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TRACKING SEX OFFENDERS IN INDIAN COUNTRY: TRIAL IMPLEMENTATION OF THE ADAM WALSH ACT

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

JULY 17, 2008

Printed for the use of the Committee on Indian Affairs

U.S. GOVERNMENT PRINTING OFFICE

44–800 PDF WASHINGTON : 2008

For sale by the Superintendent of Documents, U.S. Government Printing Office
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TRACKING SEX OFFENDERS IN INDIAN COUNTRY: TRIAL IMPLEMENTATION OF THE ADAM WALSH ACT

THURSDAY, JULY 17, 2008

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 10:07 a.m. in room 562, Dirksen Senate Office Building, Hon. Byron L. Dorgan, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. BYRON L. DORGAN, U.S. SENATOR FROM NORTH DAKOTA

The CHAIRMAN. We will call the hearing to order. My apologies for being delayed. I have been at an Energy Committee hearing this morning on the subject of gas prices and oil prices. It took longer than I expected.

This is a hearing of the Indian Affairs Committee. Today, the Committee will hold a hearing to examine the implementation of the Adam Walsh Child Protection and Safety Act of 2006. I was a cosponsor and worked in constructing that Act. The Act sought to fill the gaps in prior sex offender registration requirements.

The failures in tracking sex offenders hit particularly hard in North Dakota, but it hits hard all across this Country when we see the unbelievable stories about the victims of sex offenders. This is a photograph of a young woman named Dru Sjodin. She was abducted in Grand Forks, North Dakota on November 22, 2003. Dru Sjodin's family and the memory of Dru Sjodin has inspired at least one significant portion of the Adam Walsh Child Protection and Safety Act.

Dru Sjodin was murdered by a man named Alphonso Rodriguez, Jr. He was a level three sex offender. He was a sexual predator who had been in prison for 23 years, and prior to being released from prison, was judged to be a high risk for another violent offense, by psychiatrists and others who evaluated him.

Despite that, he was released from prison without notification of the local State's attorney, without notification of local law enforcement authorities. He moved to a place near a State border and those who might have been wishing to track whether sexual offenders were living near them by accessing a State offender list would not have seen that this particular man was living just a few miles on the other side of a State border. They would not have seen his

name. He was at a shopping center in Grand Forks, North Dakota. He kidnapped, raped, and murdered Dru Sjodin. He has since been tried and found guilty and been given the death penalty.

But the question that is raised in cases like this is how does it happen that we have a sexual predator registry of violent sexual predators that is not complete, that does not give us information about who the sexual predators are and where they are living? The other important question is, why do we not have a system that identifies not only the sexual predators who are at high risk, but especially those who are at high risk of re-offending when they are to be let out of incarceration so that the notification can be made to victims, victims' families, and to the local State's attorneys in the event that some substantial additional monitoring would be made of those high-risk sexual offenders, or perhaps some additional incarceration when necessary?

The Adam Walsh Act I recognize is not necessarily complete in every respect, but it is an Act I think that moves us forward in trying to protect people against violent sexual predators and sex offenders. For the first time in dealing with these laws, the law brought Indian tribes to the table. For example, under the guidelines of the Act, tribal court convictions will be given full faith and credit with respect to notification under this Act. In addition, sex offenders who live or work on Indian lands must comply with the registration requirements. This will help reject any notion that Indian lands are safe haven for criminals.

Those who follow this Committee know that I have held hearings in which we have had testimony that one in three Indian women during their lifetime will be raped or be the victim of a violent sexual offense. I think it is very important that we make certain that Indian lands cannot and will not and should not be safe havens for criminals who are engaged in these kinds of offenses.

Because the law deals with sex offenders, it has a significant impact on tribes and their lands. As this Committee's previous hearings have shown, Indian Country is suffering an epidemic of sexual and domestic violence. Victims of abuse on reservations in some cases have had to wait hours and in some cases weeks for a response by law enforcement because tribal police are understaffed—another subject which this Committee is dealing with.

Far too many crimes go unprosecuted which leads to under-reporting of the very problem. It is vital, it seems to me, that governments and victims in Indian Country be informed regarding the whereabouts of sex offenders.

Despite the significant impact of the Adam Walsh Act on Indian tribes, it is the case there was not sufficient consultation with tribes. This rush to move without adequate consultation has an impact on tribal governments. They should have been consulted, but under the Act tribal governments were given until July 27, 2007 to adopt a tribal resolution to carry out the obligations of the Act. If a tribe did not make the decision by July 27, then the responsibilities will be turned over to State governments.

As that date approached, no one in the Justice Department could explain what obligations a tribe would face. Indian tribes were left with a choice: choose to comply with the unknown requirements, or act to cede your sovereignty. I, along with Vice Chairwoman Mur-

kowski and Senator Biden, introduced legislation that would have permitted additional time to answer questions that are now raised by the implementation of the Act.

A similar bill was passed in the House last July, but blocked when the bill was referred to the Senate. As a result, tribes were forced to make uninformed decisions to comply with the Act or to face the consequences. One hundred ninety-eight tribes chose to exercise their authority as governments and maintain their own sex offender registry. These 198 tribal governments now have one year to reach compliance. If the Attorney General determines that a tribe has not complied, then the tribe's authority will be delegated to the State.

However, tribes and others have raised a number of questions regarding compliance. For example, can a tribe require a non-Indian sex offender to submit information to the tribal registry? Is there tribal notification or an appeal process to the Attorney General's decision of noncompliance? Is there a transition process from tribal authority to State authority?

There are many other questions our witnesses will point out and discuss today, but my point is the last thing Indian Country justice needs is more questions and confusion itself. Our law enforcement hearings have shown that this division in the criminal justice system is a major cause of violent crime problems in Indian Country. This describes the division of different jurisdictions. It is a patchwork of difficulty and complexity that frankly is just not working.

The Adam Walsh Act adds yet more questions and more layers of confusion. It seems to me that we need to answer those questions. I have asked the Department of Justice to come. They indicated that they would submit a statement and answer follow-up questions. I am disappointed that they are not here in person. I understand it has something to do with not being able to get a statement through the Office of Management and Budget, which apparently runs the entire government these days.

Look, the issue is this: The Adam Walsh Act exists. It exists because I and others believe it is important that it exist. It ought not be the case that anywhere in this Country a violent sexual predator should be able to live and not be identified or registered or a part of the monitoring that exists with governments, be that tribal government, State government, or any level of government.

The question before this hearing is not how do we find a way to allow reservations to avoid the responsibility. That is not acceptable, nor do I think our tribes are asking for that circumstance. I think the question is how do we make sure that the tribal governments are able to comply in a thoughtful way so that we have a seamless capability of identifying and monitoring sexual predators across this Country.

So that represents the purpose of this hearing. We have five witnesses today: The Honorable Ronald Suppah, who is the Chairman of the Confederated Tribes of Warm Springs in Warm Springs, Oregon. Mr. Suppah, thank you for being with us.

We have Isidro Lopez, Vice Chairman of the Tohono O'odham Nation in Sells, Arizona; the Honorable Robert Moore, the Tribal Councilman at the Rosebud Sioux Tribe in Mission, South Dakota; Mr. William Gregory, Tribal Prosecutor, Little Traverse Bay Bands

of Odawa Indians in Harbor Springs, Michigan; and Ms. Jacqueline Johnson, Executive Director of the National Congress of American Indians.

I would ask that each of the witnesses summarize their testimony, and we will include the full testimony as a part of the permanent record.

Let's begin with Mr. Ronald Suppah, Chairman of the Confederated Tribes of Warm Springs, Oregon. Mr. Suppah, you may proceed.

STATEMENT OF HON. RONALD SUPPAH, SR., CHAIRMAN, CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION

Mr. SUPPAH. Good morning, Mr. Chairman and members of the Committee. I am Ron Suppah, Chairman of the Confederated Tribes of the Warm Springs Reservation of Oregon. I appreciate the opportunity to testify today on the Warm Springs experience in trying to comply with the Adam Walsh Act.

Warm Springs was surprised and upset, as was most of Indian Country, to learn that Congress has jeopardized our sovereignty by subjecting our government to the mandates of the Adam Walsh Act. Faced with the option of trying to comply or losing jurisdiction, we have chosen to comply, even though we have very little experience in any sort of registry for sex offenders.

Since hearing about the Act, we have easily had to spend more than $10,000 of our own scarce resources to work towards compliance. We have learned all we can about the Act, submitted comments on the Act guidelines, attended consultation meetings with the Department of Justice, started attending coordination meetings with the State, and last September applied for a DOJ grant to help implement the Act.

At the end of April this year, seven months after submitting our grant application, the DOJ informed us we were being awarded an Adam Walsh implementation grant of $300,000, the amount we requested. But in mid-May, DOJ told us we needed to submit more budget information before we could start drawing on the grant funds. We submitted more detailed materials, but in mid-June, DOJ again informed us they needed still more budget information.

We are developing the additional information, but cannot start spending the grant until DOJ is satisfied. Meanwhile, time is passing before we can start ramping up towards compliance, which must be demonstrated to the DOJ's satisfaction by the end of April next year. This is just nine months away.

At present, Warm Springs has almost no experience in operating a sex offender registry. Our parole and probation office keeps track of Indian sex offenders, but only as part of the general listing of those Indians convicted of criminal offenses in our tribal court. With just nine months to demonstrate compliance, we have a lot to do. We must hire and train a registrar and a police officer to operate the registry and carry out its requirements.

We must acquire photo and fingerprint computer equipment, upgrade our computers and our links to the State, county and Federal systems, and learn the information sharing protocols. We need to

revise our tribal code to comply with Adam Walsh and to train our tribal court about the Act.

In doing so, we must make sure all these activities comply with the Adam Walsh guidelines which DOJ just issued at the start of this month. Most of this is put on hold until we can get our budget squared away with DOJ, which we hope will be fairly soon.

If we cannot meet the April 27, 2009 compliance deadline, we will have to ask the Attorney General for a one-year extension provided under the Act. We hope we won't have to, but we have a lot to do and time is running out.

In closing, I want to mention three additional concerns. One is future funding. Compliance is expensive, and if there is no future Federal funding, tribes will have to take it from other needed programs or face losing our jurisdiction. This is an unfair choice. Second, standards must be set for the Attorney General's authority to revoke tribal jurisdiction. And third, Federal prisons should do registrations. If tribes have to do registrations, so should they.

That concludes my statement. I thank you.

[The prepared statement of Mr. Suppah follows:

PREPARED STATEMENT OF HON. RONALD SUPPAH, SR., CHAIRMAN, CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION

Mr. Chairman, I am Ron Suppah, Chairman of the Tribal Council of the Confederated Tribes of the Warm Springs Reservation of Oregon. It is my pleasure to be here today to present testimony regarding the implementation of the Adam Walsh Act (Public Law 109–248) by tribal governments, and in particular by my Tribe, the Confederated Tribes of Warm Springs. My comments include a discussion of the experiences of my Tribe as we work to fulfill the Act and a discussion of the broader concerns faced by tribal governments on the general application and implementation of the Act.

Our testimony will inform the Committee how the unanticipated Adam Walsh Act threatens our sovereignty and has challenged our existing Tribal capacity and infrastructure, how we plan to address those matters, and how the Department of Justice is, on the one hand, providing funding for our compliance efforts while, on the other, frustrating our efforts to comply with the implementation timelines imposed by the Act. We will also address a number of the broader concerns with the Department of Justice's implementation of the Act and our Tribe's own particular concerns about how the Act might, or might not, be sustained.

About Warm Springs

The Warm Springs Tribe is comprised of over 4,500 members and occupies the 650,000-acre Warm Springs Indian Reservation in North Central Oregon. Warm Springs is one of three non-Public Law 280 Tribes among Oregon's nine Tribes, and the Warm Springs Police Department is the primary law enforcement provider on the Reservation. As on many reservations, the law enforcement presence on our Reservation is sparse, primarily due to insufficient federal support.

Today, at present, Warm Springs does not have a sex offender registry, and our specific experience with such a function is very limited. We do, however, have a Parole and Probation Office that lists and tracks the parole and probation status of those Indians convicted of criminal offenses in our Tribal Court, including those convicted of sex offenses. The Parole and Probation Office also has links to county and State of Oregon counterpart offices. So, we have some capacity and conviction registry and tracking experience, but we are not experienced or equipped to meet the specific Adam Walsh requirements.

Our Tribe has exercised jurisdiction over what is today the Warm Springs Reservation since time immemorial. We have always carefully guarded that sovereign authority, including through the 1950s as other Oregon tribes were stripped of that authority by P.L. 280 or were completely terminated. To be suddenly informed that the U.S. Congress has unilaterally acted in these modern times to place a portion of that sovereign authority in jeopardy, and to saddle tribal governments with unsought new obligations and expenses, is startling and abhorrent to us. We immediately undertook to learn more about the Act and its implementation. We attended

consultation sessions conducted by the Department of Justice and developed and submitted comments on the DOJ's proposed guidelines for implementation of the Adam Walsh Act. Several of those comments remain critical to us—and we believe to all tribes seeking to assume the Act's registry responsibilities—and we discuss them as on-going concerns later in this testimony. After assessing our limited options under the Act, the Warm Springs Tribal Council enacted a resolution to take on the registration requirements, and we submitted that resolution to the Department of Justice on June 26, 2007, in compliance with its deadline.

Compliance Efforts

We attended a July 31, 2007 tribal consultation session with the Department of Justice in Phoenix, Arizona where DOJ announced that implementation grants would be available. Accordingly, Warm Springs submitted a grant application to the Department of Justice SMART Office by the September 4, 2007 deadline for Adam Walsh implementation grants. In April of this year, seven months after we submitted our grant application, we initially received confusing information from DOJ about the status of our application, but on April 20, we were informed we were to receive a grant, and on April 30, Warm Springs Secretary/Treasurer Charles Calica officially received notification from DOJ of an Adam Walsh implementation grant award in the amount of $300,000.

However, we have not been able to start spending it. On May 13, we received a request from the SMART Office Chief Financial Officer for a budget narrative and listing of cost categories. On June 11, Warm Springs submitted the information we believed the SMART Office requested. But on June 17, the Department of Justice informed Warm Springs that our first submission is insufficient, and that more detailed budget information is required.

We are developing that more detailed budget information, but until our budget is finally deemed acceptable by DOJ, we are unable to access any of the grant funds, effectively delaying our ability to start acquiring and developing the capacity necessary to meet both DOJ deadlines of April 27, 2009 for certification of capacity and July 27, 2009 for commencement of registration activities.

In the meantime, and in fact since we first became aware of the Adam Walsh Act's application to tribes, Warm Springs has had to spend more than $10,000 of our own funds to learn about and work toward complying with the Act.

Today, as we try to comply with additional DOJ grant requirements, Warm Springs finds itself with each passing week facing a shorter and shorter time in which to acquire the registration capacity that must be submitted to DOJ by April 27, 2009. That leaves us nine months in which we must acquire the necessary digital fingerprinting and photo hardware and software, engage a Registry Administrator to operate the system, engage a police officer to help carry out any necessary enforcement actions and perform registration functions when the Registry Administrator is not on duty, train both, establish information-sharing protocols with other jurisdictions and upgrade our computer capacity, upgrade links to the State, house the Registration office, revise our Tribal Code to reflect Adam Walsh requirements, and train our Tribal Court personnel about the Act. In addition, we now need to make certain that our anticipated implementation plan comports with the Justice Department's Final Guidelines for the Act, which were only issued this month, eleven months after the comment deadline. If our implementation program, which we have not yet been able to begin, is not completed to the satisfaction of the Department of Justice by April 27 of next year, we may have to request from the Attorney General a one-year implementation extension as provided in the Act.

In revising our Tribal Code to accommodate the Adam Walsh Act, there are a number of policy and jurisdiction issues that will have to be considered. For instance, even though the Adam Walsh Act does not require tribes to make it a crime for a sex offender to fail to register, our Tribe will have to think about whether it wants to create such a criminal violation. That's probably the most effective way to get convicted sex offenders to comply with the registration requirement. It would also help to avoid an Adam Walsh Act enforcement vacuum on the reservation that could leave non-registrants at large on the reservation and place our sovereign authority over this issue in jeopardy of revocation by the Attorney General. Such a criminal violation could also be enforceable against non-Indians as a civil infraction. Any non-Indians who live or work on the reservation, and who have been convicted in state or federal court of a sex offense that requires Adam Walsh Act registration, are required to register with the Tribe. Once we are able to access the DOJ grant funds, we will began work on the Tribal Code provisions requiring compliance with the Tribe's sex offender registration requirements. It will have criminal penalties for Indians and civil infraction consequences for non-Indians.

Meanwhile, since we learned about application of the Adam Walsh Act to tribes, Warm Springs personnel have been active where we can be in developing coordination for the implementation of the Act. The Oregon Governor's Office has invited Warm Springs, along with all of Oregon's eight other tribes, to participate in the State "Public Safety Cluster." These are quarterly meetings that involve State public safety representatives and now all 9 tribes' public safety personnel under the State/Tribal government-to-government process. We give each other updates on the Adam Walsh Act among other public safety issues that impact either jurisdiction. Also since passage of the Adam Walsh Act, Warm Springs participates in the sex offender networking meetings being conducted quarterly by the State specifically to coordinate on Adam Walsh requirements. Warm Springs is fortunate to have good relations with the State of Oregon and with several surrounding counties, and we are counting on that history of good relations to ease and speed the coordination required under the Act.

Additional Concerns

Mr. Chairman, Warm Springs should note that the $300,000 DOJ grant we have been awarded is the amount we requested, and we believe it will be sufficient to implement the program for one year. However, we are concerned about the availability and adequacy of federal support for the cost of continuing operations in out years. Under our plan to meet the requirements of the Adam Walsh Act, Warm Springs will have on-going annual costs of approximately $175,000. Like most of Indian Country, our fiscal resources are quite limited, and if there is not sufficient federal support, the Tribe could be placed in the exceptionally unfair position of drawing funding from other critical Tribal services to meet the unfunded mandate imposed by the Adam Walsh Act or face the diminution of our tribal sovereignty. So that tribes are not placed in this untenable position, we urge this Committee and the Congress to authorize and appropriate the funds necessary for tribal compliance with the Act on an on-going basis.

Warm Springs also wishes to emphasize two other prospective troublesome issues we, and other tribes, commented on for the proposed implementation guidelines, but which remain unaddressed in the final guidelines issued earlier this month.

> First, the Tribe is disappointed that the final guidelines lack a "due process" mechanism for determining tribal compliance with the requirements of the Act. It is highly objectionable to Warm Springs that the Attorney General is allowed to unilaterally determine that a tribe has failed to comply with the Act and, as a penalty, delegate jurisdiction over the Tribe's reservation to the state. Clearly, such an administrative delegation of state jurisdiction over Indian Country is not only offensive to tribal sovereignty, it appears to be unprecedented in the more than two centuries of federal-tribal relations. Certainly, such a grave decision by the Attorney General, with such serious consequences for tribal sovereignty and jurisdiction, should be undertaken with great reluctance. Moreover, such a decision must, at a minimum, be subject to judicial challenge by the affected tribe under procedures that are consistent with the due process requirements of the United States Constitution. Warm Springs urges the Attorney General to adopt such procedures.
>
> Second, we strongly object to the provisions of the final guidelines regarding initial registration of convicted sex offenders incarcerated in the federal prison system. Unlike prisoners incarcerated in state and tribal facilities, federal prisoners are not required to register before they are released to the community under the final guidelines. The supposed justification for that glaring omission in the otherwise comprehensive requirement that incarcerated sex offenders must register before release is that there is no federal registration system. That is no excuse for not registering federally incarcerated sex offenders before their release. Certainly, it should be possible for the Federal Bureau of Prisons to arrange for incarcerated sex offenders to register with the state in which the federal correctional facility is located. That is simply a matter of federal-state coordination and cooperation. The alternative—simply releasing without registering sex offenders convicted of the most serious felonies, many of whom committed their sex crimes in Indian Country—is unacceptable in view of the public safety threat these violators pose. We recognize that the Bureau of Prisons and the federal probation offices must notify state and local law enforcement and registration agencies in destination jurisdictions prior to the release of a convicted sex offender, but the Bureau should ensure that offenders are registered in the appropriate jurisdictions before they are released.

Mr. Chairman, Members of the Committee, that concludes my testimony. Thank you for the opportunity to appear today and discuss our efforts to comply with the Adam Walsh Act.

The CHAIRMAN. Mr. Chairman, thank you very much for your statement. We appreciate your being here and your testimony.

Next, we will hear from the Honorable Isidro Lopez, who is Vice Chairman of the Tohono O'odham Nation, Sells, Arizona. I hope I have pronounced that correctly, Mr. Chairman.

Mr. LOPEZ. Yes.

STATEMENT OF HON. ISIDRO B. LOPEZ, VICE CHAIRMAN, TOHONO O'ODHAM NATION

Mr. LOPEZ. Good morning, Chairman Dorgan, Vice Chairman Murkowski, and distinguished Committee members. My name is Isidro Lopez and I am the Vice Chairman for the Tohono O'odham Nation. I thank you for the opportunity to testify today.

The Tohono O'odham Nation is the second largest reservation in the United States and the nation's government has formed longstanding partnerships with the Arizona Department of Public Safety and a host of other law enforcement agencies to register sex offenders and protect the public's safety on and off the reservation.

The Tohono O'odham's own registration and notification law was enacted several years before the Adam Walsh Act and our program is staffed by a full-time State-certified tribal police detective. As a result, the nation has registered more than 216 sex offenders on the reservation, with a resident population of 14,000. We understand the dangers posed by sex offenders whose identities remain hidden and we are committed to public disclosure of offender information.

Although the nation elected to carry out its own functions under section 127 of the Act, it is difficult to obtain the funding necessary to achieve full compliance. Because the FBI stopped funding Indian Country crime lab services in 2006, the nation entered into an intergovernmental agreement to reimburse the State of Arizona $130,000 annually for crime lab services, including the analysis and storage of offenders' DNA samples. This data is then entered into the FBI's combined DNA index system database in order to achieve the goal of making this evidence nationally available.

In addition to the DNA collection and the services provided by the State of Arizona's crime lab, the State also has been posting the nation's registration on the Arizona sex offender website and entering our offenders into the State criminal justice information system for years. While the State and the nation are now discussing an intergovernmental agreement to formalize a website service arrangement, the nation is also meeting with vendors who can create and launch a website that will fully comply with the Act.

Despite the fact that the funding to implement the Act and its guidelines and the jurisdictional maze Indian tribes always face, the nation has been working closely with our neighboring counties, the State, the City of Tucson, our tribal and Federal partners, to implement and strengthen our sex offender registration program.

These partnerships operate without official agreements, but have been highly successful. Coordination with the U.S. Marshal's office,

for example, has resulted in apprehension of charging five Indian and non-Indian offenders for non-compliance with the nation's law. The Federal and State probation departments likewise assist in registering offenders who are subject to registration in the nation, at the halfway houses before their release.

The nation is greatly encouraged that the final guidelines remove the option for States to ignore tribal convictions based on a perception that tribal justice systems deny fundamental rights that are in fact guaranteed under tribal law and the Indian Civil Rights Act.

That said, the nation is deeply troubled that even the most horrific sex crimes are categorized in the least serious tier of offenses if the conviction is obtained in tribal court. The Indian women and children suffer no less, and perpetrators are no less dangerous to the off-reservation public just because tribal courts are limited by Federal law to imposing no more than one-year sentences for rape and child molestation.

If even the most serious sex crimes are classified within the least serious tier of offenses, the goal of the Adam Walsh Act, one comprehensive system, one safety net without gaps, is undermined. Ultimately, the nation's success in achieving the goals of the Adam Walsh Act hinges on full recognition of tribes as equal partners in the fight against these terrible crimes. The extensive network of working partnerships we have developed in Arizona must be matched by a recognition in the Act and guidelines that States and tribes are equal.

Thank you.

[The prepared statement of Mr. Lopez follows:]

PREPARED STATEMENT OF HON. ISIDRO B. LOPEZ, VICE CHAIRMAN, TOHONO O'ODHAM NATION

S-ḱe:g si'alim. Bañ ce:gig Isidro Lopez. Good morning Chairman Dorgan, Ranking Member Murkowski, and distinguished Committee members. My name is Isidro Lopez and I am the Vice Chairman of the Tohono O'odham Nation. Thank you for the opportunity to testify today.

The Tohono O'odham Nation comprises the second-largest reservation in the United States and the Nation's government has formed long-standing partnerships with state and federal law enforcement officials to protect public safety on the Nation's 75 miles of international border and throughout our lands. Despite the Nation's limited law enforcement resources and the added burden of border protection, we are at the forefront of sex offender registration and notification in Indian Country.

Many years before the Adam Walsh Act was enacted by Congress, the Tohono O'odham Legislative Council enacted a stringent tribal registration and notification law. The Tohono O'odham Police Department, in turn, has implemented a rigorous registration and notification program staffed by a full-time, state-certified police detective. As a result, the Nation has a current database listing more than 216 registered sex offenders on a reservation with a resident

population of 14,000. We understand the dangers posed by sex offenders whose identities remain hidden and we are committed to public disclosure of offender information.

Because the Nation has had a sex offender registration process in place for a number of years, it has been a relatively simple transition for the Nation to comply with basic mandates of the Adam Walsh Act and the Nation did elect to carry out these functions under Section 127 of the Act. Because our registration functions are already performed by a certified police officer, expanding the descriptive data and identifying information, recording finger and palm prints, and, now, collecting DNA samples, has been a manageable, yet costly task.

That said, I would also like to alert the Committee to some challenges we have encountered that have hampered our efforts to implement the Act. Second, I will present several successes we have had in achieving compliance.

Although the Tohono O'odham Nation is making progress toward achieving full compliance, an obvious problem is funding. Because FBI funding for Indian Country crime lab services ceased in 2006, the Nation recently entered an intergovernmental agreement with the State of Arizona to reimburse the State $130,000 annually for crime lab services. These services include not only standard blood alcohol content analysis and similar processing of physical evidence, but the analysis and storage of DNA samples. This data is then submitted to the FBI's Combined DNA Index System database (CODIS).

We understand that the level of tribal-state cooperation we experience is not necessarily the norm throughout Indian Country. At national meetings, tribes in other parts of the nation report they not only lack access to, for example, state crime lab services, but are denied access to state criminal databases and other critical law enforcement tools that we all need to protect the general public from the same offenders. We all know offenders are not limited by invisible

jurisdictional boundaries and the Adam Walsh Act can only truly succeed if states fully include tribes as fellow governments fighting crime together.

Another issue for the Nation is the public website development. While again funding to establish a specific website for the Tohono O'odham Nation has been difficult to obtain, the Nation has been seeking vendors with experience working within Indian Country. This problem is compounded by the jurisdictional issues that hamper Indian Country law enforcement and on occasion are seen as a barrier to cooperation by law enforcement agencies outside of Indian Country. We are fortunate that this has not been an issue but it is certainly looming over our cooperative efforts should a non-Indian offender challenge the authority of the Tohono O'odham Nation based on the *Oliphant* decision and the resulting lack of tribal authority over non-Indian offenders on our lands.

While the Nation is deeply committed to protecting the public from sex offenders, we are concerned with the burden the Act has placed on the Tohono O'odham Police Department. We operate our program with one officer and on occasion have been able to assign additional part-time help. This makes it difficult to track offenders. We currently have 216 offenders registered, all of whom must be monitored for changes of addresses, employment, and periodic visits, etc.

Despite these needs and the always present jurisdictional challenges, the Tohono O'odham Nation has been working well with our neighboring counties Pima, Pinal, and Maricopa, the State of Arizona, the City of Tucson and our tribal and federal partners in implementing and strengthening our Sex Offender Registration program. These partnerships operate informally without an official agreement but have been successful.

In addition to the DNA collection kits and services provided by the State of Arizona crime lab, the State has also been providing public website service and has entered our offenders

into the State Criminal Justice Information system for years. However, in light of the Adam Walsh Act, the State is anxious to obtain a formal intergovernmental agreement.

Work with our federal partners, specifically the U.S. Marshal's Office, has resulted in apprehension, and charging of offenders for non-compliance. To date, there have been five registered offenders charged with an Adam Walsh violation, including non-Indian offenders who were required to register with Tohono O'odham Law Enforcement because they occasionally pass through the Nation or failed to comply with registration laws once registered here. Federal and state probation offices provide background information on the risk assessment and classification of the offenders. Consistent contact with federal and state probation offices to register offenders who enter or work on the Nation is usually accomplished by registering offenders at half-way houses before release.

Our tribal police partners would very much like to establish a specific Indian Country website because of the constant travel of offenders between the twenty-two tribal reservations in Arizona. It has been difficult for state and federal entities to track these offenders, who are aware of the jurisdictional issues and exploit them to their advantage. A specific Indian Country website that is not hampered by jurisdictional concerns and that can incorporate the unique knowledge each tribal law enforcement agency has of offenders would prove effective not only for tracking of sex offenders but also other offenders. This tool would close the all too common information gap between tribal, state, local and federal law enforcement.

Our successful efforts reflect on the environment of cooperation we are fortunate to have within the State of Arizona spurred by the motivation to protect our women and children, the most common victims of these terrible crimes. Tohono O'odham law enforcement has the attitude that they will reach out to our State, tribal, local and federal partners to enhance our efforts.

The CHAIRMAN. Chairman Lopez, thank you very much for your testimony and for being with us today.

Next, we will hear from Tribal Councilman Robert Moore from the Rosebud Sioux Tribe in Mission, South Dakota.

Mr. Moore, thank you very much.

STATEMENT OF HON. ROBERT MOORE, TRIBAL COUNCILMAN, ROSEBUD SIOUX TRIBE

Mr. MOORE. Thank you very much, Mr. Chairman. I appreciate the opportunity to be here today. Senator Tester, good to see you

as well. To all the Committee, we extend our appreciation for being here to represent the Rosebud Sioux Tribe as a representative not only from our own tribal nation, but of the Great Plains tribes as well, which you know so well, Senator Dorgan. We want to thank you for all your continued work.

We want to thank you for the $2 billion for the PEPFAR activity. It will go a long way to address some of the issues that need to be addressed concurrent to the implementation of the Adam Walsh Act, such as increased law enforcement, increased victim services, and certainly even within the Indian Health Service, some of the issues that occur when a child or a young woman is sexually assaulted or molested.

I was asked to read one brief story from a tribal member who had this happen to her. "I am an enrolled member of the Rosebud Sioux Tribe. I am an 18-year-old female who was sexually assaulted when I was 15 years old. I was raped by a neighbor who was in his early 20s. He is now in prison doing seven years. One night I went to a neighbor's house with an older girl and he raped me. I remember the rape. I just couldn't help myself. It was like I was dreaming and my dream became a nightmare.

I remember the ambulance taking me to the emergency room where I lay bleeding in the trauma room for over eight hours. Then I was taken upstairs and admitted. After 24 hours, I was then flown to Sioux Falls where I was treated for my injuries. I remember how scared I was and I thought I was going to die. I survived, but had to go to mental health and support groups at White Buffalo Calf Women Society. This is where I met other victims who helped me.

My family took me to a traditional healing ceremony and this is where I am today. The rape has affected my entire family. My mother has always been there for me throughout this whole traumatic experience. The support I received from victims through White Buffalo Calf and my family have helped me to cope with the sexual assault.

Today, I still attend the support groups and help others who went through sexual assault because I have been there and I am glad that our tribe has established a sexual offender registry so that people can be aware of the sex offenders in our area."

We are somewhere in the middle of the two tribes you have heard from already this morning in terms of the implementation of Adam Walsh. We established our own sex offender registration law at Rosebud about three months prior to the enactment of Adam Walsh, and feel the same as many tribes around the Country who already expressed their concern that Adam Walsh did not happen with tribes, but it happened to tribes.

So now we are having to face some of the ramifications of that, including the State's Attorney General having such great authority to determine whether a tribe is in compliance or not by the deadline or even following the deadline, if the deadline for implementation is not extended. We are deeply concerned about that because of the resources that tribes have already said they have had to share themselves.

Certainly with us, our Violence Against Women Act safety grant is now funding activities that otherwise should be coming from the

Adam Walsh implementation grant which we were not awarded, and certainly you can see the hoops that now a tribe has to jump through at Justice just to receive the resources to build their own system and to manage their own system and to protect what is their sovereignty.

In South Dakota, as you are probably aware, we have great jurisdictional issues with the State of South Dakota. They would jump at the chance to have any entrance onto any of our current tribal jurisdictions, even in surrounding counties outside of the main Todd County, which is the Rosebud Reservation proper.

We are also concerned about the release of Federal inmates convicted of sexual offenses that are not registered prior to their release. As you articulated this morning as well with the Dru Sjodin case, that was the case. He was not registered before he was discharged and released.

Ironically for tribal citizens who are in the same situation, they will get better health care in Federal prison, but then they have a three-day free pass to go anywhere they want, and perhaps repeat an offense again. So it is a very significant issue for us and of grave concern.

We are also concerned about the funding issues and the competitive nature of these grants, because without having to compete for them, we would be able to have those resources directly to tribes to support what is the need of that particular tribe, given their size and jurisdiction and their ability to perform the work, because it already establishes a failure on the part of the tribe if they are not given those resources to implement the Act.

That is just real briefly. You have my written testimony. We have shared our sex offender law with the staff as well for the Committee, and we want to continue working with not only your Committee, but others, the Department of Justice and others, like Leslie Hagen of the SMART office who has been such a great value to tribes in helping them through the process, that we want to be able to do everything we can to make this law work, not only for the State of South Dakota and for the Rosebud Sioux Tribe, but so that the legacy that Adam Walsh will have for Members of Congress like yourself will be rich and strong.

Thank you.

[The prepared statement of Mr. Moore follows:]

PREPARED STATEMENT OF HON. ROBERT MOORE, TRIBAL COUNCILMAN, ROSEBUD SIOUX TRIBE

The Rosebud Sioux Tribe is located in south central South Dakota and borders the Pine Ridge Reservation on its northwest corner and the State of Nebraska to the south. The reservation is located in Todd County, however, the Tribe's jurisdiction extends to tribal communities in Gregory, Mellette, Lyman and Tripp Counties in South Dakota covering over 5,900 square miles.

The area is home to over 25,000 enrolled members of the Tribe with an average per-capita income of $7,500. Todd County is historically recorded by the United States Census Bureau as one of the top five poorest counties in the United States. Over 50 percent of our membership is under the age of 21. The unemployment rate hovers around 84 percent. There are several thousand non-Indians within the Tribe's civil jurisdiction.

The Tribe has contracted law and order services from the Bureau of Indian Affairs through the Public Law 93–638 process and currently have 16 officers to respond to calls. This significant disparity in population and geographical service area to the number of officers on duty at any given time is a grave concern of tribal leaders

who are responsible for public safety and tribal court services. The tribal court is inundated with a case load into the hundreds with two prosecutors, two full time judges, one public defender and minimal court support staff.

Historically, crimes against children were unheard of as they are held sacred. In the rare instance of a crime, especially sexual assault, tribal members were ostracized from the tribe. The advent of such horrific crime, often fueled by other social and economic factors, has deepened the reverence of children for our Tribe and raised the urgency to strengthen tribal law to properly charge, adjudicate and build victim support services.

As a result of raised awareness by local victim advocacy groups, notably the White Buffalo Calf Woman Society, Inc, the Tribe's plan of action was to adopt Megan's Law and establish a resolution for Rosebud Sioux Tribal Council to enact a Sex Offender Registry on April 25, 2006 at least 3 months prior to the signing of the Adam Walsh Act.

The Adam Walsh Act, passed without tribal consultation or comment, represents a significant assault on tribal sovereignty. The State of South Dakota was an option state after the passage of Public Law 280. In other words, the State of South Dakota has the option of assuming criminal jurisdiction on Tribal lands and reservations.

The State made numerous attempts at assuming piecemeal jurisdiction over tribal lands, but the Tribes in the State of South Dakota sought declaratory and injunctive relief from the State of South Dakota from exercising jurisdiction over Indians on highways within Indian reservations. *Rosebud Sioux Tribe v. State of South Dakota,* 900 F. 2d 1164 (8th Cir. 1990).

In May of 2007, the Rosebud Sioux Tribe enacted a resolution to opt-in as the primary for administering sex offender registration provision of Adam Walsh.

While federal law predating the Adam Walsh Act provided national standards for state sex offender registration programs, it made no comparable provision concerning sex offenders who are convicted in tribal courts, or who enter the jurisdiction of a tribe following conviction in some other jurisdiction. As a result, there has been a lack of consistent means for tribal authorities to be notified on sex offenders entering their jurisdictions, to track those offenders, or to make information about those offenders available to members of tribal communities for the protection of themselves and their family. With assistance and guidance of Department of Justice and SMART Office, White Buffalo Calf Woman Society, Inc. developed another resolution with implementation of the Adam Walsh Act in which Rosebud Sioux Tribal Council passed on May 10, 2007.

Currently, White Buffalo Calf Woman Society, Inc. (WBCWS), the Tribe's designated lead victims service agency, is utilizing a Safety Grant for Indian Women to work with the state of South Dakota on the Adam Walsh Act–Sex Offender Registry. The Tribe's Attorney General, with WBCWS is working closely with State's Attorney General's office to draft a cooperative agreement concerning the transfer of electronic information and to address other issues as necessary for full implementation by the July 2009 deadline for Tribes. In addition, we have signed memorandum of agreements with surrounding counties for which the Tribe has jurisdiction.

In fact, the Rosebud Sioux Tribe's sex offender registration law requires that convicted offenders who are sentenced to register must register twice a year and extends severe civil penalties to non-Indian offenders. The State of South Dakota currently requires that offenders register only once a year.

There are currently 38 registered sex offenders within the Tribe's jurisdiction. However, within the next 5 years, given recent cases and convictions we may see that number rise to over 60 offenders who must register with the Tribe.

With that in mind, there are several key issues of concern for consideration in the enforcement of Adam Walsh within our jurisdiction.

We must have additional dollars to increase law enforcement. The Tribe has one designated officer responsible to enforce the Tribe's existing registration law which is attached to this testimony.

Additional resources will further allow the Tribe to adequately address the many man hours to ensure that our code meets the standards of the recent SORNA final regulations, approved and make sure all the technical aspects (databases, computer equipment, etc.) of the Act are in place.

Further, Congress must address issues and concerns of tribes with the Adam Walsh Act.

Currently the Act, affirmed by the final SORNA regulations permits the United States Attorney General the discretion to the State to enforce state law and jurisdiction over Indians of the reservation despite the passage of the Indian Civil Rights Act of 1968, a federal act requiring tribal consent to the assertion of state jurisdic-

tion. The Adam Walsh Act permits assertion of state authority on Indian reservations without requiring tribal consent, and is therefore represents a significant erosion of tribal sovereignty.

Congress must compel the US Attorney General to fully address and establish a due process to tribes found out of compliance with the Act and to provide resources to bring tribes into compliance, including technical assistance and other human, as well as financial, resources. This may also include assisting tribes in establishing coalitions to enforce the Act within tribal jurisdiction where a smaller tribe may not have the ability to do so on their own.

Finally, Congress must look at extending the July 2009 deadline to ensure that Tribe's, including the Rosebud Sioux, are consulted in a meaningful way to address ongoing concerns with the Act and any future legislation that forces tribes to submit to state jurisdiction and abrogates treaty, federal and constitutional law.

ROSEBUD SIOUX TRIBE
Resolution No. 2005-201

WHEREAS, the Rosebud Sioux Tribe is a federally recognized Indian Tribe organized pursuant to the Indian Reorganization Act of 1934 (48 Stat. 984) and all pertinent amendments thereof; and

WHEREAS, the Rosebud Sioux Tribal Council is the governing body of the Rosebud Sioux Tribe and exercises its powers and authority pursuant to the Rosebud Sioux Tribal Constitution and By-laws; and

WHEREAS, under the Tribal Constitution, Article IV, §§ 1(k) and 1(m) the Tribal Council is vested with the authority:

To promulgate and enforce ordinances providing for the maintenance of law and order and the administration of justice. . .;

To safeguard and promote the peace, safety, morals, and general welfare of the reservation. . . .

Id.; and

WHEREAS, the Rosebud Sioux Tribe suffers from high rates of child sexual abuse and molestation, both of which have detrimental effects on the lives of all residents of the Rosebud Indian Reservation; and

WHEREAS, the victims of such abuse on the reservation number in the thousands; and

WHEREAS, it is widely recognized and substantiated that a large number of child molesters and other sex offenders will re-offend; and

WHEREAS, the Rosebud Sioux Tribe has no laws requiring convicted sex offenders to register with the law enforcement department; and

WHEREAS, Tribal registration of convicted sex offenders is necessary to effectively prevent child molestation and other forms of sexual abuse on the Reservation. Such registration will protect the health and safety and promote the welfare of all Reservation residents, and

WHEREAS, that the Governmental Affairs Committee recommends the adoption of Ordinance 2005-06 which would amend the RST Law and Order Code, Title 5, Chapter 7, entitled Sex Offenses to add to Title 5, Chapter 7, Sections 8, 9, 10, 11, 12, and thirteen entitled Registration of Sex Offenders; and

ROSEBUD SIOUX TRIBE
Resolution No. 2005-201

WHEREAS, the Governmental Affairs Committee did hold a hearing on July 28, 2005, on the above amendments to the Law and Order Code, Title 5, Chapter 7, Sex Offenses, that convicted sex offenders be required to register with Rosebud Sioux Tribe Law Enforcement; now

THEREFORE BE IT RESOLVED, that the Rosebud Sioux Tribal Council hereby adopts Ordinance No. 2005-06 which is the amendments to the Law and Order Code, Title 5, Chapter 7, Sex Offenses.

CERTIFICATION

This is to certify that the above Resolution No. 2005-201 was duly passed by the Rosebud Sioux Tribal Council in session for a First Reading on April 25, 2006, by a vote of fifteen (15) in favor, none (0) opposed and five (5) not voting. A Second Reading was held on May 11, 2006 and approved by a vote of eighteen (18) in favor, none (0) opposed, none (0) abstained and two (2) absent. The said Resolution No. 2005-201 approving Ordinance 2005-06 was adopted pursuant to authority vested in the Council. A quorum was present.

ATTEST:

Gerri Night Pipe, Secretary
Rosebud Sioux Tribe

Rodney M. Bordeaux, President
Rosebud Sioux Tribe

ROSEBUD SIOUX TRIBE
Ordinance 2005-06

5-7-8 REGISTRATION OF SEX OFFENDERS

(1) Any person, other than a minor, who resides on this Reservation or who is temporarily domiciled on the Reservation for more than thirty (30) days and who has been convicted, whether upon a verdict or plea of guilty or a plea of nolo contendere, for commission of a sex crime, shall register, with the Tribal Law Enforcement Department.

(2) All persons required to register who were convicted prior to the date of enactment of this Ordinance, shall register with the Tribal Law Enforcement Department thirty (30) days after the enactment of this Ordinance.

(3) All persons required to register who are convicted and who are residing on the Reservation when convicted shall register with the Tribal Law Enforcement Department within ten (10) days of coming onto the Reservation to reside or temporarily domicile for more than thirty (30) days;

(4) A violation of this section by an Indian shall constitute a class B misdemeanor punishable by up to a $500.00 fine or up to a six (6) month jail sentence.

(5) A violation of this section by a Non-Indian shall constitute a civil infraction and subject to a fine of at least $500.00 but not more than a $1,000.00 fine.

5-7-9 INFORMATION REQUIRED FOR REGISTRATION

Persons required to register pursuant to Sec. 5-7-8, above shall register by completing a registration form prescribed by the Law Enforcement Department and by submitting to photographing and fingerprinting. The registration form shall include the following information:

(1) The sex offender's name and all aliases used;

(2) A complete description of the sex offender, including attached photographs and fingerprints;

(3) The sex offender's residence address, length of time at

that residence, and length of time expected to remain at that residence; and

(4) A complete account of all sex crimes for which the offender has been convicted.

5-7-10 WRITTEN NOTICE OF NEW ADDRESS REQUIRED

(1) Any person required to register pursuant to Sec. 5-7-8, who moves to a different residence address shall inform the Law Enforcement Department of his or her new residence address within ten (10) calendar days of moving.

(2) A violation of this section by an Indian shall constitute a class B misdemeanor punishable by up to a $500.00 fine or up to a six (6) month jail sentence.

(3) A violation of this section by a Non-Indian shall constitute a civil infraction and be subject to a fine of at least $500.00 but not more than a $1,000.00 fine.

5-7-11 ANNUAL REGISTRATION REQUIRED

(1) Any person required to register pursuant to Sec. 5-7-8 shall register annually with the Law Enforcement Department in order to verify the accuracy of the information given pursuant to Sec. 5-7-9.

(2) A violation of this section by an Indian shall constitute a class B misdemeanor punishable by up to a $500.00 fine or up to a six (6) month jail sentence.

(3) A violation of this section by a Non-Indian shall constitute a civil infraction and be subject to a fine of at least $500.00 but not more than a $1,000.00 fine.

5-7-12 REGISTRATION FILES AVAILABILITY

(1) The Law Enforcement Department shall maintain a file for each registered sex offender containing the information given pursuant to section 5-7-9.

(2) Law Enforcement Department may make the files

ROSEBUD SIOUX TRIBE
Ordinance 2005-06

available to any regional or national registry of sex offenders.

(3) Registration files shall be public records and shall be open to Inspection by members of the public; provided that, all victim-identifying information contained herein is confidential and nothing in this section authorizes the release of the name or any other identifying information regarding the victim of a sex crime to any person other than law enforcement agencies.

5-7-13 DUTY OF COURT TO INFORM CONVICTED SEX OFFENDERS OF REGISTRATION

When sentencing any person found guilty of committing any of the sex crimes set forth in Sec. 5-7-8 , inclusive, the Tribal Court shall require the person to read and sign any forms as may be required by the Law Enforcement Department and note in the Court's record that the sex offender who failed to register has had the duty to register and the procedure for registration shall be explained to that offender by the Tribal Court.

WHEREAS, the Governmental Affairs Committee did hold a hearing on July 28, 2005, on the above amendments to the Law and Order Code, Title 5, Chapter 7, Sex Offenses, that convicted sex offenders be required to register with Rosebud Sioux Tribe Law Enforcement; now

THEREFORE BE IT RESOLVED, that the Rosebud Sioux Tribal Council hereby adopts Ordinance No. 2005-06 which is the above amendments to the Law and Order Code, Title 5, Chapter 7, Sex Offenses.

The CHAIRMAN. Mr. Moore, thank you very much for your testimony.

Next, we will hear from Mr. William Gregory, who is a Tribal Prosecutor at Little Traverse Bay Bands of Odawa Indians in Harbor Springs, Michigan.

Mr. Gregory, thank you for joining us today.

STATEMENT OF WILLIAM GREGORY, TRIBAL PROSECUTOR, LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS

Mr. GREGORY. Thank you very much, your honor. It is a privilege to be here to share information from Michigan Indian Country. I thank you and the Committee and the staff for this opportunity.

Michigan Indian Country is composed of 12 federally recognized Indian tribes. We have been working in a consortium for the last two years to secure funding and to encourage cooperation among the tribes on law enforcement issues. I have been a prosecutor and a judge at five different tribes in Michigan since 1989. In my experience, I found a great deal of problems with tribes sharing information.

In Michigan, we have an excellent relationship with the Federal and State governments. The State of Michigan allows Michigan tribes to utilize the law enforcement information network which is

an area where you can get criminal histories, background checks, but the big problem is that the tribal courts, tribes do not put their criminal convictions on that link system.

So when we do a criminal background check in a tribe in Michigan, it is incomplete because we don't know what is going on in the other tribes. This makes us handicapped when it comes to the officers knowing who they are dealing with and what kind of person they are dealing with, and also for the prosecutors to understand that they could possibly be enhancing a charge against a particular individual.

So for two years prior to Adam Walsh, we have been struggling with how to get this information-sharing going. Again, most of the tribes in Michigan have—there are 11 of the 12 that have deputization agreements with their local counties. They also have a good relationship with the Western District U.S. Attorney's Office because 11 of our tribes are located in the Western District.

Adam Walsh has been well explained. The impact has been felt in Michigan as well. The ultimatum about setting up your own sex offender registry or let the State come in and give them access encouraged all the tribes of Michigan to file resolutions to set up their own sex offender registry, without knowing the impact, the options and all the problems that might be there.

Fortunately, in Michigan we have had some grants, some great grants that have allowed us to put into place infrastructure that I think will serve us well as we go forward. Just quickly, I would like to mention a few of those. In 2006, T–CHRIP, which stands for Tribal Criminal History Record Improvement program, gave us some money for the tribes in Michigan which we went around to the tribal courts and helped them set up databases, because the basis for a good criminal information-sharing system is a tribal court or a court that can share information on convictions.

In 2007, from T–CHRIP, we got a live-scan grant to provide all the tribes in Michigan with live-scan. It also takes the fingerprints and the palm prints which makes it Adam Walsh-compliant. From VAWA, we received grants to set up a personal protection order database. We have also requested in 2008 to expand that to all of the tribes.

We are also looking for a grant from T–CHRIP for record management systems, for all the law enforcement departments, again the type of record management system that can be stored information and can exchange that information with other law enforcement agencies.

And then we were fortunate to get a grant from SMART office in 2007 for technology and training. Those grants have all formed and created an infrastructure on which part of each will contribute to the Adam Walsh Act necessity, technology, connectivity that we anticipate.

The outlook for compliance in Michigan, the tribes are working cooperatively. They have identified options at recent summit meetings over the last year. There are committees right now that are preparing impacts for tribal leaders to identify the best options so that they can make a decision. Once the tribal leaders make a decision to go forward, I believe that compliance in Michigan is possible

by the goal established by the Act, but more than likely we will need an additional year.

Thank you.

[The prepared statement of Mr. Gregory follows:]

PREPARED STATEMENT OF WILLIAM GREGORY, TRIBAL PROSECUTOR, LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS

Mr. Chairman and members of the Committee; The Little Traverse Bay Bands of Odawa Indians, on behalf of the 12 federally recognized tribes [1] in Michigan, would like to thank you for this opportunity to provide input on the implementation of the Adam Walsh Act in Michigan's Indian Country.

The 12 tribes are located throughout the state. The tribes are known as the Three Fires of the Algonquin Tribe who migrated from New England. The Three Fires are composed of the Odawa (Ottawa), the Ojibeway (Chippewa), and the Poddawadomi (Pottawatomi). The Odawa were traditionally located along the western shore of Lake Michigan and were manly involved in fishing and trading. The Ojibeway were located along the eastern shore of Lake Huron and the north shore of Lake Superior and were mainly involved in fishing. The Poddawadomi were located in the southwestern area of Michigan and were mainly farmers. One tribe of Poddawadomi, the Hannahville Indian Community, moved to the Upper Peninsula of Michigan to escape the relocation of their tribe to Kansas.

I have served as a prosecutor for 19 years with several Michigan tribes, Grand Traverse Bands (12 years), Saginaw Chippewa Indian Tribe (3 years) and the Little Traverse Bay Bands of Odawa Indians (6 years) as well as a special prosecutor for the Little River Band of Ottawa Indians, and the Sault Tribe of Chippewa Indians. Some of these assignments overlap in time. I also served as an interim chief judge for the Saginaw Chippewa Indian Tribe of Michigan.

The Michigan tribes have a good relationship with the Michigan State Police and all tribal law enforcement departments utilize the Michigan Law Enforcement Information Network ("LEIN") for background checks and other criminal justice information.

The criminal history records available on LEIN do not contain tribal court convictions so the criminal histories are incomplete. As I prosecuted in the different tribal courts I often dealt with offenders that I had dealt with in other courts. In those rare instances I could enhance charges if the offender had prior convictions for the same offense. As a prosecutor I would only learn about a prior conviction by personal knowledge from prior contact or by informal talks between law enforcement personnel from other tribes.

I was concerned about this lack of criminal histories from other tribes so I asked our grant writer to be on the lookout for any grants that would provide funds to establish a tribal wide criminal history repository for Michigan tribes. My grant writer was skeptical but within a few months of my inquiry we received word of the Tribal Criminal History Record Improvement Program ("T–CHRIP") funded by the Bureau of Justice Statistics in the Department of Justice. We received funding for 2006 to explore means and methods for enhancing law enforcement in Indian Country through a tribal criminal history repository that would be accessible to tribes and the Michigan State Police. During our first round we learned that the first and foremost problem was the lack of criminal information capable of being shared. The thrust of the first T–CHRIP grant was to assist Michigan tribes develop sharable databases using Microsoft Access and the services of Aventure Technology of Santa Fe New Mexico, a firm with extensive experience serving tribes in New Mexico.

In 2007 the Little Traverse Bay Bands ("LTBB") secured funding through a Violence Against Women's Act ("VAWA") grant to establish a pilot program for a personal protection order ("PPO") database with four (4) Michigan tribes. The database will be operational at the end of July, 2008 and the LTBB has made application for a follow on grant to complete the database for all Michigan tribes. The infrastructure for the PPO database will also support a criminal history network as well as a sex offender registry as required by the Adam Walsh Act ("AWA").

In 2007 the LTBB received a second T–CHRIP grant to purchase livescan fingerprint machines for all Michigan tribes. Automated fingerprinting is a basic necessity for all tribes because the State of Michigan and the FBI no longer accepts paper

[1] The word Tribe and Band are used interchangeably in Michigan.

finger prints cards. The latest model livescan machines also receive palm prints, a requirement of the AWA.

In 2008 the LTBB applied for another T–CHRIP grant to purchase record management systems ("RMS") for tribal law enforcement agencies. Some tribes only use a paper filing system to keep track of investigation and arrest information. An RMS contains more information than a typical criminal history record that only contains court convictions. A tribal network of RMS will aid investigations and the collection of crime statistics.

The tribal court databases, the PPO database, the RMS network, and the livescan fingerprint machines form an infrastructure that will lead to complete justice information sharing among tribes and assist the tribes to comply with AWA.

In 2007 the LTBB received a grant from the SMART Office on behalf of all Michigan tribes for training and infrastructure to facilitate AWA implementation. The SMART Office has been extremely helpful in general and Leslie Hagen in particular. Ms. Hagen has attended every conference and training sponsored by the SMART Office and she has attended several conferences in Michigan. She is well versed on the AWA and is an excellent advocate for Indian Country USA.

The AWA was a bolt out of the blue for Indian tribes throughout the nation; tribes complained that the AWA was an unfunded mandate and the Department of Justice did not consult with tribes before the enactment of the AWA. The single most onerous aspect of the AWA for tribes was the ultimatum that if tribes didn't elect to stand up their own SOR the State of Michigan would assume responsibility and the state would be given access to the tribal justice systems. Under this threat every tribe in Michigan filed resolutions with the SMART Office by July 27, 2007 to stand up their own SOR. Michigan tribes made their election without knowing the full impact of their election.

LTBB has hosted two conferences to provide information to the tribes about the different options the tribes have for implementing AWA and the impact of each option. The Smart Office, the US Attorney for the Western District of Michigan,[2] and SEARCH, a national non-profit organization that works on national information sharing standards, and the Michigan Sex Offender Coordinator have provided information to Michigan tribes.

Some tribes are leery of sharing information; they feel that it infringes on their sovereignty. Most tribes see the need for information sharing, especially as it pertains to criminal offenders who travel from reservation to reservation. These tribes see the sharing of information as providing officer safety and safer communities. Some tribes view the AWA as extending tribal sovereignty by requiring non-Indians who work, reside, or attend school to register with the tribes. The tribes also have the option to enact civil penalties for non-Indians who fail to register or update their registration. 18 USC 2250 makes it a 10 year felony offense for anyone who enters, leaves, or resides in Indian Country. Tribal leaders see the efficacy of knowing what sex offenders are residing, working, or attending school in their jurisdiction to protect children.

Following the AWA Summit on July 1, 2008 in Petoskey Michigan, different disciplines within the various tribes are working together to form ad hoc committees to share ideas and come up with ways and means to comply with AWA.

Four options for implementing AWA were identified and discussed at the July 1 Summit: (1) Each tribe stand up their own SOR; (2) Individual tribes stand up their own SOR and negotiate memorandums of understanding ("MOU") with the State of Michigan to share different responsibilities under AWA; (3) Tribes form a consortium to develop a tribal wide SOR; and (4) Tribes form a consortium and negotiate an MOU with the State of Michigan to share responsibilities for a SOR.

The next step is to reach tribal councils and executives, educate them about the different options and come to a consensus and proceed to implementation.

The State of Michigan has participated in all the AWA conferences and trainings and is very willing to work with tribes in a manner of the tribe's choosing.

The final guidelines for AWA were just released by the SMART Office; the final guidelines clarify some of the questions raised in the previous edition.

Tribes are also encouraged to hear of the proposed Indian Law Enforcement legislation that I have had an opportunity to review. The Michigan tribes have been well served by the US Department of Justice. Because of the funding, the cooperation, and the training offered by the DOJ, the Michigan tribal law enforcement community would look favorably if Indian Country law enforcement were placed within the

[2] There are 12 federally recognized tribes in Michigan; 11 are located in the Western District. For more than 10 years the Western District has employed a Indian Country liaison AUSA. The western district has been extremely supportive of tribal efforts and has participated in all conferences and training sessions on Adam Walsh.

aegis of the DOJ. The BIA currently administers Indian Country law enforcement programs but the BIA is poorly equipped to perform their responsibilities and law enforcement is not the BIA's number one priority.

Thanks to the efforts of the SMART Office, the Bureau of Statistics, and the VAWA office, Michigan tribes are well placed to comply with AWA within the established time frame. It will not be easy, there will be sacrifices, there will be spirited differences to reconcile but the rewards loom large: communities will be safer, law enforcement will be coordinated throughout Indian country; tribal courts will be more efficient, and tribes will be more unified.

Thank you again for this opportunity.

The CHAIRMAN. Mr. Gregory, thank you very much for your testimony. We appreciate your telling us of your experience with the multiple tribes in Michigan.

Next, and finally, we will hear from Ms. Jacqueline Johnson, Executive Director of the National Congress of American Indians.

Ms. Johnson, you may proceed.

STATEMENT OF JACQUELINE JOHNSON, EXECUTIVE DIRECTOR, NATIONAL CONGRESS OF AMERICAN INDIANS

Ms. JOHNSON. Thank you, Mr. Chairman.

I want to personally also thank you, as well as Robert Moore, for the assistance that you gave in the bipartisan way that we were able to get this additional $2 billion, which is actually going to be very, very helpful for law enforcement, and certainly for the work that you did with your peers and colleagues to make this happen. I really appreciate that.

But I also want to thank you, too, for the leadership that you have taken on this law enforcement bill. I think the work that you have done and your staff has done in collaborating with Indian Country to really find out what we need will support the things that we are saying here and recommending today, particularly the inclusion of all the tribes in the Adam Walsh provisions and requirements.

As you said very clearly, this system, you know, there is a need for this system, and with the two bills as was heard here today, the two bills, the Violence Against Women and the Adam Walsh being passed within six months of each other, created confusion for Indian Country in the last two years. Indian Country is still standing by. I heard today some great recommendations, as well as some tribes who have stepped forward, putting forward their recommendations, putting forward their own resources to be able to address this issue, but unfortunately not all tribes are able to do that and they don't have the resources to be able to be in the same position. So we advocate today that we look for ways of being able to do that.

As the deadline for implementation approaches, we are still finding that there is this great deal of confusion. The guidelines, as stated earlier, were just issued earlier this month, and we are still trying to figure out how they are going to come together with the Violence Against Women Office and the coordination and collaboration just within DOJ. It is something that still needs to be tackled.

We also found that because many tribes, as was stated earlier, opted in so they could protect their sovereignty, those that were eligible to opt in to protect their sovereignty, have recognized that they need to work through or collaborate through working relation-

ships with their States. Many States have historically been very good about that. Some States have been more challenging.

But what we are hearing from the States as we monitor where the States are in their implementation is that many of them are also suggesting that the resources aren't there for them to comply with the Act. In fact, some States are even suggesting that it may be too expensive for them to comply and that they would rather receive 10 percent less than their Byrne revenues resources, grant-funding, than to have to comply. So we in Indian Country are also challenged. If a State chooses not to comply, it makes it more difficult for our tribe to comply.

I could go on. My testimony is pretty detailed about all the issues and concerns that we have. But mostly today, I want to ask you, and of course the Senate Committee on Indian Affairs, to take leadership on this issue, to address these concerns, in order to re-address the law and to clarify the things that we need. Robert Moore mentioned Leslie Hagen, who has been working very closely with Indian Country. Many times she has to say to us over and over again, these are all the answers that I can tell you; this is the law as it is written; we need to get Congress to clarify for that.

So I would like to just focus on the recommendations that we have in our testimony right now before I close. First, from the onset, the Adam Walsh Act left out over half the tribes from the national system. In order to have a truly seamless registration system, Congress must amend the Adam Walsh Act to allow all tribes to participate in the national sex offender registry system on an equal basis.

Second, the role of the BIA has been totally left out. In fact, it has not been addressed. We urge Congress that you include the BIA and bring them into the national sex offender registration system. In our testimony, I go on about how many systems that the BIA actually operates and manages for tribes. Without their inclusion, we have a gap in Indian Country.

And third, the Adam Walsh Act has given the Attorney General the unilateral authority to strip tribal governments of their civil and criminal jurisdiction to monitor ex-offenders. This unprecedented delegation is an extremely dangerous precedent and NCAI urges Congress to amend the law to protect both the tribal sovereignty and your right and authority over Indian affairs.

And finally, while States have had decades to build their sex offender management systems and modified and updated to comply with the new law, many tribes are starting from scratch. It will be extremely cost for Indian Country to comply with the law's mandates. We urge that the Committee consider extending the compliance for all tribes to provide additional time for tribes to come online.

We look forward to working with you and your staff on putting together a package of recommendations to consider to redress this legislation. Thank you very much.

[The prepared statement of Ms. Johnson follows:]

PREPARED STATEMENT OF JACQUELINE JOHNSON, EXECUTIVE DIRECTOR, NATIONAL CONGRESS OF AMERICAN INDIANS

Thank you for inviting NCAI to testify on sex offender registration. Sex offenses are a serious problem on Indian reservations. American Indian and Alaska Native women have a one-in-three chance of being raped in their lifetime.[1] Likewise, high rates of sexual abuse of Native children, particularly in government and church run schools, have long plagued Native communities. The Indian Health Service estimates that one in every four Native girls and one in every seven Native boys will be sexually abused.[2] As tribal leaders know, and this Committee has acknowledged, gaps in criminal jurisdiction and law enforcement on tribal lands have caused sexual predators to target Indian communities.[3] Perhaps no other group in the United States is as effected by, or concerned about, sexual violence and sexual predators as tribal communities.

Unfortunately, federal requirements related to the tracking of sex offenders on tribal lands have become a source of great confusion and frustration for many tribes over the past two years. In 2006, Congress passed two bills addressing sex offender tracking on tribal lands—the Violence Against Women Act of 2005, and, six months later, the Adam Walsh Child Protection and Safety Act. While the tribal provisions in VAWA were developed in close consultation with Indian tribes and are widely supported by tribal governments, the provisions addressing Indian tribes in the Adam Walsh Act were included without any input from Indian tribes and represent a dramatic departure from the way other civil and criminal justice matters are handled on tribal lands.

Indian tribes strongly support Congress's efforts to create a seamless national sex offender registry system. Many tribes had sex offender codes and registries in place prior to the passage of either VAWA or the Adam Walsh Act. NCAI has stated before, however, that the Adam Walsh Act's provision for Indian tribes is structured in a way that undermines its effectiveness, creates

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[1] This is compared with an incidence rate of 1 in 5 for women nationwide. Tjaden and Nancy Thoennes, *Prevalence, Incidence and Consequences of Violence Against Women: Findings From the National Violence Against Women Survey* (November 2000, NCJ 183781), exhibit 7 p. 22, available at http://www.ncjrs.org/pdffiles1/nij/183781.pdf.

[2] Department of Health and Human Services, Indian Health Service, Child Abuse Project, *available at,* http://www.ovccap.ihs.gov/.

[3] At a 2006 SCIA Hearing, Chairman John McCain stated that "The Indian Child Protection and Family Violence Prevention Act was enacted in 1990 in response to the findings … that certain BIA schools had become safe havens for child abusers. The investigation of these crimes revealed that the perpetrators knew that their reporting and investigation of these heinous acts were in such a sorry state that they would rarely be detected." HEARING BEFORE THE COMMITTEE ON INDIAN AFFAIRS, UNITED STATES SENATE ON S. 1899, March 15, 2006.

unnecessary barriers for the tribal and state officials charged with implementing the law, and is an affront to tribal sovereignty (NCAI Resolution ECWS 07-003, *attached*). The delegation of tribal criminal and civil authority to the states contemplated by the Act is an unnecessary complication of the already confusing system of criminal and civil jurisdiction on tribal lands. The law strips a subset of tribes that are subject to state jurisdiction under PL 280 of civil regulatory authority over their members. It also has the potential to create state criminal jurisdiction in non-PL 280 states where it has never before existed. The Act represents a substantial unfunded mandate for tribes, many of whom already suffer from a severe shortage of resources for public safety.

I commend the Committee for proactively addressing implementation of the Adam Walsh Act in Indian Country. The structural defects of the statute require additional Congressional action in order to make the goal of a seamless sex nationwide sex offender tracking system a reality. **NCAI urges the Committee to work with tribes to begin drafting amendments.**

NCAI's testimony today will touch on a number of the challenges tribes are encountering as they attempt to implement the Adam Walsh Act and make recommendations how these challenges can be addressed. I look forward to hearing about the experiences of the tribal witnesses testifying today, and I strongly encourage the Committee to solicit additional testimony from tribes in PL 280 states, tribes that have lands in multiple states, and tribes that rely on the Bureau of Indian Affairs for law enforcement, detention, or tribal courts.

Adam Walsh Act Implementation

The Adam Walsh Act addresses tribes in two key ways. First, the statute created a federal offense for an individual who has been convicted of a sex offense in tribal court who fails to register in the jurisdiction where the offender works, lives, and attends school.[4] The law also requires all jurisdictions to include tribal court convictions for qualifying sex offenses in their registries.[5] Second, Section 127 of the Adam Walsh Act provides a mechanism for a subset of Indian tribes to participate in the national sex offender registration system. Section 127 created two classes of tribes: 1) those subject to PL 280 jurisdiction in MN, WI, NE, OR, CA, and AK, and 2) all other tribes. Tribes in the second category were given one year to pass a resolution stating their intention to comply with the mandates of the Adam Walsh Act. For those tribes that failed to pass a resolution within one year, as well as the PL 280 tribes in the first category, the responsibility to implement the new law was delegated to the state or states in which the tribe's lands are located.

From the outset, the Adam Walsh Act left over half of the tribes out of the national system. It was also deeply problematic that the Adam Walsh Act required Indian tribes to take affirmative action to preserve their existing authority. This set a very dangerous precedent. Due to the hard work of many, of the 212 tribes that were eligible to elect to comply with the law, 198 did so before the July 27, 2007 deadline. An additional 5 tribes passed resolutions delegating their

[4] 18 U.S.C. § 2250. The Department of Justice has issued Guidelines instructing that this registration requirement have retroactive application. DOJ Interim Rule, 28 C.F.R. § 72.3.
[5] Adam Walsh Child Protection and Safety Act, §111 (6).

responsibilities to the state.[6] It is NCAI's understanding from our communications with tribal leaders, that many of the tribes passed resolutions to preserve their rights under the law and intend to negotiate agreements with the state or other tribes to share the burden of implementation.

As the Committee knows, all states and tribes have until July 27, 2009, or one year from the time that DOJ makes software for implementation available, to come into compliance with the mandates of the Act. The Department of Justice (DOJ) finalized the Guidelines for implementation of the law earlier this month and tribes have had very little time to digest the final Guidelines. To date, there has been very little money made available to assist tribes with implementation of the law. Many tribes have begun discussions with other tribes and the states about how they can work together to best implement the law.

At this point, however, there is still a great deal of confusion. A number of states have complained about the stringent requirements set out in the federal law and have suggested that coming into compliance will be more expensive than accepting a 10% reduction in their Byrne grant funding. It will be very difficult for tribes to comply with the law as a practical matter if the state in which the tribe is located chooses not to comply. In addition, it remains to be seen how the National Tribal Sex Offender Registry authorized in VAWA will be reconciled with the tribal provisions in the Adam Walsh Act. Section 905 of VAWA authorizes $1 million a year for five years to be granted to a tribe or tribal organization to develop both a national tribal sex offender and order of protection registry.[7] Consistent with the long-standing federal policy of respect for tribal self-determination, this provision is very flexible and would create a voluntary registry available for the use of all tribal governments. Congress appropriated $940,000 for the Tribal Registry last year, but those funds have not yet been expended by the DOJ.

Procedure for Addressing Tribal Compliance

One of the major issues that has not yet been addressed by Congress or the DOJ, is the process that will be used to assess tribal compliance with the Adam Walsh Act. Under Section 127(2)(C) of the Act, Congress vested the Attorney General with the authority to assess the compliance of those tribes who have elected to participate as a registration jurisdiction. If the Attorney General finds that the tribe is not in compliance, he has the power to delegate the tribe's authority under the Act to the state. Such a delegation would represent a major infringement on tribal sovereign authority, and Congress' unprecedented decision to vest the Attorney General with this power may well be an unconstitutional delegation of Congress' authority under the Indian Commerce Clause. At the very least, it undermines the government-to-government relationship and long-standing policy of respect for tribal sovereignty on the part of the Congress.

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[6] NCAI commends Leslie Hagen, in the SMART Office for her efforts to ensure that Indian tribes receive timely information regarding implementation of the Act. It is vitally important that the SMART Office continue to have a knowledgeable staffer dedicated to implementation of the Act in Indian Country.

[7] Violence Against Women and Department of Justice Reauthorization Act, Pub. L. 109-162, Sect. 905(b), 119 Stat. 2960 (2006) ("VAWA").

If the Attorney General chooses to exercise this authority, it will dramatically change the current scheme of civil and criminal jurisdiction in Indian Country. As a practical matter, such a delegation by the Attorney General will undoubtedly create a great deal of confusion among law enforcement agencies on the ground and will require significant adjustments in the state plan for implementation of the Act. It will also have the potential to destabilize countless carefully negotiated cross-jurisdictional collaborative agreements that currently exist between tribes and the states. This confusion and destabilization could easily undermine the effectiveness of the Act for the protection of both Native and non-Native communities.

Despite these potentially serious consequences, the DOJ Guidelines provide no indication of the process that will be used by the Attorney General to assess tribal compliance and make this delegation. The federal government's unique trust responsibility to Indian nations, the federal policy of promoting and supporting tribal self-determination, and the requirement in EO 13175 that the federal government "shall grant Indian tribal governments the maximum administrative discretion possible," require that Congress revisit this portion of Section 127.

NCAI recommends that Congress amend the law to remove the provision giving the Attorney General unilateral authority to strip tribal governments of their civil and criminal authority.

At the very least, the Attorney General must engage in meaningful consultation with Indian tribal governments to develop a process that requires DOJ to provide adequate notice to tribes of their noncompliance and to take all actions that may be necessary to provide technical assistance to help a tribe come into compliance.

The Responsibilities of the Bureau of Indian Affairs

We are very concerned that the Bureau of Indian Affairs (BIA) is not mentioned in the law nor in the DOJ Guidelines. In many locations the BIA is the primary law enforcement agency for the tribe, and may also operate the tribal court and detention facility. The BIA funds fifty-nine detention facilities on tribal lands, and directly operates twenty.[8] Forty-seven tribal law enforcement programs are BIA-operated, and an additional 154 programs are BIA-funded.[9] Forty-six tribal communities are served by BIA-operated courts.[10] It is unclear from the statute and the Guidelines what role the BIA will play when a tribe opts-in where the BIA has the responsibility for one of these important functions.

NCAI recommends that Congress clarify that where a tribal government has elected to participate as a registration jurisdiction, the Bureau of Indian Affairs must take all necessary action to assist with tribal implementation of the Act.

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[8] Guillermo Rivera, Bureau of Indian Affairs, Testimony before the National Prison Rape Elimination Commission, March 27, 2007.
[9] Steven Perry, Bureau of Justice Statistics, "Census of Tribal Justice Agencies in Indian Country, 2002," (Dec. 2005).
[10] *Id.*

Registration of Federal Inmates

We also have significant concerns about the provisions in the Guidelines exempting federal corrections facilities from the Act's requirement that offenders be registered prior to release from incarceration. SORNA mandates that "an appropriate official shall, shortly before the release of the sex offender from custody, or if the sex offender is not in custody, immediately after the sentencing of the sex offender... ensure that the sex offender is registered."[11] However, under the Guidelines all federal corrections facilities will merely provide the sex offender with notice that the individual must register within three days. Sex offenders in federal prisons are often the worst of the worst. It is irresponsible to release these prisoners without ensuring that they are registered in their home jurisdiction is notified of their release. This provision leaves Indian tribes particularly vulnerable because of the high proportion of offenders whose crimes arose in Indian Country that are incarcerated in federal prisons. Today, over 60% of federal sex offense cases occur in Indian Country and the majority of such offenders will return to Indian reservations.[12]

In addition to undermining public safety, this provision in the Guidelines will substantially shift the cost burden of initial registration from the federal government to the tribes. The responsibility of initially registering an incarcerated offender, including the collection of DNA and fingerprints, is a responsibility that clearly lies with the federal government under the Act. At a consultation session with tribal leaders on July 31, 2007 federal representatives stated that the federal prisons could not register offenders because there is no federal registry. Many tribes, however, also do not currently have registry systems in place. The costs that would be associated with developing the federal infrastructure necessary to fulfill this responsibility are no greater than the cost the Indian tribes will incur in building the same infrastructure.

NCAI strongly recommends that Congress clarify that federal corrections facilities, like state and tribal facilities, are required to ensure that offenders are entered into the registry before their release.

Tribes Not Acting as "Registration Jurisdictions"

Even in those places where tribal governments did not have the option of participating as a registration jurisdiction under Section 127 of the Act, or in cases where the tribe opted-out, the tribal government will play an important role in the successful implementation of the national sex offender registration system. Although the statute treats tribes and states as if they are interchangeable, the state simply cannot fulfill all of the responsibilities of tribal governments. For example, even where a state has the authority under the Act on tribal lands, tribal courts will still have the responsibility of notifying offenders of their registration obligation. Tribal detention facilities will still be housing offenders. The state will need access to tribal codes in order to include the text of the law violated by the offender in the state registry. Most importantly, tribal or BIA law enforcement officers will still be the officers most likely to be in need of information about the whereabouts of registered offenders for investigation purposes and

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[11] Adam Walsh Child Protection and Safety Act, § 117 (a)(3).

[12] Report of the Native American Advisory Group, United States Sentencing Commission 2 (Nov. 4, 2003), *available at* http://www.ussc.gov/NAAG/NativeAmer.pdf.

best positioned to assist registration personnel with tracking down non-compliant offenders. In many places the states do not have the infrastructure in place in tribal communities to successfully implement the requirements of the Adam Walsh Act. Alaska officials, for example, have expressed concerns that they simply will not be able to implement the Adam Walsh Act in the Native villages.

The DOJ has attempted to mitigate the problems created by the exclusion of a subset of tribes subject to PL 280 jurisdiction in Section 127. In the Guidelines DOJ clarifies that nothing in the law prohibits a tribe whose authority has been delegated to the state under Section 127 from carrying out registration and notification programs consistent with their sovereign authority to do so, so long as it does not interfere with the state's responsibility under the Adam Walsh Act. The Guidelines further clarify that nothing in the law precludes the states and tribes from agreeing that tribal authorities will play some role in carrying out state registration and notification functions.

While this is an important clarification, it leaves those tribes that were excluded from participation under Section 127 dependent on the goodwill of the state. NCAI has heard from a number of tribes that they are experiencing resistance when they attempt to negotiate a sharing of responsibilities with the states. In addition, throughout the Guidelines provisions are included requiring the sharing of information between "jurisdictions" of an offender's whereabouts or updates to registration information. Indian tribes who have not opted-in under Section 127 have the same law enforcement and public safety need to receive this information as do other jurisdictions. Unfortunately, the definition of "jurisdiction" in the statute would leave them out and, as a result, the local law enforcement agency would not have the information it needs to keep the community safe.

NCAI strongly recommends that Congress amend the Adam Walsh Act to remove the arbitrary distinction made in Section 127 and allow all tribes to participate in the national sex offender registration system on an equal basis.

Federal Database Access and Technology Infrastructure

The Adam Walsh Act will require tribes to have access to the National Sex Offender Registry (NSOR) maintained by the FBI and other federal criminal information databases. Currently, Indian tribes can access the federal databases only by going through the state in which the tribe is located. Some tribes have been able to negotiate agreements with state governments to gain this access. These agreements vary between states with some states charging substantial sums or requiring criminal information sharing before granting access to the tribes. Many tribes have been unable to negotiate an agreement with the state and remain shut out of the federal criminal databases. Indian tribes have been advocating for direct access to the federal database for years, and a provision was included in VAWA stating that the "Attorney General shall permit Indian law enforcement agencies, in cases of domestic violence, dating violence, sexual assault, and stalking, to enter information into Federal criminal information databases and to obtain

information from the databases." However, the FBI continues to assert that tribes can only access the databases by negotiating with the state.[13]

A census of tribal justice agencies conducted by the BJS in 2002 found that fifty-four tribes were submitting information on tribal sex offenders to the National Sex Offender Registry.[14] However, less than 12% of tribes were electronically connected to jurisdictions off the reservation, nearly half of tribal justice agencies reported that they do not have access to the National Criminal Information Center database, and only fourteen tribes reported that they were routinely sharing crime statistics with the state or local governments or the FBI.[15] In addition, the vast majority of tribal law enforcement agencies are still using ink and paper fingerprinting techniques that will have to be upgraded to LiveScan technology before tribes can comply with SORNA.

NCAI recommends that Congress clarify that the FBI must permit tribal law enforcement agencies to directly access the federal criminal information database.

Resources and Timelines

Perhaps the biggest challenge facing tribal communities attempting to implement the Adam Walsh Act is the cost. Because of a desire to preserve tribal authority vis-à-vis the states, many tribes have opted-in as registration jurisdictions under Section 127 even though they likely will not have the capacity to meet the onerous requirements set out in SORNA without a substantial expenditure of resources. As noted above, tribes also face substantial technological and infrastructure deficits. The states have had over a decade to build the sex offender management systems that will be modified and updated to comply with the new law. Many tribes, however, are starting from scratch, and it will be extremely costly for Indian tribes to build the infrastructure necessary to comply with the law's mandates. To date, very little money has been made available from the Department of Justice to assist tribes in complying with the law. In addition, appropriations for implementing the law were cut in FY 2008 from more than $20 million to just over $4 million, making it increasingly unlikely that significant funding will be made available prior to the 2009 compliance deadline. As a result, many tribal governments may be forced to divert limited tribal public safety resources away from other priorities. Or, more likely, they will be compelled to opt-in and then submit their sovereign authority to states. The statute currently allows for 2 one-year extensions of the deadline, but the burden will be on the tribe to apply for such an extension.

In light of the delays in the promulgation of the Guidelines, the limited nature of the funding available, and the practical reality that many tribes are playing catch up, NCAI recommends that Congress extend the compliance deadline for Indian tribes. NCAI also strongly recommends that Congress appropriate funds specifically for tribal implementation of the Adam Walsh Act.

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[13] Comments of the Federal Bureau of Investigation at the "Government-to-Government Consultation on Violent Crime in Indian Country," March 5, 2008.
[14] BJS Census of Tribal Justice Agencies, 2002.
[15] Id.

Conclusion

The tribal governments represented by NCAI share the federal government's commitment to protecting our communities and citizens from sexual predators. In fact, prior to the Adam Walsh Act, many Indian tribes had adopted sex offender registry codes. NCAI and our tribal members also worked successfully to include a provision in the Violence Against Women Act of 2005 to create a National Tribal Sex Offender Registry so that Indian tribes could share information with one another and improve our ability to track dangerous offenders. We have no doubt that there are solutions to the many challenges and concerns outlined above, however finding those solutions will require bringing all of the necessary stakeholders together to develop solutions that will work for the diverse tribal governments across the nation.

NATIONAL CONGRESS OF AMERICAN INDIANS

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The National Congress of American Indians
Resolution #ECWS-07-003

Title: Urging Congress to Amend Section 127 of the Adam Walsh Act

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, according to Department of Justice statistics, 1 in 3 Native women will be sexually assaulted in her lifetime; and

WHEREAS, tribal governments are committed to fulfilling their responsibility to protect and promote public safety on tribal lands and a number of tribes have developed innovative strategies for tracking sex offenders on tribal lands; and

WHEREAS, on July 27, 2006 Congress passed the Adam Walsh Act, which created a National Sex Offender Registry and Notification System; and

WHEREAS, Section 127 of the Adam Walsh Act addresses Indian tribes and was included without any hearings, consultation or consideration of the views of tribal governments and current tribal practices; and

WHEREAS, Section 127 forces tribal governments to affirmatively elect to comply with the mandates of the Act by July 27, 2007 or *the state in which the tribe is located will be given jurisdiction to enforce the Act and would then have the right to enter tribal lands to carry out and enforce the requirements of the Act*; and

WHEREAS, tribal governments in the mandatory P.L. 280 states would be forced to relinquish civil jurisdiction to the states for limited purposes under the Act; and

WHEREAS, the Act requires tribes who elect to comply with the Act, to maintain a sex offender registry that includes a physical description, current photograph, criminal history, fingerprints, palm prints, and a DNA sample of the sex offender; and

WHEREAS, the tribal provisions of the Adam Walsh Act make no reference to the National Tribal Sex Offender Registry authorized in Title IX of the reauthorization of the Violence Against Women Act passed in 2005 that was developed in consultation with Tribal governments and is more consistent with principles of tribal sovereignty; and

WHEREAS, Congress has failed to appropriate any money to develop the National Tribal Sex Offender Registry, nor to assist tribes into developing the systems necessary to comply with the mandates of the Adam Walsh Act and is unlikely to do so prior to the July 27, 2007 deadline for tribes to opt-in; and

WHEREAS, the Department of Justice has not yet issued any regulations or guidance for implementation of the Act and it seems increasingly unlikely that any such guidance will be promulgated prior to the July 27, 2007 deadline; and

WHEREAS, the provision in the Adam Walsh Act that gives states enforcement authority essentially delegates federal law enforcement authority on many reservations where no such delegation has occurred for any other area of law and states are not currently exercising criminal jurisdiction; and

WHEREAS, requiring tribes to take affirmative action to avoid an expansion of state jurisdiction on tribal lands represents an unprecedented diminishment of tribal sovereignty and will likely result in an expansion of state jurisdiction that will unnecessarily complicate the already confusing system of criminal jurisdiction on tribal lands and diminish cooperation between states and tribes on law enforcement; and

WHEREAS, the existing scheme of criminal jurisdiction on tribal lands is sufficient to fully enforce the registration requirements of the Adam Walsh Act without the provision delegating federal enforcement authority to the state in places where states do not currently have this authority; and

NOW THEREFORE BE IT RESOLVED, that the NCAI does hereby call upon the Congress to amend the Adam Walsh Act to remove the existing tribal provisions and engage in a process of consultation with tribal governments to determine how best to include tribal nations in the national sex offender registry; and

BE IT FURTHER RESOLVED, that the NCAI does hereby call upon the Congress to remove the arbitrary July 27, 2007 deadline for tribes to elect to participate; and

BE IT FURTHER RESOLVED, that NCAI calls upon Congress to strike the portion of the Adam Walsh Act that delegates federal enforcement authority under the statute to the states; and

BE IT FINALLY RESOLVED, that NCAI calls upon Congress to appropriate sufficient funds for tribes to develop registration systems that will comply with the mandates of the Adam Walsh Act and for the development of the National Tribal Sex Offender Registry, and calls upon the Department of Justice to authorize tribal registration numbers.

CERTIFICATION

The foregoing resolution was adopted by the Executive Council at the 2007 Executive Council Winter Session of the National Congress of American Indians, held at the Wyndham Washington and Convention Center on February 26-28, 2007 with a quorum present.

President

ATTEST:

Juana Majel

Recording Secretary

The CHAIRMAN. Ms. Johnson, thank you very much.

We will be introducing in just a matter of days, perhaps next Monday or Tuesday, the major law enforcement bill that we have put together. We have been involved in a lot of consultation around the Country on that piece of legislation. We now have nine cosponsors that are bipartisan. We will be formally introducing that bill in the Senate in just a matter of days.

The reason I mention that is the subject today is really law enforcement, and how do we streamline and improve law enforcement on Indian reservations, and particularly how is the coordination between tribal governments and other governments improved.

I think it was you, Mr. Lopez, who testified—someone did, I think it was you—who testified that we are in a circumstance where given the way the law is written, if a violent sexual predator commits a very violent act on a reservation, and for one reason or another it is not prosecuted perhaps by the U.S. Attorney in that area, but prosecuted by the tribal courts for whatever reason, no matter how violent that Act, it falls into tier one, because the sentence for that can be no more than a one-year sentence. Is that correct? Would you expand on this?

Mr. LOPEZ. That is correct, because of the Indian Civil Rights Act. If a member is convicted in tribal court, because of our law, we can only prosecute or put in incarceration for one year. As they leave the reservation or when we speak to the State or the county, they are going to only recognize that they bring him to the lowest tier I guess because of their incarcerations, or rather their sentence has only been a year.

The CHAIRMAN. But it is entirely possible in that circumstance you could have these folks mislabeled on the registration. If you have someone who is classified as a sex offender, but classified as tier one, when in fact it could possibly be a very violent sex offender, but because of the unusual circumstances of a tribal court in this case having had to take jurisdiction and being prohibited from exercising more than a one-year incarceration, it is very likely this would be information that would I think misinform people if they looked at it.

Well, I will come back to that. Let me ask a number of other questions, if I might.

Mr. Gregory, you indicate the T–CHRIP program you talked about.

Mr. GREGORY. T–CHRIP, yes.

The CHAIRMAN. The T–CHRIP program and the need for a tribal record management system dealing with the history of offenders, perhaps not just sexual offenders, but all offenders.

Mr. GREGORY. Yes.

The CHAIRMAN. Is it generally the case from your experience that no such system exists? That the tribal courts when meting out certain sentences to those who are brought before the courts do not register that sentence or do not describe that someplace in a record or database?

Mr. GREGORY. They keep it in their own database or filing system, whatever they may have, but they do not share that unfortunately at this time.

The CHAIRMAN. Do tribal courts have access to the NCIC? Tribal courts do not have access to that routinely, right?

Mr. GREGORY. They could have it through the State of Michigan through the Michigan State Police criminal history record depository, then it would just go on.

The CHAIRMAN. Certain cooperative circumstances exist I assume where tribal authorities, perhaps having agreements in some parts of the Country with local law enforcement authorities, could have access to information on the NCIC as they work together on a case, but it is likely the case that the NCIC, if it is not receiving information from dispositions or adjudication of criminal cases on the reservations, the NCIC is not having a complete list either then. Is that correct?

Mr. GREGORY. That is very true, your honor, very true. It is one of the main problems we have in law enforcement in Michigan. But through the cooperative efforts that we have carried out, I think that we are convincing them for safe communities and for officer safety. The law enforcement departments are strongly behind these measures. We are hoping that the impetus from the necessity for sharing information under the Adam Walsh Act is going to help us push the tribes into that cooperative agreements and cooperative efforts to get all criminal histories, including sex offenders, but of course we are mandated under Adam Walsh on sex offenders, but on other crimes as well because under Adam Walsh you have to have criminal histories when you register offenders.

The CHAIRMAN. The criminal history is critically important if we are going to address real law enforcement needs in a significant way. The fact is in this Country generally, and I am guessing although I don't have the data, on Indian reservations a relatively small percentage of the crimes, or I should say a large percentage of the crimes will be committed by a small percentage of the population, in many cases over and over and over again.

If you don't have an adequate criminal history, you have a very difficult time trying to address those issues with that smaller part of the population that is producing most of the criminal activity.

Ms. Johnson, can you tell me what is happening across the Country with all of the tribes? I assume tribes are strapped for money,

strapped for cash, strapped without the ability in many cases to make the significant technology investments that are necessary to have a really good criminal history record and be sharing that. Is that the case?

Ms. JOHNSON. Yes. In fact, a lot of the tribal courts still don't have electronic systems for just managing the data themselves. So that would be one of the first steps, not only that, but technology, the live-scan technology that most tribes still don't have. It is good to see that there are projects out there that are trying to do those kinds of things. There are some tribes that are trying to do tribe by tribe recognition and sharing of data on a very small scale, and that needs to be expanded.

But you were just talking about access to the NCIC systems. You know, less than 12 percent of the tribes have access to those systems right now. NCAI met with the Attorney General and said that was just paramount for us to be able to comply with the law. We are really concerned that if we don't get access, we will not be able to make the compliance requirement and then the Attorney General is in a position to determine, without any guidelines right now, of what meets compliance or not and could transfer sex offender jurisdiction over.

The CHAIRMAN. So you are saying that access to that is important in terms of reaching compliance under the Adam Walsh Act?

Ms. JOHNSON. Critical. Yes.

The CHAIRMAN. Let me come back to that in a moment.

Mr. Suppah, you indicated that your tribe is considering civil penalties for non-Indian violators on your reservation. Is that correct? A non-Indian sexual predator comes back to live on your reservation decides I'm not going to register no matter what the tribe has decided I should do. Do you feel like you have the capability of taking action and imposing a civil penalty that will stick on a non-Indian in that circumstance?

Mr. SUPPAH. I guess the Adam Walsh Act does not require tribes to have a sex offender registry. So that kind of loop we wanted to address that by amending our tribal code to make it a criminal violation for failure to register.

The CHAIRMAN. Let me ask any one of you who could answer this about the Bureau of Prisons and the willingness of the Bureau of Prisons to notify tribal governments before releasing sex offenders. Who has experience with that?

Mr. Lopez?

Mr. LOPEZ. We get our information, as I mentioned, when they are released through the halfway houses, because when they release, they just don't come home. They go through a halfway house, if you will. Once they are released from there, we get out information if they say they are going to come back to the nation, then their probation officers will let us know. That is how we find out.

The CHAIRMAN. But the Bureau of Prisons does not let you know, as a routine matter?

Mr. LOPEZ. No.

The CHAIRMAN. In the law enforcement bill that we will be introducing, we do have a provision in that law enforcement bill that would require the Bureau of Prisons to share that information with tribal governments.

Mr. MOORE. That would be great. Likewise at Rosebud, we simply don't have that access to NCIC as well. In addition to that, we do have a civil infraction in our law for non-Indians for non-compliance of registering with our law, with a maximum penalty of a fine of at least $500, but not more than a $1,000 fine. We understand we can't incarcerate them in our local jail, but we can fine them. So we have made it a civil infraction for non-Indians not registering within our jurisdiction.

The CHAIRMAN. Has that been challenged at all?

Mr. MOORE. Not at all.

The CHAIRMAN. Do you feel confident that you can make that stick?

Mr. MOORE. We can make it stick.

Mr. GREGORY. Mr. Chairman?

The CHAIRMAN. Yes?

Mr. GREGORY. I also believe that, I believe I have the right cite, 18 U.S.C. 2250, which makes it a 10-year felony for someone who is supposed to register or to update their registration, and who either travels to Indian Country, travels out of Indian Country, or resides in Indian Country, could face Federal prosecution, serious Federal prosecution.

I would also like to add, and I am sorry to add this, but I am very impressed with the law enforcement bill that I have had the opportunity to review. All law the enforcement community and the tribal community in Michigan strongly supports that bill. We would even look favorably with the Department of Justice taking over the administration of Indian Country law enforcement.

One last recommendation would be that——

The CHAIRMAN. Wait a second. Say that again? That is a surprising statement.

Mr. GREGORY. We have spoken about it many times.

The CHAIRMAN. When you say we, you are speaking for whom?

Mr. GREGORY. I am sorry, the tribal law enforcement community. We have a Michigan Law Enforcement Association that meets on a monthly basis. They have often stated their preference to have Indian Country law enforcement come under the aegis of the Department of Justice rather than the Bureau of Indian Affairs.

The Bureau of Indian Affairs lacks a lot of the resources necessary, the technology to take use of the statistics that we are required to supply to them. Their number one priority is not law enforcement, whereas under the Department of Justice it is.

The CHAIRMAN. Ms. Johnson, what do you think of that?

Ms. JOHNSON. That is a loaded question.

[Laughter.]

Ms. JOHNSON. Well, you know, I think that Indian Country has always wanted the Department of Justice to step up to the plate more, to take on the responsibilities, but understanding the jurisdictional and unique issues in Indian Country. Unfortunately, the way that Justice is structured right now where the tribal office sits within the structure it is not high enough in the system for us to be able to have the right kind of leadership from the helm.

We did mention that when I met with the Attorney General to let him know that we really felt that in order to make the changes necessary for Indian Country to feel more comfortable with Justice,

they would have to restructure themselves to have a representative or an office within his office to take some direction.

Once that step is developed, then maybe Indian Country might feel a little bit different. I think a lot of folks in Indian Country might support that. Others would be scared of that just because of the unknown of what Justice could really do.

The CHAIRMAN. Let me ask you to start at the top, Ms. Johnson, with me. I repeat what I said earlier today. I think there is no question that this Country has moved in an aggressive way to say we are not going to continue to do business the way we used to do business with sexual predators. Arrest them, put them in prison, no matter how violent. When they are let out of prison, you wave and give them a few bucks and they are off someplace, not monitored.

We can't continue to do that. Those that are at risk for re-offending at high risk, and that is judged by psychiatrists and others. Mr. Rodriguez, who I described earlier, was judged to be at high risk and sure enough he murdered someone.

We are not going to discontinue doing that, so we are going to do something very different. If that different approach means a registry that is significant, it is required, it is taken seriously. If that is the case, then that registry and the treatment of law enforcement all around the Country with this issue has to be thoughtful, serious and complete. You can't do that unless you include all aspects of this Country. The sovereignty of reservations is very important, but its sovereignty is no different than the sovereignty of our government. If we decide we are going to do something, we have to do it together.

So I understand the difficulty of Indian tribes trying to respond to things that they are not quite certain with respect to the requirements. So go through with me, if you will, if you can, from the most important to the least important, the five or six things that need to be resolved in order to answer the questions that the tribes have about how to comply effectively with the Adam Walsh Act.

Ms. JOHNSON. Okay. First of all, the tribes that are left out. What we are hearing, you know, the Public Law 280 States were left out of the system.

The CHAIRMAN. Explain that for the record, Alaska and California.

Ms. JOHNSON. Okay. Alaska, California, there is a list, Minnesota, it goes on. There are also some that were recognized States that came after the actual law of Public Law 280, but they have been exempted from the Act for compliance under the way that this is, and they would be subject to the States. But the difference is that for California, for example, a lot of tribes in California, a Public Law 280 State, a lot of California tribes feel very passionately about this issue.

Indian Country is totally with you about saying we need to have a seamless operation, and we totally want to address sex offender registry because our people, our women, our children have such high percentages of being affected by this. But what we want to make sure is that, you know, the States now can decide whether or not how a State is going to provide that oversight and moni-

toring within the tribal community. We think the tribal communities should be able to have some say in how that works.

For example in Alaska, 226 tribes out there, villages that are out there, even their own State legislature, a representative said the State doesn't have the resources to be able to monitor those remote villages. Well, the tribes are in those remote villages and they want to be able to monitor, but the exclusion of the tribes from being included in the Adam Walsh Act also excludes them from being able to get resources necessary to help implement and to provide the seamlessness of the registry system.

That goes the same thing with the Bureau of Indian Affairs. By not including the Bureau of Indian Affairs in here at all, you have a whole, you have detention centers, you have law enforcement agencies, you have prisons that are operated by the Bureau of Indian Affairs who don't have to comply. So you have a gap in compliance that just simply needs to be addressed.

You have, as I said before, the Attorney General's authority to strip tribal governments. It is very disconcerting to me that, one, Congress would want to give their oversight, their plenary power over tribal communities to the Attorney General to decide whether or not they are in compliance, and then could actually strip them of their civil and criminal jurisdiction and transfer that jurisdiction over to the State without Congress actually setting up standards of how that would happen.

But mostly, I am more concerned about the tribes, tribes who don't know what the rules are of the game at this point. There is no requirement in the Act for them to develop, in consultation with tribes, a due process or technical assistance to be able to help a tribe come into compliance, so it simply sets a precedent that is just really disconcerting to NCAI.

And then of course, just like when we experienced with the welfare reform programs, tribes aggressively wanted to be supportive. Tribes and States worked together, and NCAI was very involved in that. But the States had a leg up because they had been having systems in place for decades before. This is the same thing. The States have had systems and resources to develop those systems for at least a decade, and tribes are not there. We want to get there. We want to participate. We care about this in our communities, but we don't have the infrastructure.

With the resources that could be directed to it to help us develop the infrastructure, I have had more meetings with tribes. I cannot believe it. The fact that we have this many tribes who had to affirmatively opt in is a statement from Indian Country because that is really hard to do. But to get all of them, almost all of them—but a very small percentage of them—to opt in says they care about this issue and we want to do something to address it, but we need the resources and we need the collaboration.

The challenge for us is this fighting that is happening—I am not saying fighting—but the confusion that is happening between the Violence Against Women Office and the SMART office on implementation of Adam Walsh is causing confusion for Indian Country. We need to be able to sit down and say, okay, how is this going to work? How are we going to have a seamless operation between those two systems? Because Indian Country can't afford to have

two separate systems. We need to have one system that recognizes the responsibility of both of those issues, and then we can move forward in implementing our system that will coexist with theirs.

We as governments should have the same right as other governments to have access to the data systems of the FBI. We shouldn't have to go through a bunch of hoops with another government that determines how we qualify.

Those are just a few of the issues.

The CHAIRMAN. Well, that is enough.

Ms. JOHNSON. Okay. Thanks.

[Laughter.]

The CHAIRMAN. You have raised I think some important points. I would say that the legislation we will be introducing also addresses a portion of this with respect to the NCIC and the availability of that important data.

You make a point that I think is important for the government to recognize, and that is over a period of some years we have developed certain registries, including sex offender registries. In fact, some tribes had done so prior to the enactment of the Adam Walsh Act as well, not very many, but some had done so.

But I think you make an important point that you don't just ramp up a registry and have the base of knowledge and the experience for doing that in a short period of time, because the States haven't done it in a short period of time. So I think that is important for us to understand and recognize.

I do think what we want at the end of this is a product which is contributed to by all of the jurisdictions in this Country so we have an adequate database, a good effective database, that is a registry including all of the names of those that we should be aware of who are violent sexual predators, so that we can keep track of them and understand who they are and where they are.

It doesn't pay for us to create a system that has a patchwork of holes. I mean, that is not workable and doesn't protect the American people.

Well, again I indicated to you we are going to be introducing I expect either next Monday or Tuesday the major law enforcement bill. John and Allison on our staff, and many others, Heidi, have done a lot of work on this legislation. We have traveled across the Country. We have consulted with tribes. We have consulted with other levels of government from county sheriffs to attorneys general of the States, to the Justice Department.

We have done the due diligence you should do to try to figure out what is happening, how do people feel about it, what are the best of the ideas that are available, and try to incorporate that into the bill.

We have also now been able to get bipartisan support for that legislation which we will introduce. I won't describe the names today, but we will do that when we introduce it on the floor of the Senate. I think that will move us forward, and I think also should provide at least some assistance in some of the areas Ms. Johnson you described with respect to the deficiencies that exist in tribes trying to comply with the Adam Walsh Act. So stay tuned for that.

I want to thank all of you for coming today to be willing to testify and provide some additional information.

Mr. Moore?

Mr. MOORE. Just one last comment. Not enough can be said about the work of victims' support groups throughout the United States in Indian Country, and the coalitions of these groups who have done a significant amount of work to help tribes and tribal leaders understand the import of establishing their own laws for the implementation of Adam Walsh, like the White Buffalo Calf Society and others throughout the Country, who have just done an enormous amount of work to help us be able to do our work to protect our children and our whole community.

I needed to say that because I serve on the VAWA task force at NCAI, so I know the incredible passion that they have to ensure that Adam Walsh is a successful piece of legislation that is effective in Indian Country as it is throughout the United States. Not enough can be said about the great work and diligence that they have done for us.

The CHAIRMAN. I think that is important to say, and I appreciate your making that point. There is one other point that I think is important, and that is as we deal with this issue of sexual predators and violence against women, and sex offenses, it is very important for us to have trained healthcare officials, nurses, doctors and others. It is important even for the remote sites to have rape kits and others things available for those who are trying to treat victims.

We have had testimony before this Committee about just the fundamental things that have been missing that do need to be restored and the training needs to be developed. It is why I and Senator Murkowski and others added the $250 million to the authorization bill that passed yesterday—$250 million to the Indian Health Service. We got a substantial amount of money to law enforcement, thanks to two of our colleagues, Senator Kyl and Senator Thune. We have all worked together. I have done hearings in Arizona. Senator Thune and I have worked together on the Standing Rock issue.

So we have worked on a lot of these issues, but especially the issue of Indian health care, which I think is in full crisis, adding $250 million, one-half of which would be destined to improved facilities, and the other half of which would be destined to try to address the contract health issue dilemma that we have.

It is important as we continue to try to add money and make the Indian Health Service work more effectively. I think it does not work very well, frankly, to just do the basics out there in the Country on the reservations, with the ability to have trained people to help victims as they come in and are being treated.

Again, I want to thank all of the witnesses for traveling to Washington, D.C., except for Ms. Johnson who just comes across the street. Thank you for traveling and participating today and giving us your information. We will use this as we proceed to try to address what we might be able to do to respond to your concerns.

This hearing is adjourned.

[Whereupon, at 11:09 a.m., the Committee was adjourned.]

APPENDIX

PREPARED STATEMENT OF HON. MYRA PEARSON, CHAIRWOMAN, SPIRIT LAKE TRIBE

My name is Myra Pearson, Chairwoman for the Spirit Lake Tribe located in the state of North Dakota. I have been following the Adam Walsh Act for several months. I have concerns regarding both the procedure and the substantive provisions of the law and the regulations that implement that law.

As a tribal leader, a grandmother and a mother the safety and well-being of our children and our members are at the forefront of the issues that I consider to be imperative to the future of our tribe. I believe that our children are sacred and we must do everything we can to protect them and to ensure their future. It is for this very reason that I am troubled by the Adam Walsh Act.

I believe that the underlying principle and purpose of the Act, the protection of community members, creates common ground between local, state, federal and tribal leaders, however the road to that goal of safeguarding our members is where we clearly differ. I find it extremely condescending and presumptive of the federal government to pass legislation that not only attacks our sovereignty but that also presumes to provide a road map that will tell us how to best safeguard our own members. At Spirit Lake we were looking at resolutions to this issue far before the passage of the Adam Walsh Act, but we were doing it in our own way and in our own time. Now we are being forced to do it in a federal way and on federal time.

Despite my objections to the procedure in which this law was passed I also have several substantive concerns about the language of the Act and the regulations that have been drafted to implement the Act. I plan to submit more succinct legal comments on the regulations themselves, but initial concerns include:

> The classification process for various sex offenses . . . this process conflicts with existing federal law such as the ICRA which constrains the ability of our tribal court to administer justice . . . how will such conflicts be resolved?
>
> The provisions dealing with recognition of tribal court convictions. again these provisions conflict with existing federal laws such as the ICRA . . . . If tribes do not provide legal counsel to defendants then the court orders will be no good outside of Indian country . . . I wonder where the funds will come for to pay for court appointed counsel and I wonder if adopting what many believe to be a broken system that has been implemented by states and federal authorities is the best way to administer justice on our reservation. I also ask what exactly is assistance of counsel . . . if we provide lay advocates will that suffice? Who will ultimately determine whether the defendant's rights were adequately preserved . . . is this not a right of the tribal courts to first determine. And finally what about the victim's . . . this law is purportedly in place to protect victims and to prevent future victimization by sex offenders, however if tribal court orders are exempted from the recognition process because we do not have the financial ability to substantially comply with federal laws then I wonder whether we are truly delivering justice to those children, individuals and families who have already been victimized.

In closing it is one thing for tribes to "opt in" by passing a resolution, and we can get our attorney's to draft a code that substantially complies with the federal mandate, but I question whether we have the necessary financial capabilities, infrastructure and support to enforce these resolutions and federal laws and whether three years is enough time to get to where we need to be. Will the implementation of this law truly protect our children and our members or will this be another law that is shelved and basically deemed unenforceable? Are these laws going to be great in theory but not rooted in reality.

Finally, while we are trying to jump through federal hoops, and filing for extensions and scrambling to maintain the sovereignty we have left where are the members and victims? We need to take action now and in our own way and in our own time to protect our own members. We learn from experience and that prompts ac-

tion but when it comes to sex offenders we know the problems and we know what needs to be done.

We would request also that we continue to be involved in the consultation process concerning the language and implementation of these regulations.

PREPARED STATEMENT OF THE SPIRIT LAKE SIOUX TRIBE

The Spirit Lake Tribe strongly opposes the procedure followed by the United States Congress in the passage of the Adam Walsh Child Safety and Protection Act, particularly the Tribe opposes the lack of meaningful consultation prior to the passage of the Act and views this process as a violation of tribal sovereignty and further the Tribe strongly objects to the "use it or lose it" provisions of the Act in so far as they mandate Tribes to opt in or risk losing jurisdiction with respect to the registration and monitoring of sex offenders.

With that this comment shall not continue to focus on the obvious failings of the legislation itself nor on the process by which the legislation was passed but rather shall focus on the regulations that are being proposed to interpret and implement SORNA.

In particular the Tribe finds cause for objection and opposition to the following:

- The provisions dealing with retroactive application of the law is somewhat of a concern especially when addressing juvenile delinquencies. The procedure of registration and notification was not contemplated by the Court at the time of the conviction and the fact that our juvenile court focuses on rehabilitation runs contrary to the retroactive application of this law as it leaves no discretion for the court to determine whether registration provisions are necessary; and
- The regulations address the development of and access to software but do not address technological capabilities associated with the use and maintenance of that software. In other words what type of servers will be necessary to utilize the software and where will such funds come from?; and
- The provisions that address "substantial compliance" are too vague. There should be some factors listed to establish criteria that can be applied to determine whether a tribe is in substantial compliance. This is necessary to avoid entirely subjective review of programs. Also there should be provisions that address with some specificity the options available to tribe's should they be found to be in noncompliance. Also there remains some question as to how will substantial compliance be determined. Will the SMART office simply review tribal legislation or will the process involve site visits, proof of technological capabilities etc.
- The Tribe strongly objects to the delegation of jurisdiction provisions of both the Act itself and the regulations. Despite the fact that Spirit Lake Tribe has opted by resolution to develop and administer its own sex offender registration and notification program, such a decision should not have to be made in order to retain our jurisdiction or risk losing it to the state. We would like to see the Act itself amended accordingly and would consequently request that such language also be removed from the regulations.
- The regulations contain various provisions that seems to directly conflict with existing federal law such as the Indian Civil Rights Act. In particular the provisions found at section VI(A) pertaining to full faith and credit of tribal court convictions is highly objectionable because it allows jurisdiction to require that tribal convictions were obtained only where a defendant was afforded assistance of counsel. The Indian Civil Rights Act only requires that individuals be informed of their right to counsel, not that the tribe provide counsel to indigent defendants. The regulations should be amended to clarify this apparent conflict. Additionally some reference should be made to the use of lay advocates. Often defendant's are represented by lay advocates rather than licensed attorneys. These lay advocates know and understand the tribal court and tribal law, however there is no indication that convictions obtained where defendant's were represented by lay advocates would be subject to registration requirements in other jurisdictions.
- The Tribe objects to the application of the Tier classification system due to the fact that tribal convictions and sentences are limited by existing federal law and not by the views, policies or laws of the tribes. In other words the tribes have been restricted by federal law to sentences of 1 year or less and now sex offenses are being classified in terms of severity based upon those sentencing restrictions. In tribal court someone who would be subject to a 15 year sentence

for aggravated sexual assault would only face 1 year in tribal court for the same offense and the same facts. Consequently the use of sentencing as a classification tool is not effective and should be modified.

- In terms of the required registration information the Tribe objects to the requirements that tribal or traditional names be registered. It is unlikely that this process would assist in the tracking and monitoring of sex offenders and it is likely that the use of this information would negatively impact individuals who have the same tribal or traditional name as a convicted sex offender. The Tribe would therefore ask that this provision or requirement be removed from the regulations entirely.
- Finally from a practical standpoint the Tribe is concerned that neither the Act nor the regulations address implementation issues in terms of program development and program support for tribes that are opting to develop and administer their own programs.

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