

# TESTIMONY OF THE ROSEBUD SIOUX TRIBE of South Dakota

On the implementation of the Adam Walsh Act  
United States Senate Committee on Indian Affairs  
Washington, DC  
July 17, 2008

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 (8<sup>th</sup> 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 jurisdiction. 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**

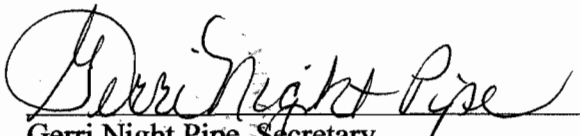
**WHEREAS,** the Governmental Affairs Committee did hold a hearing on July 28, 2005, on the above amendments to the Law and Order Code, Title 5, Chapter 7, Sex Offenses, that convicted sex offenders be required to register with Rosebud Sioux Tribe Law Enforcement; now

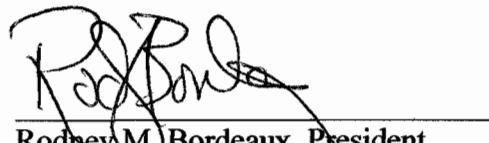
**THEREFORE BE IT RESOLVED,** that the Rosebud Sioux Tribal Council hereby adopts Ordinance No. 2005-06 which is the amendments to the Law and Order Code, Title 5, Chapter 7, Sex Offenses.

**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

**ROSEBUD SIOUX TRIBE**  
**Ordinance 2005-06**

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.