



# NATIONAL CONGRESS OF AMERICAN INDIANS

## The National Congress of American Indians Resolution #PHX-08-028

### TITLE: Amend the Adam Walsh Act

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**WHEREAS**, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

**WHEREAS**, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

**WHEREAS**, the Adam Walsh Act requires all tribes choosing to assert jurisdiction to become compliant with the Act by July of 2009; and

**WHEREAS**, the final guidelines for implementation of the Act were issued in July of 2008; and

**WHEREAS**, states have had over a decade of experience in implementing sex offender registration and notification requirements; and

**WHEREAS**, no state or tribe is fully compliant with the Act as of the date of passage of this resolution; and

**WHEREAS**, tribes will need more time to both fully understand the implications of asserting jurisdiction under the Act and will need more time to become compliant with the Act as outlined in the final guidelines; and

**WHEREAS**, in an affront to tribal sovereignty no tribe was consulted in the drafting of the Act and it has become apparent that there are gaps which relate to Indian Country that need to be filled in to ensure the Act is successfully implemented throughout the United States, including Indian Country; and

**WHEREAS**, gaps include a lack of clarity on whether registration requirements apply to all land within the external boundaries of a reservation, trust lands, fee lands, off reservation trust lands, or off reservation tribally owned fee lands; and

**WHEREAS**, the Act does not specifically recognize the inherent sovereign authority of tribes to exercise regulatory authority over non-Indians as contemplated under the Act in the event courts determine those regulatory provisions to be criminal prohibitory in nature, as some state courts are beginning to assert; and

**WHEREAS**, tribes need additional funding to fully implement the Act; and

**WHEREAS**, the Act does not contemplate that new tribes will be recognized in the future; and

**WHEREAS**, the Act, unfairly and without clear reason, does not permit tribes in mandatory Public Law 280 states to assert jurisdiction; and

**WHEREAS**, the Act does not require government-to-government consultation with tribes prior to the Attorney General's transfer of jurisdiction from a tribe to a state for non-compliance; and

**WHEREAS**, the Act may permit, or even require, the Attorney General to transfer jurisdiction to a non-compliant state in the event a tribe is not compliant; and

**WHEREAS**, the Act may allow defendants to assert diminishment claims as a defense to various criminal provisions in the Act thereby subjecting tribes to collateral attacks on the extent of their reservation boundaries.

**NOW THEREFORE BE IT RESOLVED**, that the NCAI does hereby urge the Senate Committee on Indian Affairs to draft an amendment to the Adam Walsh Act extending the time for compliance by tribes and closing gaps that presently exist in the law to ensure the Act meets its goal of uniform sex offender registration and notification throughout the United States, including Indian Country; and


**BE IT FURTHER RESOLVED**, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

#### CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2008 Annual Session of the National Congress of American Indians, held at the Phoenix Convention Center in Phoenix, Arizona on October 19-24, 2008, with a quorum present.

  
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President

ATTEST:

  
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Recording Secretary