

Testimony of Ron Suppah, Sr., Chairman,
The Confederated Tribes of the Warm Springs Reservation of Oregon,
Before the Senate Committee on Indian Affairs
Regarding Tribal Implementation Status of the Adam Walsh Act,
July 17, 2008.

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 begin 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

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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.