

Chapter 454

SEX OFFENDERS RESIDENCY RESTRICTIONS

§ 454-1. Definitions.

§ 454-2. Recitals.

§ 454-3. Purpose.

§ 454-4. Residency restriction.

§ 454-5. Residency restriction exceptions.

§ 454-6. Safety zones.

§ 454-7. Safety zone exceptions.

§ 454-8. Enforcement.

§ 454-9. Severability.

[HISTORY: Adopted by the Town Board of the Town of Koshkonong by 11-12-2014. Amendments noted where applicable.]

GENERAL REFERENCES

Nuisances — See Ch. 391.

§ 454-1. Definitions.

The following words and phrases shall have the following meanings:

CHILD or CHILDREN — An individual under the age of 18 years.

CRIME AGAINST CHILDREN —

- A. Any of the following offenses set forth in the Wisconsin Statutes, as amended, or in the laws of this or any other state or the federal government having like elements necessary for conviction, respectively:
- (1) Wis. Stat. § 940.225(1), First Degree Sexual Assault.
 - (2) Wis. Stat. § 940.225(2), Second Degree Sexual Assault.
 - (3) Wis. Stat. § 940.225(3), Third Degree Sexual Assault.
 - (4) Wis. Stat. § 940.22(2), Sexual Exploitation by Therapist.
 - (5) Wis. Stat. § 940.30, False Imprisonment — Victim was Minor and Not Offender's Child.
 - (6) Wis. Stat. § 940.31, Kidnapping — Victim was Minor and Not Offender's Child.
 - (7) Wis. Stat. § 944.02, Rape (prior statute, now Wis. Stat. § 940.225).
 - (8) Wis. Stat. § 944.06, Incest.
 - (9) Wis. Stat. § 944.10, Sexual Intercourse with a Child (prior statute, now Wis. Stat. § 948.02).

- (10) Wis. Stat. § 944.11, Indecent Behavior with a Child (prior statute, now Wis. Stat. § 948.02).
- (11) Wis. Stat. § 944.12, Enticing Child for Immoral Purposes (prior statute, now Wis. Stat. § 948.07).
- (12) Wis. Stat. § 948.02(1), First Degree Sexual Assault of a Child.
- (13) Wis. Stat. § 948.02(2), Second Degree Sexual Assault of a Child.
- (14) Wis. Stat. § 948.025, Engaging in Repeated Acts of Sexual Assault of the Same Child.
- (15) Wis. Stat. § 948.05, Sexual Exploitation of a Child.
- (16) Wis. Stat. § 948.055, Causing a Child to View or Listen to Sexual Activity.
- (17) Wis. Stat. § 948.06, Incest with a Child.
- (18) Wis. Stat. § 948.07, Child Enticement.
- (19) Wis. Stat. § 948.075, Use of a Computer to Facilitate a Child Sex Crime.
- (20) Wis. Stat. § 948.08, Soliciting a Child for Prostitution.
- (21) Wis. Stat. § 948.095, Sexual Assault of a Student by School Instruction Staff.
- (22) Wis. Stat. § 948.11(2)(a) or (am), Exposing a Child to Harmful Material.
- (23) Wis. Stat. § 948.12, Possession of Child Pornography.
- (24) Wis. Stat. § 948.13, Convicted Child Sex Offender Working with Children.
- (25) Wis. Stat. § 948.30, Abduction of Another's Child.
- (26) Wis. Stat. § 971.17, Not Guilty by Reason of Mental Disease or an Included Offense.
- (27) Wis. Stat. § 975.06, Sex Crime Law Enforcement.

RESIDENCE — A place where a person sleeps, abides, lodges, or resides on a permanent or regular basis. For purposes of this definition, a permanent basis means 14 or more consecutive days and a regular basis means 14 or more aggregate days during any calendar year and four or more days in any month. A person may have more than one residence.

SEX OFFENDER — A person who has been convicted of, has been found delinquent of, or has been found not guilty of by reason of disease or mental defect of, a "sexually violent offense" or a "crime against children."

SEXUALLY VIOLENT OFFENSE — Shall have the meaning set forth in Wis. Stat. § 980.01(6).

TEMPORARY RESIDENCE — A place where a person abides, lodges, or resides for a period of 14 or more days in the aggregate during any calendar year and which is not the person's permanent address or place where the person routinely abides, lodges or resides for a

period of four or more consecutive or nonconsecutive days in any month and which is not the person's permanent address.

§ 454-2. Recitals.

The Wisconsin Statutes, including Chapters 940, 944 and 948 thereof, govern the punishment of individuals who commit sex crimes. The Wisconsin Statutes also govern the release into the community of such individuals. The Town ("Town") is responsible to maintain the public health, safety, and welfare; and finds that sex offenders have high recidivism rates that threaten the public health, safety, and welfare, especially that of children. In making this finding, the Town has reviewed a study by the United States Department of Justice finding that sex offenders are four times more likely than non-sex offenders to be arrested for another sex crime after discharge from prison. The study also found that 70% of all men in prison for a sex crime were men whose victims were children. The Town has also reviewed the findings of various legislatures related to sex offender residency as well as the decision of the United States Court of Appeals for the 8th Circuit in *Doe v. Miller*, 405 F.3d 700 (8th Circuit 2005), in which the Court stated that it was "common sense" that limiting contact between sex offenders and areas where children are located is likely to reduce the risk of sex offenses against children. In addition, the Town has reviewed the decision of the Wisconsin Court of Appeals in *City of South Milwaukee v. Todd J. Kester*, Appeal No. 2012 AP 724, in which the Court held that a Wisconsin municipality could regulate through its police power, the location of sex predators within the City.

§ 454-3. Purpose.

The purpose of this chapter is to protect the public health, safety, and welfare of children in the Town of Koshkonong by limiting contact between sex offenders and children to reduce the risk that sex offenders will re-offend.

§ 454-4. Residency restriction.

- A. Except as otherwise provided in this chapter, a sex offender shall not establish a residence or temporary residence within 1,000 feet of any real property upon which there exists any of the following uses: [**Amended 12-8-2017**]
- (1) A school or any other facility for children.
 - (2) A public park, park facility, pathway or recreational trail where children routinely congregate.
 - (3) A day-care licensed by the State of Wisconsin.
 - (4) A public library.
 - (5) A public playground or public recreational area.
 - (6) A public athletic field used by children.
 - (7) A residential care center for children.

(8) A public swimming pool.

- B. For purposes of this section, distance is to be measured in a straight line from the closest boundary line of the real property upon which the sex offender's residence or temporary residence is located to the closest boundary line of the real property of the applicable use.

§ 454-5. Residency restriction exceptions.

A sex offender residing within an area otherwise prohibited by § 454-4 is not in violation of this chapter if any of the following apply:

- A. The person is required by court order or other governmental authority to serve a sentence at a jail, prison, juvenile facility, or other facility located at the otherwise prohibited location.
- B. The person had established a residence at the location prior to the effective date of this chapter.
- C. The use enumerated in § 454-4 was established after the sex offender established a residence at the location and registered that residence as required by law.
- D. The sex offender is a minor or ward under guardianship.

§ 454-6. Safety zones.

No sex offender may enter or be present on any real property upon which there exists any facility used for or which supports the use of:

- A. A school or any other facility for children.
- B. A public park, park facility, pathway, or recreational trail where children routinely congregate.
- C. A day-care licensed by the State of Wisconsin.
- D. A public library.
- E. A public playground or public recreational area.
- F. A public athletic field used by children.
- G. A residential care center for children.
- H. A public swimming pool.
- I. Any public building during the time it is being used for educational or recreational activities by children.

§ 454-7. Safety zone exceptions.

A sex offender present in an area otherwise prohibited by § 454-6 is not in violation of this chapter if any of the following apply:

- A. The property supporting a use enumerated in § 454-6 also supports a church, synagogue, mosque, temple, or other house of religious worship, subject to the following conditions:
 - (1) Entrance and presence on the property may occur only during hours of worship or other religious program or service.
 - (2) The person may not participate in any religious education programs that include individuals under the age of 18.
- B. The property supporting a use enumerated in § 454-6 also supports a use lawfully attended by the sex offender's natural or adopted child or children, which child's use reasonably requires the attendance of the sex offender, provided that entrance and presence on the property occurs only during hours of activity related to the use by the child or children.
- C. The property supporting a use enumerated in § 454-6 also supports a polling location in a local, state, or federal election, subject to the following conditions:
 - (1) The sex offender is eligible to vote.
 - (2) The polling location is the designated polling location for the sex offender.
 - (3) The sex offender casts his or her ballot with whatever usual and customary assistance is available and vacates the property immediately after voting.
- D. The property supporting a use enumerated in § 454-6 also supports a school lawfully attended by the sex offender as a student, provided that the sex offender may only remain on the property at such times that are reasonably required for his or her educational purposes.
- E. The property supporting a use enumerated in § 454-6 also supports a police station, Town Hall, or other governmental building, provided that the sex offender vacates the property immediately after completing the activity that required his or her presence at the property.

§ 454-8. Enforcement.

- A. Violations of this chapter shall be subject to the penalty provided in § 1-3, General penalty. [Amended 3-13-2019 by Ord. No. 1]
- B. Any person violating this chapter is declared to be creating a public nuisance which may be abated in the manner provided for in § 391-6 of the Code of the Town of Koshkonong.

§ 454-9. Severability.

The terms and provisions of this chapter are severable. Should any term or provision of this chapter be found invalid by a court of competent jurisdiction, the remaining terms and provisions shall remain in full force and effect.