal Council or a Band committee or board, provided that the Sex Offender shall leave the Child Safety Zone immediately after the meeting has ended;
 - (7) Traveling through the Child Safety Zone en route to a specific location within the Reservation that is not within a Child Safety Zone, provided that traveling around the Child Safety Zone to arrive at such specific location is impossible or impracticable.
- (b) While the Sex Offender is within the Child Safety Zone pursuant to the exceptions provided in subsection 2.03(a) of this Act, the Sex Offender shall not:
- (1) Loiter,
 - (2) Make physical contact of any nature whatsoever with a Minor that is not the Sex Offender's child; or
 - (3) Take photographs or video of a Minor that is not the Sex Offender's child.

Section 2.04 Measurement

The three hundred (300) feet radius surrounding Child Safety Zones provided in subsection 2.01(a) of this Act shall be measured by following a straight-line from the outermost property line of the Child Safety Zone, or if there is no such formal property line, from the outermost building, facility, or parking lot within such Child Safety Zone.

CHAPTER 3

Section 3.01 Posting Notice of Child Safety Zone

Notice shall be posted at all Child Safety Zones that contains language substantially similar to the following:

This area is a Child Safety Zone under the Pokagon Band's Child Safety Zone Act. Unless a specific exception within the Act applies, no Sex Offender shall enter this Child Safety Zone. Violators will be prosecuted or subject to civil penalties. Contact the Tribal Police with any questions.

Section 3.02 Maps of Child Safety Zones

- (a) The Department of Housing and Community Development shall create and maintain a map depicting the Child Safety Zones. At least annually, the Department of Housing and Community Development shall review the Reservation and update the map.
- (b) The map created and maintained by the Department of Housing and Community Development in subsection 3.02 (a) shall be available to the public upon request to the Department of Housing and Community Development and shall be posted on the Band's website.
- (c) If there is a conflict between any map created pursuant to subsection 3.02(a) and this Act, this Act shall control.

Section 3.03 Notice to Registered Sex Offenders

Any Sex Offender that registers with the Tribal Police as a Sex Offender pursuant to the Band's Sex Offender Registration Code shall receive the following from the Tribal Police:

- (a) A copy of this Act, and
- (b) A copy of the map created and maintained by the Department of Housing and Community Development pursuant to subsection 3.02(a) of this Act.

CHAPTER 4

Section 4.01 Violation by Indian

Any Indian Sex Offender who violates or fails to comply with any provision of this Act shall be guilty of a crime and shall be subject to a maximum fine of \$5,000 or one (1) year imprisonment or both. Each day during which such violation or failure to comply continues shall constitute a separate violation of this Act.

Section 4.02 Violation by Non-Indian

Any non-Indian Sex Offender who violates or fails to comply with any provision of this Act shall be liable for a civil fine not to exceed \$5,000 for each such violation or failure to comply. The

amount of any such civil fine may be recovered in a civil action in the Tribal Court. All civil fines accruing under this Act shall be cumulative, and a suit for the recovery of one fine shall not bar or affect the recovery of any other fine, judgment, penalty, forfeiture, or damages, nor bar the power of the Tribal Court to punish for contempt, nor bar any criminal prosecution. Each day during which such violation or failure to comply continues shall constitute a separate violation of this Act.

LEGISLATIVE HISTORY

Child Safety Zone Act, enacted July 8, 2013 by Res. No. 13-07-08-01 and pursuant to the enacting resolution, the Child Safety Zone Act shall become effective August 5, 2013; On December 2, 2013, by adoption of Tribal Council Res. No. 13-12-02-02, § 1.08(o) was amended, which changed the definition of the term “Sex Offender”; on November 30, 2016, by adoption of Tribal Council Res. No. 16-11-30-01, §§3.02(a), (b), and 3.03(b), were amended to provide that certain responsibilities regarding the creation and maintenance of maps of Child Safety Zones be the responsibility of the Department of Housing and Community Development, and §2.01(b) was amended to include the Department of Housing and Community Development.