

WRITTEN TESTIMONY OF THE
LITTLE TRAVERSE BANDS OF ODAWA INDIANS
ON BEHALF OF THE 12 MICHIGAN TRIBES
BEFORE THE COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
HEARING ON IMPLEMENTATION OF ADAM WALSH ACT
JULY 17, 2008, 10:00 AM



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Little Traverse Bay Bands Prosecutor
Senate Committee on Indian Affairs
Hearing on Adam Walsh Act Implementation
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Mr. Chairman and members of the Committee; The Little Traverse Bay Bands of Odawa Indians, on behalf of the 12 federally recognized tribes¹ 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 mainly 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

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

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 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 Michigan², 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.

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.

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 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.