
GREAT PLAINS TRIBAL CHAIRMAN'S ASSOCIATION

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GREAT PLAINS TRIBAL CHAIRMAN'S ASSOCIATION (GPTCA)

GPTCA Recommendations for S. 3320 and H.R. 6583 to create a Comprehensive Justice System for our People

Resolution No. 58-09-05-08

WHEREAS, the Great Plains (formerly Aberdeen Area) Tribal Chairman's Association (GPTCA) is composed of the elected Chairs and Presidents of the 16 Sovereign Indian Tribes and Nations recognized by Treaties with the United States that are within the Great Plains Region of the Bureau of Indian Affairs; and

WHEREAS, the Great Plains Tribal Chairman's Association was formed to promote the common interests of the Sovereign Tribes and Nations and their members of the Great Plains Region which comprises the states of North Dakota, South Dakota, Nebraska; and

WHEREAS, the United States has obligated itself through Treaties entered into with the Sovereign Tribes and Nations of the Great Plains Region and through its own federal statutes, Laws, the Constitution, international law and well articulated policies; the United States has pledged to protect Indian Tribes, guarantee the right of Tribal self-government, protection and safety, and to promote the viability of Indian reservations and lands as permanent homelands for Indian Tribes, and

WHEREAS, among the most important documents, which articulates certain of the United State's obligations to the Sioux Tribes of the Great Plains Region, is the Act of February 28, 1877(19 STAT. 254) to fulfill certain obligations assumed under the Treaty of 1868, which provides that in consideration for certain confiscated territory and hunting rights the U.S. would insure the Sioux Bands:

- "(1) "all aid" necessary "for civilization" (Article 5);*
- (2) that the Congress shall "by appropriate legislation secure to them an orderly government" (Article 8);*
- (3) that each [Sioux] individual shall be protected in his rights of person property and life" (Article 8); and*
- (4) that the Sioux Band may select "suitable men from each band to co-operate with" the United States "in maintaining order and peace on the reservation" and that these Individuals "shall receive such compensation for their services as Congress may provide" (Article 9);" and*

WHEREAS, the non-Sioux Bands of the Great Plains region have similar provisions in their Treaties and Congressional statutes; and

WHEREAS, through this 1877 Act, and the legal documents and policies articulated above, the United States has assumed a special trust obligation to insure the safety of people and property on the Great Plains Reservations through the provision of adequate law enforcement, detention, tribal courts , 911 and other public safety related services; and

WHEREAS, the United States has failed to live up to that obligation; and

WHEREAS, this failure by the United States to provide full funding and adequate resources for protection and an orderly Government has left the Tribes in the Great Plains Region suffering and subjected Tribal Members and children to great harm, among problems identified are high crime rates, insufficient funding in all areas, Law Enforcement Departments which are understaffed, poorly-equipped, under-trained and generally inadequate , lack of detention centers, tribal courts with little resources and facilities, lack of 911 services, inadequate juvenile justice programs, no court related diversion programs, and many more problems as identified by the Tribes, and

WHEREAS, these problems are, and have been, compounded by the U. S. government's failure over many years to address the Tribes' inadequate, poorly maintained, and condemned detention centers, tribal court houses, police stations and substations, and 911 buildings; and

WHEREAS, the Great Plains Tribes have repeatedly documented these deficiencies to the Congress of the United States; and

WHEREAS, in response to these complaints and the similar complaints received from other Tribes, United States Senators Dorgan, Johnson, Thune, Baucus, Bingaman, Lieberman, Smith, Cantwell, Tester and Murkowski and United States Representatives Herseth-Sandlin, Kildee, Cole, Grijalva and Udall have introduced S. 3320 and H.R. 6583, two virtually identical bills, both entitled the "Indian Law Enforcement Reform Act", which are designed to address many of these problems; and

WHEREAS, the sponsors and co-sponsors of these bills have asked the Tribes for their comments on, and recommended changes to, these important pieces of legislation; and

WHEREAS, the GPTCA has reviewed these bills and found that while they contain many helpful provisions, there are some changes that the Tribes of the Great Plains would like to recommend; and

WHEREAS, the GPTCA believes that many of the changes we are recommending will also assist other Tribes who are facing similar problems, and

THEREFORE BE IT RESOLVED, the GPTCA formally expresses its profound appreciation to their representatives Senators Dorgan, Johnson, Thune, Baucus and Tester, and Congresswoman Herseth-Sandlin, and the other co-sponsors, for introducing these important pieces of legislation; and

THEREFORE BE IT FURTHER RESOLVED, the GPTCA states as Tribal Leaders of our Nations, we require a comprehensive Justice system for our reservations, we are trying to fix the whole family and as Tribal Chairpersons, it is up to us to see that this

is carried out and the law or legislation is passed to assist our People so it is with this purpose we make the following recommendations or amendments to H.R. 6583 and S. 3320.

1. The GPTCA strongly recommends a comprehensive justice system and on-reservation law enforcement, detention, tribal courts and 911 must be looked at as a comprehensive package. None of these services can function properly if there are serious deficiencies in any one of these programs. To document the BIA's actions and inactions in each of these areas, the GPTCA recommends that Section 101(a)(14) of the bill be amended to require the BIA's annual expenditure report to the Congress to include the BIA's expenditures for each of these important areas and not just its expenditures related to law enforcement and detention.
2. The GPTCA also recommends that that Section 101(a)(14) be amended to require the BIA to document the training, personnel, vehicle, communications and equipment needs of law enforcement, tribal courts, tribal prosecutors, tribal defense attorneys, and tribal 911 programs and not just the staffing needs of law enforcement and corrections.
3. While the GPTCA is pleased that Section 101(d) of the bill requires the BIA and the DOJ to develop and submit to the Congress a long range plan for addressing detention facility problems, the GPTCA believes that the focus of this subsection is far too narrow. It therefore recommends that new provisions be added to Section 101(d) requiring the BIA to develop and submit a long term plan each year to Congress with annual reporting on the progress of implementation for constructing, replacing and repairing all public safety related buildings including on-reservation police stations, substations, courthouses, and 911 facilities as well detention centers. Law enforcement and public safety programs cannot function properly without all of these buildings, and many of the structures being utilized today are condemned or in serious need of repair. The GPTCA would also like to see the detention facility language in this subsection amended to clarify that it is intended to cover both short term holding and long term detention facilities. The GPTCA would also like to see the bill require immediately upon passage, the BIA to provide safe and appropriate places to house juveniles under the age of 12 which require professional supervision.
4. The GPTCA recommends that Section 101 be further amended to include new provisions which require the BIA to develop a long term plan within the first year for addressing the current manpower, equipment, training, and communications shortages in law enforcement, detention, tribal courts and tribal 911 operations. While the GPTCA recognizes that this legislation cannot require the BIA to expend funds, it would still like to see bill language which holds the BIA to a realistic timeline and standard for addressing these critical problems.
5. Many tribes in the Great Plains have found that a number of their police officers lack intention torts coverage under the Federal Tort Claims Act merely because they have not yet received Special Law Enforcement Commissions from the BIA. To address this problem, the GPTCA strongly

recommends that the bill add a provision which amends Section 2680 of the Federal Torts Claims Act to provide FTCA intentional torts coverage to all tribal police officers who are properly employed under a P.L. 93-638 contract, so long as they are graduates of a training program, (federal, state or College/University) which meets the requirements of Section 301 of the bill.

6. Currently, tribal police officers who do not carry Special Law Enforcement Commissions lack the same federal legal protections that are provided to federal police officers. Assault on or even murder of one of those tribal officers is not considered by many federal courts, to constitute the assault on or murder of a federal officer. This leaves these officers more vulnerable to injury and death in the line of duty than their federal counterparts. Since, under the Indian Self Determination Act, these tribal police officers are literally stepping into the shoes of federal BIA officers, the GPTCA would like to recommend new bill language which makes it a federal crime to assault or murder any tribal police officer who is properly employed under a P.L. 93-638 contract regardless of whether they do or do not possess a Special Law Enforcement Commission.
7. While the GPTCA is pleased that Section 102 of the bill requires the U.S. Attorney to submit evidence to and cooperate with Tribal Justice Officials when it declines to prosecute a case, the bill contains no provision requiring federal law enforcement officials to submit the evidence in cooperation that they have gathered to the Tribal Police when they cease an investigation. The GPTCA recommends that the bill be amended for cooperation to require the transfer of that evidence to tribal law enforcement when a declination report is issued by federal law enforcement under Section 102.
8. The GPTCA is concerned that the provisions of Sec. 102, calling for the U.S. Attorney to issue declination reports when it fails to pursue a prosecution, will lead the U.S. Attorney to file federal charges in some minor cases which are better handled in tribal court. For this reason, the GPTCA recommends that language be included in the bill to clarify that it is not a violation of the intent of this legislation for the U.S. Attorney to exercise its prosecutorial discretion by foregoing federal prosecution, in certain minor cases, where the tribal court has filed or is about to file charges against the accused.
9. The GPTCA recommends that Section 103(b) be amended to encourage the U.S. Attorney's Tribal Liaisons to communicate and coordinate with tribal victim's assistance programs, as well as tribal justice officials. The GPTCA also recommends an amendment requiring the U.S. Attorney, himself or herself, to meet with each of the federally recognized Tribes in their region on not less than a bi-annual basis. The bill language should also state that the Tribe's tribal justice officials should also be included in those meetings where appropriate.
10. The GPTCA recommends that language be added to Section 103(d) requiring the U.S. Attorney to have meaningful consultation with the Tribe or Tribes which will be impacted before appointing a permanent Special Assistant U.S. Attorney to prosecute on-reservation crimes.

11. The GPTCA strongly recommends that Section 106 be amended to (1) insure that the Office of Tribal Justice will be an independent division within the Department of Justice, (2) that the Director of that Office is confirmed by the U.S. Senate, (3) that the Director of that Office will report directly to the United States Attorney General, and (4) that the Office of Tribal Justice must consult with the Assistant Secretary for Indian Affairs and the Associate Solicitor for Indian Affairs (DOI) whenever it is called upon to render an opinion on treaty and trust responsibility issues.
12. The GPTCA recommends that Section 106(b), which creates the Office of Indian Country Crime, be amended to require the Director of that newly established Office to consult with tribal governments on not less than twice annually basis on the new DOJ policies and procedures which that office is developing under this legislation.
13. The GPTCA recommends that new language be added to Section 301 requiring the BIA to develop a reasonable refresher course to recertify tribal police officers who have been out of law enforcement for a few years, so that those individuals do not have to repeat the entire academy program in order to return to law enforcement jobs. Further, the GPTCA recommends the BIA recognize that officers can be allowed to receive education & training for Law Enforcement by States, accredited Indian Colleges and Universities and not just one Institution.
14. To enhance recruitment and help to fill vacancies, the GPTCA requests new language added to Section 301(b) to require the DOJ to, absent unusual circumstances, complete background investigations on BIA and tribal law enforcement and corrections officers within 60 days of receipt of those applications.
15. The GPTA association would like to recommend that language be added to the Section 301 which requires the BIA to continue to issue Special Law Enforcement Commissions while the new standards required by that subsection are being finalized.
16. The GPTCA has concerns about the expanded use of federal and non-federal agency staff for on-reservation law enforcement under Section 301 (c). The GPTCA would therefore recommend that language be included in that section which requires the BIA to seek tribal government approval whenever it is seeking to use any federal non-BIA personnel for other than short term investigations on our reservations. Cooperation with Tribal Governments is advised before federal non-BIA personnel remain on the reservations. Similarly, the Tribe must be consulted and authorization received from the Tribe whenever Reservation officers are detailed to other locations leaving inadequate coverage.
17. Because the bill talks at some length about the use of non-BIA police officers and other non-Interior funding sources of law enforcement, detention and court operations, the GPTCA would like to see new language added to the bill which reaffirms that while the DOJ and each of these other agencies has

a trust responsibility to the Tribes, the primary responsibility for providing and funding law enforcement, Tribal courts, 911 and detention services to the Tribes rests with the Bureau of Indian Affairs. Again, cooperation is advised.

18. While the GPTCA strongly supports the expansion of tribal court authority under Section 304, we would ask you to recognize that most of the Tribes in the Great Plains cannot presently afford to provide for law trained judges and defense counsel for the accused. This problem needs to be corrected in order to insure that this expanded tribal court sentencing authority is not only being made available to those tribes who have large gaming operations and/or large sources of third party income. The bill needs to have a mechanism of assuring that those Tribes who have a need and a desire to exercise this expanded sentencing authority can obtain the federal funding necessary to do so in a timely manner. The failure to do so will leave hollow the tribal justice referrals that are mandated in Section 102 when the U.S. Attorney issues a declination report.
19. The Bill addresses Public Defenders but it is an unfunded mandate and we strongly recommend funding. The tribes are also very concerned about the fact that tribal members including many of our Indian Youth are facing charges in state and federal courts. They are not currently provided with any defense counsel at all or inadequate defense counsel who may not understand their backgrounds nor have a real interest in protecting their rights. For this reason, the GPTCA would like to see each tribe provided with adequate funding to hire a legal defense staff that is authorized to represent all tribal members regardless of what court they are facing, or in the case of persons who are before courts which are further from the reservation in urban areas, with funds to allow the tribe to hire qualified legal representation for tribal members. (On Mon morning in the local County Courthouse there is a line up for misdemeanor petty crimes. Most of the Indian young people are pleading guilty because they don't have even a public defender so they are sentenced and enter the "Prison Pipeline" crushing any opportunity for achievement. Approximately 85% in Prison are American Indian, 73% of those in the Probation system are Lakota)
20. In Section 305, which establishes the Indian Law and Order Commission, the GPTCA recommends amendments which require this Commission to take a broader look at the steps that can be taken to improve on-reservation law enforcement and justice capability, and it also recommends amendments which give the Tribal Advisory Board an expanded role and capability. At the very least, the Tribal Advisory Board needs to have its own staff and its own office space, as well as an adequate budget, so that it can provide the Commission with the facts and input that it is intended to provide under this section of the bill. The Tribal Advisory Board should also be authorized to issue a supplemental and/or a dissenting opinion on the report prepared by the Commission. The GPTCA also recommends provisions calling for real tribal input and consultation in the selection and appointment of the members of this Commission.

21. The GPTCA strongly recommends that all of the grant programs being reauthorized by this bill allow for multi-year grants, when the tribes so request, that they clearly mandate the agency to waive any match requirement without undo requirements and that they all be required to pay indirect cost. This is the only way that may Great Plains Tribes are going to be able to afford to seek and implement those grants.
22. The GPTCA recommends that the bill be amended to replace the summer youth pilot program created in Section 401, with a permanent and expended summer youth program which provides for summer youth programs in Indian communities as well as at BIA funded schools.
23. The GPTCA recommends that language be added to the bill requiring the federal on-reservation parole and probation officers, whose positions are created in Section 405, to work directly with our Tribal Justice Officials as well as with the U.S. Attorney.
24. The GPTCA has a serious concern with the Indian Crime Data collections provisions of the bill because, at present, our tribal crime data collections systems do not interface well with the systems being utilized by the DOJ. The GPTCA strongly supports language or report language added to the bill requiring the BIA and the DOJ to undertake some serious efforts to correct these problems, especially in light of the fact that the bill provides that our crime data will be utilized as a factor in distributing a number of types of federal funds.
25. While the GPTCA strongly supports Section 602's expanded training provided for officers who interview victims and collect evidence in cases of domestic violence and sexual assault, it recommends that language be added to that section calling for even more specialized training in dealing with children who are witnesses to, or victims of this type of violence.
26. While the GPTCA strong supports the language in Section 603, providing for federal employee testimony in cases of rape and sexual assault, strongly recommends that this language be expanded to cover all types of federal testimony and federal evidence in all types of tribal criminal and quasi criminal matters (like protection order cases). Tribal Courts regularly require federal evidence and federal employee testimony in cases of drunken driving, battery, drugs and so on, not just in cases of sexual assault. This amendment becomes even more important because of the bill's Section 102 declination report provisions, which require the U.S. Attorney to transfer these types of cases over to the tribal court when it issues a declination report. Without that evidence, no court can bring a successful prosecution.
27. The GPTCA would like to recommend that provisions be added to the bill providing for direct funding of Tribes by the U.S. Department of Homeland Security.
28. The GPTCA would strongly recommend that new provisions be added to the bill requiring the BIA to provide more direct funding to the Tribes for law enforcement and public safety with an annual report to Congress on

progress. The GPTCA has a real concern that if careful monitoring/oversight is not undertaken and more tribal direct funding is not provided for; many of the funds provided for in this new bill will be siphoned off at the BIA administrative level. The GPTCA has officially taken action to request local control, from the bottom up not the top down and requests returning control back to the Superintendent

29. While the GPTCA supports the re-authorization of the DOJ programs in Section 403, it must point out that these programs cannot be viewed as a realistic funding source for on-going tribal law enforcement, detention, 911 and court operations. This needs to be clarified in the bill or in the report language. The funding for these programs is not reliable, it does not arrive at the beginning of the fiscal year, and it often comes with restrictions that inhibit the use of those funds for other than supplemental purposes. At the very least, these programs and their funding should be made permanent and available to the Tribes under the Indian Self Determination Act contracts or grants.
30. While the legislation re-authorizes the Indian Alcohol and Substance Abuse Act, it does not go far enough in addressing the relationship between alcoholism and crime on Indian Reservations. The GPTCA therefore recommends that new provisions be added to this bill providing for the development, funding and implementation of alcoholism and drug treatment programs for offenders, and for the development, funding and implementation of family counseling and other diversion programs which can help to break the recidivism rates that most tribal courts are experiencing. These new provisions should also provide for alternative approaches to adjudication such as expanded drug courts and special programs for juvenile offenders.
31. The GPTCA recommends that a new provision be added to the bill requiring the Indian Health Service to assist the Tribal Courts in assessing the mental health of an accused person or an inmate.
32. The GPTCA notes that the bill contains no programs or funding authorization for crime prevention activities. The GPTCA would like to see provisions along these lines added to the bill
33. The GTPCA has examples of inadequate data records and wrong information furnished from the District Office to Washington DC, for example the number of officers on the reservations reported to DC is wrong as is the number of violent crimes occurring on the Reservations. Funding is appropriated on the basis of these statistics and they are under counted so funding is less.
34. The GPTCA recommends that because 911 services are vital to public safety on many reservations, the bill include specific provisions requiring the BIA to develop and support these programs financially on a permanent basis.
35. The GPTCA recommends language be inserted to allow improved Cooperation and compatibility between 638 Law Enforcement and BIA

Departments. For example, BIA Officers are not allowed to participate in Tribal training or state and regional Law enforcement/Justice meetings.

36. The GPTCA has long been on record as requesting that BIA law enforcement and detention operations and oversight functions be returned to the local BIA Superintendent. There has never been a good working relationship between the Plains Tribes and the Office of Justice Services or the Tribes and the District One Special Officer. In fact the GPTCA is on record for terminating the District one Commander, Mr. Four Dance. The GPTCA therefore request an amendment to Public Law 101-379, returning law enforcement management and oversight functions on the Great Plains Tribal Reservations to the Agency Superintendent in the same manner which existed prior to the enactment of Public Law 101-379.

NOW THEREFORE BE IT FINALLY RESOLVED that this resolution shall be the policy and recommendations of the Great Plains Tribal Chairman's Association until otherwise amended or rescinded.

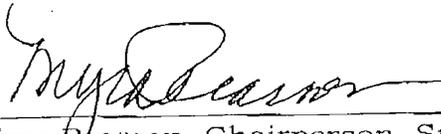
Resolution No. 58-09-05-08

CERTIFICATION

This resolution was enacted at a duly called meeting of the Great Plains Tribal Chairman's Association held at Bismarck, North Dakota on September 5, 2008 at which a quorum was present, with 9 members voting in favor, 0 members opposed, 0 members not abstaining, and 7 members not present.

Dated this 5th day of Sept, 2008.

ATTEST:



Myra Pearson, Chairperson, Spirit Lake Sioux Tribe
Secretary,
Great Plains Tribal Chairman's Association



**Ron His Horse Is Thunder, Chairman,
Standing Rock Sioux Tribe
Great Plains Tribal Chairman's Association**

