

CDC tribal advisory committee met in August



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DIRECTOR, UNIT IV

Recently, I was selected as an at-large committee member to serve on the CDC Tribal Advisory Committee (TAC). The TAC committee gives recommendations, priorities and testimony to key CDC officials as to what is really happening in Indian Country.

On Aug. 4 and 5, my first meeting was in Spokane, Wash., Director Abramson, Bemidji representative, and myself were in attendance; a lot of great ideas and issues came up at this meeting.

Director Abramson and I were able to have a lunch meeting with Dr. Lenaway, division director for the National Center for Environmental Health Services, and informed him of the many water quality and environmental issues we face. After our discussion on Enbridge Line 5, invasive species, Graymont and proposed 10,000-acre potato farm, Dr. Lenaway was very interested in getting any information we have on these issues and then doing a site visit to our community.

I will continue to keep you updated on our progress with Dr. Lenaway and his staff.

Amending Tribal Code Chapter 70 Criminal Procedure by Adding Section 70.134 Limiting Certain Prosecution Agreements was passed on Aug. 18 in Marquette.

**AMENDING TRIBAL CODE
CHAPTER 70 CRIMINAL
PROCEDURE**

**BY ADDING SECTION
70.134**

**LIMITING CERTAIN
PROSECUTION AGREEMENTS**

WHEREAS, the Article VII, Section 1(g) of the Constitution of the Sault Ste. Marie Tribe of Chippewa Indians assigns to the Board of Directors the power to establish a criminal justice system including the authority to promulgate and enforce ordinances governing the conduct of persons within the jurisdiction of the tribe and to establish a reservation court and define its duties and powers; and

WHEREAS, the Article VII, Section 1(n) of the Constitution of the Sault Ste. Marie Tribe of Chippewa Indians authorizes the Board of Directors to create and delegate authority to subordinate officers and reserves to the Board the right to review the authority delegated and actions taken by such officers; and

WHEREAS, the Board of Directors have determined that it is just and appropriate to impose certain limitations on the maximum duration of certain agreements between the

Tribal Prosecutor and defendants charged with a criminal offense under tribal law.

NOW, THEREFORE, BE IT RESOLVED, Chapter 70 of the Tribal Code: Criminal Procedure is hereby amended by the addition of a new section 70.134 which shall read as follows:

70.134 Limitation on certain prosecution agreements to dismiss charges

An agreement between the Tribal Prosecutor and a defendant charged with a criminal offense under tribal law, in which the Prosecutor has agreed to dismiss criminal charges in return for an agreement by the accused that he or she will not seek or be eligible for future employment with the Tribe or will adhere to other specific terms or limitations as a condition of the dismissal, shall be enforceable against the accused only for a period not to exceed two years unless the agreement has been expressly incorporated into a court order approved by the Tribal Judge.

This section shall apply retroactively to any such agreements entered into prior to the date of enactment of this provision. Nothing in this section will preclude the Tribe from considering the underlying facts and circumstances of the original offense when making any future hiring decision involving the individual.

I have been pushing this issue for years and finally we corrected the many wrongs that were done against our own tribal members.

In the past, the prosecutor would tell team members they had something to charge them with, but if the team member agreed to sign an agreement giving up their job and any right to work for the tribe again they wouldn't be prosecuted.

I can see members not having any legal advice being intimidated by the prosecutor who might not have had a shred of evidence just sign the agreement.

We have asked for lists or files containing this information and none have ever turned up.

All these years, we have had tribal members afraid to apply for a job — this will never be able to happen to our members again!

Under this code change, this section shall apply retroactively to any such agreements entered into prior to the date of enactment of this provision. In the future any agreement written such as this will only be allowed for the maximum of two years.

**AMENDING TRIBAL CODE
BY ADDING CHAPTER 77:
SETTING ASIDE TRIBAL
CONVICTIONS**

WHEREAS, the Article VII, Section 1(g) of the Constitution of the Sault Ste. Marie Tribe of Chippewa Indians assigns to the Board of Directors the power to establish a criminal justice system including the authority to promulgate and enforce ordinances governing the conduct of persons within the jurisdiction of the tribe and to establish a reservation court and define its duties and powers; and

WHEREAS, the Board of Directors have determined that it is just and equitable to establish a process by which persons who have been convicted of only a single criminal offense under tribal



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al law, and who have no subsequent convictions within the five years following their conviction, may apply to have their tribal court conviction set aside subject to appropriate limitations, standards, and procedures.

NOW, THEREFORE, BE IT RESOLVED, the Tribal Code is hereby amended by the addition of the attached new Chapter 77: Setting Aside Tribal Convictions.

**TRIBAL CODE
CHAPTER 77:
SETTING ASIDE TRIBAL
CONVICTIONS**

77.101 Application to Set Aside Conviction.

(1) A person who has been convicted of not more than one (1) criminal offense under Chapter 71 of the Tribal Code may file an application for the entry of an order setting aside that criminal conviction provided that:

(a) At least five years have passed following imposition of the sentence for the tribal court conviction or following completion of any term of probation, imprisonment, and/or parole for that conviction, whichever occurs later;

(b) The person has not been convicted of and has no pending charges for any other criminal offense in tribal court or in the courts of any jurisdiction in the United States or in any other country;

(c) The conviction sought to be set aside is not homicide in violation of §71.708, abuse of office in violation of §71.1101, or any degree of criminal sexual conduct in violation of §71.1801-1804 or any sexual offense that requires registration as a sex offender under the provisions of Chapter 72 of the Tribal Code, entitled the Sex Offender Registration and Notification Code; and

(d) The conviction sought to be set aside is not for attempt or conspiracy to commit any of the crimes listed or described in subsection (c); and

(e) The conviction sought to be set aside is not a traffic offense.

(2) A person may have only one (1) conviction set aside under this section.

77.102 Contents of Application.

An application to set aside a conviction may be considered only if it contains the following information and is signed under oath by the person whose conviction is to be set aside:

(a) The full name and current address of the applicant.

(b) The case number of the

tribal court conviction that is to be set aside.

(c) A statement that, except for the tribal court conviction sought to be set aside, the applicant has not been convicted of any other criminal offense in tribal court or in the courts of any other jurisdiction in the United States or in any other country.

(d) A statement as to whether the applicant has previously filed an application to set aside this or any other conviction and, if so, the disposition of that application.

(e) A statement as to whether the applicant has any other criminal charge pending against him or her in any court in the United States or in any other country.

(f) Two complete sets of fingerprints.

77.103 Review and Consideration of Application.

(1) The applicant shall submit the completed application to Sault Tribe Law Enforcement ("STLE") together with a fee of \$50.00 payable to the Sault Ste. Marie Tribe of Chippewa Indians to be used by STLE to defray the expenses incurred in processing the application. STLE shall review its own records, shall conduct a LEIN search for any records relating to the applicant, and shall forward a complete set of finger prints to the Federal Bureau of Investigation for a comparison with the records available to the agency.

Upon completion of this review process, STLE shall forward the application to the tribal court and to the tribal prosecutor together with a report describing any information STLE has discovered regarding any pending charges against the applicant, any record of conviction of the applicant, and the setting aside of any conviction of the applicant, including any similar information obtained by STLE from the Federal Bureau of Investigation.

(2) Upon receipt of a copy of the completed application and STLE report, the tribal prosecutor shall review any files and records maintained by the prosecutor regarding the applicant, shall attempt to identify the victim or victims of the crime and, if such persons are identified, shall attempt to notify the victim or victims of the application.

The notice shall be by first-class mail to the victim's last known address and the tribal prosecutor shall file a proof of service with the tribal court and/or a statement indicating that such persons were unable to be identified or located. The victim or victims shall have the right to appear

at any hearing held by the court concerning the application and to make a written or oral statement.

(3) After the application is complete, including the filing of the STLE report and the tribal prosecutor's proof of service on any victim or victims, the tribal court may require the filing of affidavits and the taking of such proofs as it considers proper.

The tribal prosecutor shall be given notice of any such proceedings and shall be provided the opportunity to contest the application.

(4) If the court determines that the circumstances and behavior of the applicant from the date of the applicant's conviction to the filing of the application warrant setting aside the conviction and that setting aside the conviction is consistent with the public welfare, the court may enter an order setting aside the conviction and any actual applicable trial court cost as determined by the tribal court. The setting aside of a conviction under this section is a privilege and conditional; it is not a right and the determination is vested in the sound discretion of the tribal court judge.

77.104 Implementation and Effect of Order

(1) If the court enters an order setting aside a conviction pursuant to Section 1, the applicant, for purpose of tribal law, shall be considered not to have been previously convicted, subject to the limitations and exceptions provided in this section.

(2) Upon the entry of an order pursuant to Section 1, the court shall send a copy of the order to the tribal prosecutor and to STLE. STLE and the tribal prosecutor shall each retain a nonpublic record of the order setting aside a conviction and of the record of the arrest, fingerprints, conviction, and sentence of the applicant in the case to which the order applies. This nonpublic record shall be kept strictly confidential and may be made available only to the extent and in the circumstances provided in this section.

(3) If an order to set aside a conviction under section 1 involves a conviction that has been previously reported to outside state or federal record services such as the LEIN system, STLE shall make a reasonable, good faith effort to remove the record from that record service, if such removal is permitted by the service, assuring that the record will no longer appear as part of the applicant's criminal history under that service. If removal of

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the record of conviction is not permitted by the outside record service or is otherwise not achievable, STLE shall instead post the set aside order to that outside system.

(4) Except as provided in subsection (3), the nonpublic record described in subsection (2) may be disclosed only for the following purposes:

(a) By STLE and the tribal prosecutor to show that a person who has filed an application to set aside a tribal court criminal conviction has previously had a conviction set aside pursuant to this act.

(b) For consideration by STLE if a person whose conviction has been set aside applies for employment with STLE.

(c) To the person whose conviction has been set aside by the order.

(5) Notwithstanding the provisions of subsection (1):

(a) The applicant is not entitled to the remission of any fine, costs, or other money paid as a consequence of a conviction that is set aside.

(b) This act does not affect the right of the applicant to rely upon the conviction to bar subsequent proceedings for the same offense.

(c) This act does not affect the right of a victim of a crime to prosecute or defend a civil action for damages.

(d) This act does not create a right to commence an action for damages for incarceration under the sentence that the applicant served before the conviction is

set aside pursuant to this act.

Another resolution that was passed, Amending Tribal Code by Adding Chapter 77: Setting Aside Tribal Convictions, was done very quickly. There were a lot of unanswered questions. As an example, Director Chase asked, "Would someone who committed elder abuse under this code change be forgiven?" The answer was, well, if they kept their record clean, then they would be eligible per the code. With many unanswered questions, we pushed to workshop this, but the majority prevailed and pushed this vote through. When something this serious is pushed through we really should look at what the ulterior motive would be. Director Chase and I did not vote for this code change as it was written.

I would like to address some of last month's board articles about the removal of Director Glyptis and how she didn't come and tell them her story. What they failed to tell you is they did not make an effort to ask Director Glyptis the truth; that way they can continue to fuel the misinformation spread in their communities.

When the removal was presented in Marquette on Aug. 18, many legitimate questions were asked about the validity of the signatures, what standards are they following, etcetera ... When the removal was turned in to the board secretary at a Sault meeting, it then went to the tribal registrar. After review, the tribal registrar sent the board an official memo making an

official statement on the signatures. Then, several days later, she sent another memo changing her first official statement. The second statement from the registrar came after Director Glyptis posed several questions to John Wernet, general counsel, in writing on the removal and/or signatures. This is a very serious situation and should not be handled so wishy-washy. I could continue to write about this issue, but several board members voted to send this removal to a hearing board, so I will reserve any more comment.

Thank you. Please feel free to contact me.

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