

Sharon House, and Associates
Attorneys at Law
Box 357
Oneida Reservation
Oneida, WI 54155
Cell 559-381-4038
Cell 920-737-2886
Office 920-869-7072
Fax 920-737-7070
shouse85@earthlink.net

TO: JAMIE HUMMINGBIRD, CHAIRMAN, NTGCR
LENA HAMMONS, VICE CHAIRMAN, NTGCR
BARBARA COLLIER, SECRETARY, NTGCR

FROM: SHARON HOUSE, ATTORNEY

DATE: JUNE 27, 2009

RE: OVERVIEW OF TRIBAL LAW & ORDER ACT OF 2009 IN RELATION TO TRIBAL GAMING
REGULATION

The following is an overview of the proposed Bill S 797, Tribal Law & Order Act of 2009 as it may relate to Tribal Gaming regulation. As you may be aware, there are many advantages to the above mentioned Bill in relation to Indian Country, but the overview that is being presented is focusing upon Indian Gaming Regulation. Of course the Tribal Regulatory Agencies each have their own unique issues that will impact and affect the interpretation and analysis of the above:

Title I. FEDERAL ACCOUNTABILITY AND COORDINATION

Section 101 – The language requires consultation between the Office of Justice Services (OJS) and Tribal leaders and to provide technical assistance and training to tribal police, specifically the language states:

“(3) coordinate with other bureaus, agencies, offices, and divisions within the Department of Justice to ensure that each component has an accountable process to ensure meaningful and timely consultation with tribal leaders in the development of regulatory policies and other actions that affect--

... or `(D) any other tribal interest.'.

The above language opens the door for Tribes that offer Gaming to propose that additional training and time be spent in the law enforcement area of gaming crimes and coordination of problems associated with Gaming Facilities and operations having to deal with more than one jurisdiction. As you are aware,

many times the gaming area has unique problems because not only do civil regulatory issues arise, but also criminal activities can occur. Clarification in the area of law enforcement and gaming would be extremely helpful, especially when Tribes are dealing with Tribal, Federal and State law enforcement officials. Because of all the law enforcement needs of Tribes, gaming is usually not a high priority, so perhaps this area could become a part of the proposed consultations with the Tribe's leaders.

Section 101 (c) – The proposal would provide that BIA police would be able to make warrantless arrests where the officer has probable cause to believe that a suspect committed any crime in Indian Country. This would allow BIA police to immediately make arrests in the gaming area if necessary by reviewing surveillance tapes, for lesser crimes than felonies. This is extremely important because many times suspects are either let go or take off from the premises on their own by the time all evidence is collected that indicates a crime has been committed and/or the appropriate jurisdiction is determined.

Section 102 – Declination Reports – This area provides accountability by the U.S. Attorneys because they would have to coordinate with Tribal Officials prior to declining to prosecute certain crimes, and maintain records of such consultations and decisions. This would at least allow Indian Gaming Regulators be aware of what type of gaming crimes and the amount of loss to the Tribes would be prosecuted in the future.

Section 103 (b) – Prosecution of Crimes in Indian Country – The Bill would provide for Tribal Liaisons which would allow the Gaming Regulators to be a part of the development of multi-disciplinary task forces and the development of technical assistance to tribal law enforcement officials. Again, gaming crimes could be better acknowledged and clarified for tribal law enforcement officials.

Section 104 – Administration – The Office of Tribal Justice within the DOJ would allow OTJ to develop and direct the Dept. Indian Affairs polices and coordinate and consult with tribal leaders on matters and maintain records on such issues which could only assist in the area of crimes impacting Indian Gaming.

TITLE II. STATE ACCOUNTABILITY AND COORDINATION

Section 201 – State Criminal Jurisdiction and Resources – This would amend Public Law 280 to allow the Tribes to request federal assistance in investigating and prosecuting reservation crimes. This would provide concurrent authority over reservation crimes. This is extremely important because not all Class III Gaming Compacts are clear as to who has jurisdiction over gaming crimes and/or crimes committed on gaming premises or property.

Section 202 – The Attorney General would be authorized to provide grants, technical and other assistance to encourage tribal, state and local law enforcement agencies to enter into cooperative law enforcement agreements to combat crime in Indian country and nearby communities. This is a new program and would greatly benefit those gaming operations that are located within and served by more than one or two jurisdictions. This could assist in providing uniformity as to which jurisdiction should be

contacted first, second, etc. if a crime is committed on the property of the gaming operation and/or is a gaming crime.

TITLE III. EMPOWERING TRIBAL JUSTICE SYSTEMS

Title III provides a number of primary benefits to the Tribes in training of law enforcement officers in all areas of law enforcement, specifically training of law enforcement officers in State and Tribal academies and training centers and the requiring of background checks for tribal law enforcement officer candidates to be expedited; grants and technical assistance in the area of Drug enforcement; improved access to National Crime Databases; the ability of Tribal Courts to impose sentences of three years and \$15,000 fines; and, a federal commission would be established that is made up of tribal federal, and state and local justice officials, and other experts, which would be authorized to review criminal jurisdiction.

Section 301 (b) enhances existing law to grant Special Law Enforcement Commissions which would authorize tribal officers to enforce violation of federal law committed on Indian lands. Of course there would be coordinated training in Indian country to certify tribal officers and would add requirements to set timelines for SLEC related agreements between the BIA Tribes. This would assist Indian Gaming Regulators to work with Tribal law enforcement when it comes to areas of federal crimes committed on the premises or property of the gaming operation and perhaps would clarify issues related to money laundering and counterfeiting.

TITLE V. INDIAN COUNTRY CRIME DATA COLLECTION AND INFORMATION SHARING

Section 501, 502 and 503 – Uniform Indian Country Crime Reporting – This section would make tribal governments eligible for federal grants that promote criminal data collection and criminal history reporting. This particular section would clearly assist those Tribal Gaming Operations and the Tribal Regulatory Agencies with identifying known groups and individuals that travel to a number of Indian Gaming Operations with the intent to “scam” or steal from said operations. In addition, this would assist Tribal Regulatory Agencies in accessing background information for licensing of employees in a more efficient manner. In addition 503 would authorize the Director of the Bureau of Justice Assistance to provide criminal information system grants to Indian tribes to address multi-jurisdictional crimes and establish secure information sharing systems to enhance investigations and prosecutions. This establishment of secure information sharing systems would clearly enhance and assist those Tribal Regulatory Agencies that have attempted to begin an information sharing system and would like to enhance said sharing of information or it would benefit those Agencies that did not have the resources to begin such a sharing of information.

The above overview clearly indicates that both the Tribal Gaming Regulatory Agencies and the Gaming Operations, along with the law enforcement entities that are operating within the jurisdictions of the Tribes would be greatly benefited by the passage of Bill S 797 and HR Bill 1924. The primary benefits that appear to be reflected in the Bills are the accountability that would be imposed upon Federal Prosecutors when deciding to prosecute crimes on Indian lands, the consultation with Tribes that is required when dealing with crimes on Indian lands, the training opportunities for Law Enforcement officials in the area of gaming, the uniform data collection in regard to background information for licensing purposes and being aware of those who seek to challenge the integrity of Indian Gaming Operations, and the coordination of functions, duties and protocol in regard to Indian lands that may be subject to multi-jurisdictions when it comes to gaming crimes and/or crimes committed on Indian Gaming premises or property.