

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 action 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.