

## TRIBAL RESPONSE

With deficiencies in tribal sex offender registration and notification and with recent court decisions that further shed light on the lack of sex offender registration laws in Indian country, the question remains...what can tribes do to protect their communities? Among the potential tribal responses to the issue are the following:

- Pass tribal legislation that requires sex offenders to register with tribal or BIA authorities and that provides for community notification when the tribe deems appropriate. Some tribes such as Colville and White Earth have recently passed such legislation. *(copies of such codes may be obtained from the Tribal Judicial Institute)*
- Exercise banishment or exclusionary authority to exclude sex offenders from the reservation.
- Cooperative Agreements between tribes and state sex offender registration programs that address the sharing of information is yet another means to address the lack of sex offender registration within tribal communities.
- Watch for pending federal legislation pertaining to sex offenders and to provide input and comment into the development of such federal laws.

## RESOURCES

**For more information on sex offender registration please visit the following websites:**

<http://www.ojp.usdoj.gov/vawo/laws>

<http://www.sexcriminals.com>

**For more information on tribal laws and code development please visit our website or call us at:**

<http://www.law.und.nodak.edu/npilc/judicial/index.php>

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## SEX OFFENDER REGISTRATION IN INDIAN COUNTRY

### TRIBAL STRATEGIES TO RESPOND TO THE TRACKING AND MONITORING OF SEX OFFENDERS IN TRIBAL COMMUNITIES

Tribal Judicial Institute



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# SEX OFFENDER REGISTRATION IN INDIAN COUNTRY

## Introduction

*American Indians are being raped or sexually assaulted at staggering rates as compared to other races. In a recent report from the Bureau of Justice Statistics it was reported that American Indians are raped or sexually assaulted more than twice as often as individuals of other races.<sup>1</sup>*

Sex offender registration and notification laws are an area of increasing interest and concern for Indian Tribes. Currently there are no laws that require notification to tribal communities when sex offenders relocate or reside within their reservation boundaries, unless the tribes themselves have addressed these requirements in tribal codes or ordinances. Absent tribal legislation requiring registration and notification of sex offenders, tribal communities are at a high risk of becoming a very dangerous crack in the sex offender registration and notification process.

This document will provide you with historical information on the development of federal sex offender registration and notification legislation, current issues facing Indian tribes and promising practices and resources for tribes.

### (Endnotes)

<sup>1</sup> Perry, Steven W.,

A BJS Statistical Profile, 1992-2002 American Indians and Crime, (2004)

**1994 – JACOB WETTERLING ACT IS PASSED BY THE UNITED STATES CONGRESS**

\* requires convicted sex offenders to register their name, address and nature of their conviction with state authorities in the jurisdiction where they reside.

\* applies to individuals convicted of sexually violent crimes, crimes against children and those deemed to be sexual predators.

**1996 – LYCHNER ACT IS PASSED BY THE UNITED STATES CONGRESS**

\* required the Federal Bureau of Investigations to develop and implement a National Sex Offender Registry.

\*The Act formally defined the term “sexually violent predator”.

\* The Act established penalties to be imposed upon sex offenders who relocate and fail to notify authorities.

**1996 – MEGAN’S LAW IS PASSED BY THE UNITED STATES CONGRESS**

\* this Act amended the Jacob Wetterling Act and set forth the first notification system for registered sex offenders.

\* The Act requires information regarding sex offenders to be made available to the public.

\* The Act does not require Active Community Notification primarily due to the financial costs associated with an active community notification program

## LEGISLATIVE TIMELINE

**2006 – THE ADAM WALSH CHILD PROTECTION AND SAFETY ACT**

**Among other things Title I of the Act:**

- \* Requires the development of a national sex offender registration system and public website
- \* Specifically references federally recognized Indian Tribes.
- \* Proposes to make grant funding available to Federally Recognized Indian Tribes seeking to develop, implement and maintain a tribally based sex offender registration and notification system.
- \* Requires convicted sex offenders to register, and keep registration current, in each jurisdiction where the offender resides, is employed and is a student,.
- \* Requires states to provide criminal penalties for sex offenders who fail to register.
- \* Jurisdictions have one (1) year from the date of enactment to elect to carry out the provisions of the Act

## PROBLEMS AND CHALLENGES

Many sex offenders who are indicted and convicted before federal courts are required to register in the county where they live but they are not required to register with tribal or Bureau of Indian Affairs law enforcement agencies.

Ongoing problems with effective communication and information sharing between many federal, state and tribal agencies result in tribal communities becoming safety zones for convicted sex offenders thereby placing tribal communities at high risk of further victimization. Most recently this issue of jurisdictional problems and the need for tribal responses to sex offender registration became apparent in Minnesota in the case of State v. Jones, 700 N.W. 2d 556 (2005), wherein the Minnesota Court of Appeals upheld the District Court’s decision, finding that

sex offender registration laws are classified as civil regulatory laws rather than prohibitory laws. In its decision the Minnesota Court of Appeals determined that even in a P.L. 280 state such as Minnesota where the state exercises criminal jurisdiction on all but one of the reservations, the state could not charge an individual with a crime for failing to timely adhere to registration laws when that individual was living on the reservation. The finding created a stir among law enforcement agencies, attorneys and tribal leaders. While tribal leaders seemed to agree that the legal basis for the decision was sound, they recognized a need for a tribal response to the issue to prevent their communities from becoming a haven for sex offenders and predatory offenders. That decision is being appealed by the state to the Minnesota Supreme Court.