

# *An Overview of Federal Criminal Databases*

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## Types of Information that would be helpful if entered into federal databases.....

- Sex offender registration information and updates of various kinds into the National Sex Offender Registry (NSOR), a file of the National Crime Information Center (NCIC), as required by the Sex Offender Registration and Notification Act (SORNA). This includes but is not limited to certain tribal court sex offense convictions. See, 18 USC 2250; 42 USC 16927.
- Fingerprints for inclusion in the Integrated Automated Fingerprint Identification System (IAFIS) and palm prints to the FBI's Next Generation Identification (NGI) System, as required by SORNA. See 42 USC 16927. (Much key criminal data is linked by fingerprint to NCIC data).
- Tribal arrests and convictions into NCIC for all criminal history usage purposes, to include use by federal court judges when making pretrial detention and sentencing decisions.

## Types of Information that would be helpful if entered into federal databases.....

- Tribal court misdemeanor domestic violence convictions, which may create a nationwide firearm possession prohibition per 18 USC 922(g) (9) and serve as a predicate for the crime of domestic assault by habitual offender per 18 USC 117.
- Tribal court domestic violence protective orders, which create a nationwide firearm possession prohibition per 18 USC 922(g) (8), can serve as a predicate for the crime of interstate violation of a protective order per 18 USC 2262, and are valid nationwide per 18 USC 2265.

## Types of Information that would be helpful if entered into federal databases.....

- Tribal court felony convictions, which create a nationwide firearm possession prohibition per 18 USC 922(g)(1).
- Tribal court criminal history record information, which is crucial for conducting accurate and effective background and criminal investigations.
- Tribal court arrest warrants issued by tribes who may be willing to seek extradition in order to enforce such warrants.

When did this issue start getting more attention from Tribal Governments?

## VAWA 2005

### Section 905(a)

“The Attorney General shall permit Indian law enforcement agencies, **in cases of domestic violence, dating violence, sexual assault, and stalking,** to enter information into Federal criminal information databases and to obtain information from the databases.”

# VAWA 2005

## Section 905(b)

“[t]he Attorney General shall contract with any interested Indian tribe, tribal organization, or tribal nonprofit organization to develop and maintain—

(A) a national tribal sex offender registry; and

(B) a tribal protection order registry containing civil and criminal orders of protection issued by Indian tribes and participating jurisdictions.”

## Since VAWA 2005 was enacted....

- Adam Walsh Act: Sex Offender Registration and Notification Act (SORNA) July 2006
- NICS Improvement Amendments Act of 2007
- Tribal Law and Order Act of 2010
- Violence Against Women Reauthorization Act of 2013
- These subsequent significant policy and legal changes may impact development of or alter the importance of the registries provided for in VAWA 2005. Many of these changes have increased the necessity for including tribal records in federal records databases like NCIC.



## For Example.....

- Section 233(b)(1) of the TLOA states in part, **“The Attorney General shall ensure that tribal law enforcement officials that meet applicable Federal or State requirements be permitted access to national crime information databases.”**
- Access no longer tied to specific types of crimes

Which federal agency is responsible  
for these databases?



# CRIMINAL JUSTICE INFORMATION SERVICES DIVISION (CJIS)

## *CJIS Systems*

- Integrated Automated Fingerprint Identification System (IAFIS)
- Next Generation Identification (NGI) including NPPS
- National Crime Information Center (NCIC)
- National Instant Criminal Background Check System (NICS)
- Law Enforcement OnLine (LEO)
- Uniform Crime Reporting (UCR)
- National Data Exchange (N-DEx)



# General NCIC Information

- Federal Central Database maintained by FBI-CJIS (Criminal Justice Information Service)
- Launched in 1967 with five files and 356,784 records
- By end of FY 11, NCIC contained 11.7 million active records in 19 files
- NCIC database currently consists of 21 files – 7 property files and 14 persons files
- NCIC is a voluntary system-
  - There are mandatory fields in some sub files
  - It can be queried-“read only”
  - Ability to enter data based on CSA policy/law/regulation
  - CSA-CJIS Systems Agency
  - CSO-CJIS Systems Officer

# Shared Management Concept

- NCIC operates under a shared management concept between the FBI, federal, state, local and tribal criminal justice users.
- Policy Facet: provides a means for user input on NCIC policy through the Criminal Justice Information Services (CJIS) Advisory Policy Board (have a CJIS Advisory Policy Board Tribal Task Force)
- Functional Facet: FBI provides a host computer and telecommunications lines to a single point of contact in each of the 50 states, DC, Puerto Rico, US Virgin Islands, Guam and Canada

# Security and Quality Controls

- Each jurisdiction, in turn, operates their own computer systems, providing access to local **criminal justice agencies**.
- The entry, modification, and removal of records is the responsibility of the agency that entered them.
- The CJIS Division serves as the custodian of the records.
- The CJIS Systems Agency – the criminal justice agency that has overall responsibility for the administration and usage of NCIC with a district, state, territory, or federal agency – appoints a CJIS systems officer (CSO) from its agency.

# Security and Quality Controls

- The CSO is responsible for monitoring system use, enforcing system discipline and security, and ensuring that all users follow operating procedures.
- NCIC policy establishes a number of security measures to ensure privacy and integrity of the data.
  - The information passing through the network is encrypted to prevent unauthorized access.
  - Each user of the system is authenticated to ensure proper levels of access for every transaction.
  - Each agency must periodically validate its records.
  - Agencies must undergo periodic audits to ensure data quality and adherence to all security provisions.

## Criminal Justice Agency Defined

Title 28, Code of Federal Regulations, section 20.3(g) defines a criminal justice agency as “(1) courts; and (2) a governmental agency or any subunit thereof that performs the administration of criminal justice pursuant to a statute or executive order, and that allocates a substantial part of its annual budget to the administration of criminal justice.”



Why is it important to submit records?

# NCIC Protection Order File

The NCIC Protection Order File (NCIC POF) was developed to serve as the national registry for protection orders issued in state and tribal courts.

- The NCIC POF is a voluntary system and is designed to facilitate the enforcement of protection orders and the federal firearm laws.
- The ability of law enforcement to confirm the existence of a protection order in the NCIC POF takes on added importance when a protected party requests enforcement of an order issued by a foreign jurisdiction and she/he does not have a copy of the order in their possession.
- Currently, just over 27 tribal criminal justice agencies submit tribal court protection orders for entry into the NCIC POF.

# IAFIS-Integrated Automated Fingerprint Identification System

- IAFIS, is a national fingerprint and criminal history system maintained by the Federal Bureau of Investigation (FBI), Criminal Justice Information Services (CJIS) Division.
- IAFIS provides automated fingerprint search capabilities, latent searching capability, electronic image storage, and electronic exchange of fingerprints and responses, 24 hours a day, 365 days a year.
- Criminal Arrest Fingerprints submitted provide the basis for a III criminal history check

# NICS

The National Instant Criminal Background Check System (NICS) is a national system that checks available records on persons who may be disqualified from receiving firearms. NICS was established for Federal Firearm Licensees (FFLs) to contact either the FBI or a designated state point of contact by telephone, or other electronic means, for information to be supplied immediately on whether the transfer of a firearm would be in violation of 18 U.S.C. §§ 922(g) and (n) or state law.

# Categories of Prohibited Possessors

Federal law provides several categories of person prohibited from using or possessing firearms and/or ammunition, including:

- A person who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year (18 U.S.C. § 922(g)(1));
- An unlawful user and/or addict of any controlled substance (18 U.S.C. § 922(g)(3));
- The person who is subject to a qualifying protection order (18 U.S.C. § 922(g)(8));
- A person convicted in any court of a qualifying misdemeanor crime of domestic violence (18 U.S.C. § 922(g)(9)).

## What if a NICS search turns up no records?

- In short, if a defendant were convicted today in tribal court of a qualifying misdemeanor crime of domestic violence and record of his conviction was not submitted to NCIC, that same defendant could travel off the reservation and purchase a firearm.
- The FFL would receive no information from NICS that the defendant was a prohibited purchaser.
- Clearly, a firearm in the hands of a batterer presents a significant lethality risk for a victim of intimate partner violence, her family, her coworkers, innocent bystanders and the community.

## Domestic Assault by an Habitual Offender

VAWA 2005 created a new federal statute, 18 U.S.C. § 117, called Domestic Assault by an Habitual Offender. It punishes any person who commits a domestic assault in Indian country who has two prior federal, state, or **tribal court** convictions for offenses that would be— subject to federal jurisdiction—an assault, a sexual abuse offense, an offense under Chapter 110A, or a serious violent felony against a spouse or intimate partner.

Are there any issues with Tribes submitting records to federal criminal databases?



## Issues with Tribes and Federal Criminal Databases

- There are approximately 300 tribal courts in the US, yet recent CJIS research shows that there is an extremely low rate of criminal justice data entry by tribal criminal justice agencies.
- Some tribal criminal justice agencies may be entering criminal justice data via state/local ORIs, which may obscure their tribal origins and cause their data to not show up in this preliminary research.

## Issues Continued.....UCR

- The Bureau of Justice Assistance (BJA) and the Bureau of Justice Statistics (BJS) have been working on the issue concerning tribes' ability to enter criminal justice statistics specifically identifiable to their tribe.
- When tribal specific crime statistics -- Uniform Crime Reporting (UCR) data -- are not correctly entered into CJIS systems, tribes become ineligible for certain formula-based criminal justice funds, such as Justice Assistance Grants (JAG), which are based on a formula related to population and crime statistics.

## Issues Continued...Cost

- The “switch,” or hardware and software that is necessary to provide submission of NCIC data to CJIS from any remote location managed by the CSA, is estimated by CJIS to cost approximately one million dollars. The management of the switch includes hardware and software purchase and maintenance, auditing, legal agreements with sub users, hard or software options for sub user access, administrative and technical support, training, etc.

## Issues Continued...State Laws

- Some tribes are unable to submit NCIC data because they are not permitted by the states to enter data through the systems that the states manage - CA
- See, Testimony of William Denke, Sycuan Tribe Chief of Police
  - <http://www.aisc.ucla.edu/iloc/resources/documents/bd-testimony-inidan-lando-commission-final.pdf>
- Even when tribes have been able to enter data through state CSAs, the data is not always attributed as tribal data

## Issues Continued...Fingerprints

- FBI-CJIS had permitted jurisdictions, including tribes, to submit fingerprint records by mail, thereby bypassing state-related submission issues; however, CJIS is now phasing this method out for non-tribal jurisdictions but has agreed to continue to support tribes who do not have the ability to electronically submit fingerprint data themselves or through the state.
- There is a federal conduit to IAFIS called the Joint Automated Booking System (JABS), but there are insufficient resources to establish this as a viable alternative for all tribes in need of this alternative.

What progress has been made?

# CJIS Division

## Tribal Working Group

- December 2011, Law Enforcement Support Section Chief designated as CJIS Tribal Liaison
- Designated Liaison for each CJIS Program Office
- Liaison with federal partners
  - Bureau of Indian Affairs (BIA)
  - Office of the Deputy Attorney General (ODAG)
  - Office of Tribal Justice (OTJ)
  - Sex Offender Monitoring, Apprehending, Registering, and Tracking (SMART) Office

# CJIS Division

## Tribal Working Group

- Liaison to Indian County
  - Connectivity to CJIS Systems/Programs
  - Connectivity issues with state, territory, and local jurisdictions
  - CJIS Policy Compliance
  - CJIS Program Awareness



# CJIS Advisory Policy Board Tribal Task Force

- Established under the APB Executive Committee
- The Mission of the Tribal Task Force is to enhance officer and public safety by improving federal, state, local, territorial, and tribal participation in the CJIS Division Systems.
- The Task Force will review issues that may prevent or discourage tribal law enforcement agencies from entering records/data into CJIS Division Systems and make recommendation that will address those issues.

# Tribal Task Force Membership

- Bill Denke, Sycuan Police Department, Chair
- James J. Battese, Miami Nation
- Francis E. Bradley, Hualapai Nation Police Department
- Mike Martin, Little River Band of Ottawa Indians
- Tribal Court – TBD
- Dawn Peck, Idaho State Police
- Gene Thaxton, Oklahoma Department of Public Safety
- Edward Bonner, Placer County Sheriff
- Jason O'Neal, BIA
- Michael Haas, DOJ
- Mark Telle, FBI ICCU
- John Derbas, FBI LESS
- Kimberly Lough, FBI NOPU

# JUST

- Justice Telecommunications System (JUST)
- Pilot Project funded by COPS which provide a few tribes with access to NCIC via DOJ's JUST system
- JUST is a transaction driven/fee-based system, like it is for all other urban or rural criminal justice agencies
- JUST Pilot Tribes are subject to same NCIC terms of use as all other urban or rural criminal justice agencies

## Final Thoughts....

- Access is important, but use of federal criminal databases by those tribal criminal justice agencies with access is key!