

ORDINANCE OF THE HOOPA VALLEY TRIBE
HOOPA VALLEY INDIAN RESERVATION
HOOPA, CALIFORNIA

TITLE 47

ORDINANCE NO.: 01-98

DATE APPROVED: March 5, 1998

SUBJECT: REGISTRATION OF SEX OFFENDERS RESIDING WITHIN THE
EXTERIOR BOUNDARIES OF THE HOOPA VALLEY INDIAN RESERVATION
AND EXCLUSION OF SEX OFFENDERS

WHEREAS: The Hoopa Valley Tribal Council is the governing body of the Hoopa Valley Indian Tribe of California pursuant to authority of the Constitution and Bylaws of the Hoopa Valley Tribe, Article V, Section 1, as approved by the Commissioner of Indian Affairs on August 18, 1972 and subsequently confirmed and ratified by the United States Congress on October 31, 1988 in the Hoopa-Yurok Settlement Act (25 U.S.C. § 1300i et seq.);

WHEREAS: The Hoopa Valley tribal Council is authorized to promulgate and enforce ordinances governing the conduct of members and non-members of the Hoopa Valley Indian Tribe within the exterior boundaries of the Hoopa Valley Indian Reservation pursuant to Article IX of the Constitution and Bylaws of the Hoopa Valley Tribe;

WHEREAS: The Hoopa Valley Tribal Council is authorized to safeguard and promote the peace, safety, morals and general welfare of the Hoopa Valley Indians pursuant to Article IX of the Constitution and Bylaws of the Hoopa Valley Tribe;

WHEREAS: The United States Congress, in the Hoopa-Yurok Settlement Act, confirmed and ratified the Hoopa Valley Tribe's Constitution and Bylaws which authorizes the promulgation and enforcement of ordinances governing the conduct of members and non-members of the Hoopa Valley Indian Tribe;

WHEREAS: The Hoopa Valley Tribal Council has the inherent authority to exclude persons from the Hoopa Valley Indian Reservation;

WHEREAS: The Hoopa Valley Tribal Council's authority to exclude persons from the Hoopa Valley Indian Reservation is expressly recognized in Article IX, section 1(j) of the Constitution and Bylaws of the Hoopa Valley Tribe;

WHEREAS: The Indian Civil Rights Act of 1968 (25 U.S.C. 1301 et seq.) provides for imposition of civil penalties for violations of Tribal ordinances; and

WHEREAS: The Hoopa Valley Tribal Council is concerned that various state agencies are not providing the required notice of the residency of known sex offenders to the Hoopa Valley Tribal Police Department pursuant to the California Penal Code and related codes.

NOW, THEREFORE, BE IT RESOLVED: that the following Ordinance governing registration of sex offenders is hereby adopted and shall be effective upon approval by the Hoopa Valley Tribal Council.

§ 1 SHORT TITLE

The short title of this Ordinance shall be the Hoopa Valley Sex Offender Registration Act, HVSRA or Title 47, and may be cited in legal documents as 47 Hoopa Valley Tribal Code § [].

§ 2 SCOPE

This Ordinance applies to all residents of the Hoopa Valley Indian Reservation.

§ 3 PURPOSE

The purpose of this Ordinance is to ensure the health, safety and well-being of all residents of the Hoopa Valley Indian Reservation.

§ 4 REGISTRATION OF SEX OFFENDERS

A. Every person described in section 4(B), for the rest of his or her life while residing within the exterior boundaries of the Hoopa Valley Indian Reservation, shall be required to register with the Chief of the Hoopa Valley Tribal Police Department within five working days of coming to the exterior boundaries of the Hoopa Valley Indian

Reservation with the purpose of temporarily residing or establishing a domicile within the exterior boundaries of the Hoopa Valley Indian Reservation. The person shall be required annually thereafter, within five working days of his or her birthday, to update his or her registration with the Hoopa Valley Tribal Police Department, including, verifying his or her name and address on a form as may be required by the Hoopa Valley Tribe.

B. The following persons shall be required to register pursuant to Section 4(A):

1. Any person who, since July 1, 1944, has been or is hereafter convicted in any court of the State of California, in any tribal court, in any federal or military court of a violation of subdivision (b) of Section 207 of the California Penal Code, kidnapping, as punishable pursuant to subdivision (d) of Section 208, Section 220 of the California Penal Code, except assault to commit mayhem, Section 243.4 of the California Penal Code, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261 of the California Penal Code or paragraph (1) of subdivision (a) of Section 262 of the California Penal Code involving the use of force or violence for which the person is sentenced to the state prison, Sections 264.1, 266, 266c, 266j, 267, 285, 286, 288, 288a, 288.5, or 289 of the California Penal Code, subdivision (b), (c), or (d) of Section 311.2 of the California Penal Code, Sections 311.3, 311.4, 311.10, 311.11, or 647.6 of the California Penal Code, former Section 647a, subdivision (d) of Section 647 of the California Penal Code, subdivision 1 or 2 of Section 314 of the California Penal Code, any offense involving lewd and lascivious conduct under Section 272 of the California Penal Code, or any felony violation of Section 288.2 of the California Penal Code; or any person who since that date has been or is hereafter convicted of the attempt to commit any of the above mentioned offenses.

2. Any person who, since July 1, 1944, has been or hereafter is released, discharged, or paroled from a penal institution where he or she was confined because of the commission or attempted commission of one of the offenses described in Section 4(B)(1).

3. Any person who, since July 1, 1944, has been or hereafter is determined to be a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the California Welfare and Institutions Code.

4. Any person who, since July 1, 1944, has been, or is hereafter convicted in any other court, including any tribal, federal or military court, of any offense which, if committed or attempted in the State of California, would have been punishable as one or more of the offenses described in Section 4(B)(1).

5. Any person ordered by any court to register pursuant to this section for any offense not included specifically in this section if the court finds at the time of conviction that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification. The court shall state on the record the reasons for its findings and the reasons for requiring registration.

C. Any person who, after August 1, 1950, is released, discharged, or paroled from a jail, state or federal prison, school, road camp, or other institution where he or she was confined because of the commission or attempted commission of one of the offenses specified in Section 4(B)(1) or is released from a state hospital to which he or she was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the California Welfare and Institutions Code, shall, prior to discharge, parole, or release, be informed of his or her duty to register under this section by the official in charge of the place of confinement or hospital, and the official shall require the person to read and sign any form that may be required by the Hoopa Valley Tribe, stating that the duty of the person to register under this section has been explained to the person. The official in charge of the place of confinement or hospital shall obtain the address where the person expects to reside upon his or her discharge, parole, or release and shall report the address to the Hoopa Valley Tribal Police Department. The official in charge of the place of confinement or hospital shall give one copy of the form to the person and shall send one copy to the appropriate law enforcement agency or agencies having jurisdiction over the place the person expects to reside.

upon discharge, parole, or release. If the conviction which makes the person subject to this section is a felony conviction, the official in charge shall, not later than 45 days prior to the scheduled release of the person, send one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon discharge, parole, or release. The official in charge of the place of confinement shall retain one copy.

D. Any person who, after August 1, 1950, is convicted in the State of California of the commission or attempted commission of any of the offenses specified in Section 4(B)(1) and who is released on probation or discharged upon payment of a fine shall, prior to release or discharge, be informed of the duty to register under this section by the court in which the person has been convicted, and the court shall require the person to read and sign any form that may be required by the Hoopa Valley Tribe, stating that the duty of the person to register under this section has been explained to him or her. The court shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Hoopa Valley Tribal Police. The court shall give one copy of the form to the person and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

E. Youth Offenders

1. Any person who, on or after January 1, 1986, is discharged or paroled from the California Department of the Youth Authority to the custody of which he or she was committed after having been adjudicated a ward of the court pursuant to Section 602 of the California Welfare and Institutions Code because of the commission or attempted commission of any offense described in Section 4(E)(3) shall be subject to registration under the procedures of this section.

2. Any person who, on or after January 1, 1995, is discharged or paroled from a facility in another state that is equivalent to the California Department of the Youth Authority, to the custody of which he or she was committed because of an offense which, if

committed or attempted in California, would have been punishable as one or more of the offenses described in Section 4(E)(3) and (4), shall be subject to registration under the procedures of this section.

3. The following offenses shall apply for the purpose of this subdivision:

a. Assault with intent to commit rape, sodomy, oral copulation, or any violation of Sections 264.1, 288, or 289 under Section 220 of the California Penal Code.

b. Any offense defined in Sections 288 or 288.5 of the California Penal Code, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 286 of the California Penal Code, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 288a of the California Penal Code, paragraph (2) of subdivision (a) of Section 261 of the California Penal Code, subdivision (a) of Section 289 of the California Penal Code, subdivision (b) of Section 207 of the California Penal Code, or kidnapping, as punishable pursuant to subdivision (d) of Section 208 of the California Penal Code.

c. Any offense under Section 264.1 of the California Penal Code involving rape in concert with force or fear of bodily injury or penetration by any foreign object in concert with force or fear of bodily injury.

4. Any person who is discharged or paroled from the California Department of the Youth Authority to the custody of which he or she was committed after having been adjudicated a ward of the court pursuant to Section 602 of the California Welfare and Institutions Code because of the commission or attempted commission of the offense set forth in Section 647.6, occurring on or after January 1, 1988, shall be subject to registration under the procedures of this section.

5. Prior to discharge or parole from the California Department of the Youth Authority, any person who is subject to registration shall be

informed of the duty to register under the procedures set forth in this section. California Department of the Youth Authority officials shall transmit the required forms and information to the Hoopa Valley Tribal Police Department.

6. All records specifically relating to registration, in the custody of the Hoopa Valley Tribal Police Department and other agencies or public officials, shall be destroyed when the person who is required to register has his or her records sealed under the procedures set forth in Section 781 of the California Welfare and Institutions Code. This subdivision shall not be construed as requiring the destruction of other criminal offender or juvenile records relating to the case which are maintained by the Hoopa Valley Tribal Police Department, Hoopa Valley Tribal Court or other agencies and public officials, unless ordered by the Hoopa Valley Tribal Court.

§ 5 CONTENT OF REGISTRATION

A. The registration shall consist of the following:

1. A statement in writing signed by the person, giving information as may be required by the Hoopa Valley Tribal Police Department.

2. The fingerprints and photograph of the person.

3. The license plate number of any vehicle owned by or registered in the name of the person.

B. If any person who is required to register pursuant to this section changes his or her name or residence address, the person shall inform the Hoopa Valley Tribal Police Department in writing within five working days.

§ 6 PENALTIES FOR FAILURE TO REGISTER

A. Any person who is required to register under this section based on a misdemeanor conviction and violates this section is subject to civil penalties consistent with the Indian Civil Rights Act, and exclusion from the Hoopa

Valley Indian Reservation in accordance with all applicable Hoopa Valley Tribal ordinances.

B. Notwithstanding Section 6(A), any person who has been convicted of assault with intent to commit rape, oral copulation, or sodomy under Section 220 of the California Penal Code, any violation of Section 264.1 or 289 under Section 220 of the California Penal Code, any violation of Section 261 of the California Penal Code, any offense defined in paragraph (1) of subdivision (a) of Section 262 of the California Penal Code involving the use of force or violence for which the person is sentenced to state prison, any violation of Sections 264.1, 286, 288, 288a, 288.5, or 289 of the California Penal Code, subdivision (b) of Section 207 of the California Penal Code, or kidnapping, as punishable pursuant to subdivision (d) of Section 208 of the California Penal Code, and who is required to register under this section who violates this section is subject to civil penalties consistent with the Indian Civil Rights Act, and exclusion from the Hoopa Valley Indian Reservation in accordance with all applicable Hoopa Valley Tribal ordinances.

C. Any person required to register under this section based on a felony conviction who violates this section or who has a prior conviction for the offense of failing to register under this section and who subsequently commits that offense is subject to civil penalties consistent with the Indian Civil Rights Act, and exclusion from the Hoopa Valley Indian Reservation in accordance with all applicable Hoopa Valley Tribal ordinances.

§ 7 RESTRICTIONS ON INSPECTION OF CERTAIN INFORMATION

Except as provided in Section 290.4 of the California Penal Code, the statements, photographs, and fingerprints required by this section shall not be open to inspection by the public or by any person other than a regularly employed peace officer or other law enforcement officer.

§ 8 TEMPORARY RELEASE OF CONFINED PERSON

In any case in which a person who would be required to register pursuant to this section for a felony conviction is to be temporarily sent outside the institution where he or she is confined on any assignment within the exterior boundaries of the Hoopa Valley Indian Reservation including

firefighting, disaster control, or of whatever nature the assignment may be, the Hoopa Valley Tribal Police Department shall be notified within a reasonable time prior to removal from the institution. This provision shall not apply to any person who is temporarily released under guard from the institution where he or she is confined.

§ 9 MENTALLY DISORDERED SEX OFFENDER

As used in this ordinance, "mentally disordered sex offender" includes any person who has been determined to be a sexual psychopath or a mentally disordered sex offender under any provision which, on or before January 1, 1976, was contained in Division 6 (commencing with Section 6000) of the California Welfare and Institutions Code.

§ 10 RELEASE OF INFORMATION

A. When a peace officer reasonably suspects, based on information that has come to his or her attention by any peace officer or member of the public, that a child or other person may be at risk from a sex offender convicted of a crime listed in paragraph (1) of subdivision (a) of Section 290.4 of the California Penal Code, a law enforcement agency may, notwithstanding any other provision of law, provide any of the information specified in paragraph (2) of this subdivision about that registered sex offender that the agency deems relevant and necessary to protect the public, to the following persons, agencies, or organizations the offender is likely to encounter, including, but not limited to, the following:

1. Public and private educational institutions, day care establishments, and establishments and organizations that primarily serve individuals likely to be victimized by the offender.

2. Other community members at risk.

B. The information that may be disclosed pursuant to this section includes the following:

1. The offender's full name.
2. The offender's known aliases.
3. The offender's gender.

4. The offender's race.
5. The offender's physical description.
6. The offender's photograph.
7. The offender's date of birth.
8. Crimes resulting in registration under this section.
9. The offender's address, which must be verified prior to publication.
10. Description and license plate number of offender's vehicles or vehicles the offender is known to drive.
11. Type of victim targeted by the offender.
12. Relevant parole or probation conditions, such as one prohibiting contact with children.
13. Dates of crimes resulting in classification under this section.
14. Date of release from confinement.

C. Information disclosed pursuant to this subdivision shall not include information that would identify the victim.

D. If a law enforcement agency discloses information pursuant to this subdivision, it shall include, with the disclosure, a statement that the purpose of the release of the information is to allow members of the public to protect themselves and their children from sex offenders.

E. For purposes of this section, "likely to encounter" means (a) that the agencies, organizations, or other community members are in a location or in close proximity to a location where the offender lives or is employed, or that the offender visits or is likely to visit on a regular basis, and (b) the types of interaction that ordinarily occur at that location and other circumstances

indicate that contact with the offender is reasonably probable.

F. For purposes of this section, "reasonably suspects" means that it is objectively reasonable for a peace officer to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect that a child or other person is at risk.

G. For purposes of this section, "at risk" means a person is or may be exposed to a risk of becoming a victim of a sex offense committed by the offender.

H. The Hoopa Valley Tribal Police Department may continue to disclose information on an offender under this subdivision for as long as the offender is included in Section 290.4 of the California Penal Code.

I. In addition to the procedures set forth elsewhere in this section, the Hoopa Valley Tribal Police Department may advise the public of the presence of high risk sex offenders in its community pursuant to this subdivision.

1. For purposes of this subdivision:

a. A high risk sex offender is a person who has been convicted of an offense for which registration is required under section 4 and also meets one of the following criteria:

i. Has been convicted of three or more violent sex offenses, at least two of which were brought and tried separately.

ii. Has been convicted of two violent sex offenses and one or more violent non-sex offenses, at least two of which were brought and tried separately.

iii. Has been convicted of one violent sex offense and two or more violent non-sex offenses, at least two of which were brought and tried separately.

iv. Has been convicted of either two violent sex offenses or one violent sex offense and one violent non-sex offense, at least two of which were brought and tried separately, and has been arrested on separate occasions for three or more violent sex offenses, violent non-sex offenses, or associated offenses.

b. A violent sex offense means any offense defined in Section 220 of the California Penal Code, except attempt to commit mayhem, sections 261, 264.1, 286, 288, 288a, 288.5, 289, or 647.6 of the California Penal Code, or infliction of great bodily injury during the commission of a sex offense, as provided in Section 12022.8 of the California Penal Code.

c. A violent non-sex offense means any offense defined in Section 187 of the California Penal Code, subdivision (a) of Section 192 of the California Penal Code, sections 203, 206, 207, 236 of the California Penal Code, provided that the offense is a felony, subdivision (a) of Sections 273a, 273d, or 451 of the California Penal Code, or attempted murder, as defined in Sections 187 and 664 of the California Penal Code.

d. An associated offense means any offense defined in Section 243.4 of the California Penal Code, provided that the offense is a felony, Sections 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, 311.7, 314, 459 of the California Penal Code, provided the offense is of the first degree, 597 of the California Penal Code, 646.9 of the California Penal Code, subdivision (d), (h), or (i) of Section 647 of the California Penal Code, 653m of the California Penal Code, or infliction of great bodily injury during the commission of a felony, as defined in Section 12022.7 of the California Penal Code.

e. For purposes of subparagraphs (b) to (d), inclusive, an arrest or conviction for the statutory predecessor of any of the enumerated offenses, or an arrest or conviction in any other

jurisdiction for any offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in those subparagraphs, is to be considered in determining whether an offender is a high risk sex offender.

f. For purposes of subparagraphs (b) to (d), inclusive, an arrest as a juvenile or an adjudication as a ward of the juvenile court within the meaning of Section 602 of the California Welfare and Institutions Code for any of the offenses described in those subparagraphs is to be considered in determining whether an offender is a high risk sex offender.

g. Notwithstanding subparagraphs (a) to (d), inclusive, an offender shall not be considered to be a high risk sex offender if either of the following apply:

i. The offender's most recent conviction or arrest for an offense described in subparagraphs (b) to (d), inclusive, occurred more than five years prior to the high risk assessment by the Hoopa Valley Tribal Police Department, excluding periods of confinement.

ii. The offender notifies the Hoopa Valley Tribal Police Department, on a form approved by the Department and available at the Hoopa Valley Tribal Police station, that he or she has not been convicted in the preceding 15 years, excluding periods of confinement, of an offense for which registration is required under paragraph (2) of subdivision (a), and the Department is able, upon exercise of reasonable diligence, to verify the information provided in paragraph (2).

h. "Confinement" means confinement in a jail, prison, school, road camp, or other penal institution, confinement in a state hospital to which the offender was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of

Chapter 2 of Part 2 of Division 6 of the California Welfare and Institutions Code, or confinement in a facility designated by the California Director of Mental Health to which the offender was committed as a sexually violent predator under Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the California Welfare and Institutions Code.

i. "Law enforcement agency" means any of the following: the Hoopa Valley Tribal Police Department; sheriff's department; district attorney's office; county probation department; Department of Justice; Department of Corrections; Department of the Youth Authority; Department of the California Highway Patrol; or the police department of any state university, state college, or community college.

§ 11 EXCLUSION OF NON-MEMBER SEX OFFENDERS

A. In accordance with all applicable Tribal ordinances, regulations and laws, known non-member sex offenders residing within the exterior boundaries of the Hoopa Valley Indian Reservation shall be excluded from the Hoopa Valley Indian Reservation after receiving notice as provided in Title 5, Hoopa Valley Tribal Code, section II(1) and (2).

B. For purposes of this section, "non-member" shall mean any person that is not an enrolled member of the Hoopa Valley Tribe.

§ 12 RECORD OF DISSEMINATION OF INFORMATION

A. If the Hoopa Valley Tribal Police Department disseminates information pursuant to this Ordinance, the Hoopa Valley Tribal Police Department shall maintain records of the offender and the means and dates of dissemination for a minimum of five years.

§ 13 IMMUNITY OF LAW ENFORCEMENT AGENCY AND EMPLOYEES

Law enforcement agencies and employees of law enforcement agencies shall be immune from liability for good faith conduct under this section.

§ 14 CIVIL PENALTIES FOR MISUSE OF INFORMATION

Any person who uses information disclosed pursuant to this section to commit a felony or misdemeanor shall be subject to civil penalties consistent with the Indian Civil Rights Act and exclusion from the Hoopa Valley Indian Reservation consistent with applicable Hoopa Valley Tribal ordinances.

§ 15 APPLICATION OF REGISTRATION AND PUBLIC NOTIFICATION PROVISIONS

The registration and public notification provisions of this section are applicable to every person described in these sections, without regard to when his or her crimes were committed or his or her duty to register pursuant to this section arose, and to every offense described in these sections, regardless of when it was committed.

§ 16 EFFECTIVE DATE, AMENDMENT

This Ordinance shall be effective from the date of its approval by the Tribal Council. This Ordinance may be amended in accordance with applicable tribal ordinances of the Hoopa Valley Tribe.

§ 17 SEVERABILITY

If any part of this Ordinance is held to be invalid, the remainder shall continue to be in full force and effect to the maximum extent possible.

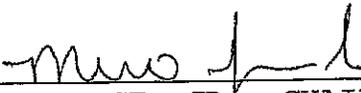
§ 18 SOVEREIGN IMMUNITY

Nothing hereunder is intended to be or shall be interpreted to be a waiver of Sovereign Immunity of the Hoopa Valley Tribe from unconsented suit in Tribal, Federal or State court.

CERTIFICATION

I, the undersigned, as Chairman of the Hoopa Valley Tribal Council do certify that the Hoopa Valley Tribal Council is composed of eight (8) members of which six (6) members were present, constituting a quorum, at a regular meeting thereof; duly and regularly called, noticed, convened and held this 5th day of March, 1998; and that this Ordinance was adopted by a vote of five (5) for, zero (0) opposed, and zero (0) abstaining; and that since approval, this Ordinance has not been rescinded, amended, or modified in any form.

DATED THIS FIFTH DAY OF MARCH, 1998.


MERV GEORGE, JR., CHAIRMAN
HOOPA VALLEY TRIBAL COUNCIL


ATTEST: DARCY BALDY, EXECUTIVE SECRETARY
HOOPA VALLEY TRIBAL COUNCIL



IN REPLY REFER TO:

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Sacramento Area Office
2800 Cottage Way
Sacramento, California 95825



RECEIVED

APR 28 1998

OFFICE OF TRIBAL ATTORNEY
HOOPA VALLEY TRIBE

APR 20 1998

Merv George Jr., Chairman
Hoopa Valley Tribal Council
P.O. Box 1348
Hoopa, CA 95546

Dear Mr. George:

The purpose of this correspondence is to acknowledge receipt of the following Tribal Ordinances:

1. Land Management Commission Ordinance.
2. Chairman's Ordinance.
3. Gaming Ordinance, Class II.
4. Sex Offender Registration Ordinance.
5. Workers' Compensation Ordinance.

We will review and grant approval where required. The ordinances will be reviewed to assure that they meet all technical and legal requirements. Should you have any questions regarding this, please contact Dorson Zunie at (916) 979-2600, Ext. 250.

Sincerely,


Acting Area Director