



**UTILIZING
BACKGROUND
CHECKS TO IMPROVE
PUBLIC SAFETY IN
INDIAN COUNTRY**



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**WHAT IS THE
TRIBAL LAW &
ORDER ACT?**

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Tribal Law & Order Act

- Updated 28 USC 534 to confirm that tribal criminal justice agencies have legal authority to access FBI criminal justice information.
- “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.” TLOA, sec. 233(b); 34 USC 41107(1).

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Crime Data as a Tool to Fight Crime

- Crime data to fight crime that is underway or under investigation.
- Crime data to reduce opportunities for crime: background checks.

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Tribal Submissions to NGI

- FY 2017 civil fingerprint non-channeler submissions: 6,282
 - 35% increase over FY 2016
- FY 2017 civil fingerprint channeler submissions: 12,120
 - 7% increase over FY 2016
- FY 2017 civil fingerprint NIGC submissions: 82,179
 - .02% increase over FY 2016
- **TOTAL civil submissions = 100,581**

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FBI CJIS Clarksburg, West Virginia



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Background Check Legal Authorities

- Public Law 92-544 (34 USC 41101)*
- Indian Gaming Regulatory Act
- National Child Protection Act/Volunteers for Children Act (NCPA/VCA)*
- Serve America Act
- Native American Housing Assistance & Self-Determination Act
- Indian Child Protection & Family Violence Prevention Act
- Native American Child Safety Act
- Head Start Act
- Purpose Code X
- Criminal justice agencies
- Firearms licensing/permitting

* Fingerprints authorized by State and may only be submitted through the State Identification Bureau

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Public Law 92-544

- Menard v. Mitchell, 328 F.Supp. 718 (D. D.C. 1971)
- disallowed use of FBI maintained criminal history record information for non-federal background checks for employment or licensing purposes because there was no federal law that authorized such use.
- Congress responded by enacting P.L. 92-544, 86 Stat. 1115 (Oct. 25, 1972); codified as 34 USC 41101.

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Public Law 92-544 (34 USC 41101)

- Authorizes FBI to provide criminal history records “...to officials of State and local governments for purposes of employment and licensing...”
- Requires a “...State statute...approved by the Attorney General...”
- Approval authority has been delegated to the FBI, Office of the General Counsel, Criminal Justice Information Law Unit.

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Public Law 92-544 (34 USC 41101)

- Ways that tribes are incorporated:
 - State statute specifically names tribe and purpose, or
 - State statute adopts tribal resolutions that specify the purpose
- Common purposes: persons with access to children, tribal government employees, and tribal gaming employees.

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Indian Gaming Regulatory Act

- National Indian Gaming Commission has broad authority to conduct background investigations.
- NIGC “...shall conduct or cause to be conducted such background investigations as may be necessary.” 25 USC 2706(b)(3).
- Applies to key employees and primary management officials.

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NCPA/VCA

- 34 USC 40102(a) – States can authorize a “qualified entity” to request background checks to determine whether a provider has been convicted of a crime bearing on fitness for providers having responsibility for safety & well-being of children, elderly, or disabled.
- Definition of “State” does not include “Tribes” – 34 USC 40104(11).

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NCPA/VCA

- However, definition of “qualified entity” can include a public organization “that provides care or care placement services...including an organization that licenses or certifies others to provide care or care placement services...” – 34 USC 40104(10).
- A state can designate an appropriate tribal government agency (or a tribal non-governmental entity) as a qualified entity.

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Serve America Act

- Individuals serving with the Corporation for National and Community Service – including AmeriCorps.
- 42 USC 12645g
- 45 CFR 2540

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Native American Housing Assistance & Self-Determination Act

- Applicants for employment with a tribal housing authority.
- Applicants for tenancy in a tribal housing authority property.
- Name-based query may be conducted by law enforcement to determine whether there is information. If there is information, then fingerprints must be submitted to obtain the criminal history record information.
- 25 USC 4138

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Public Law 101-630 (25 USC 3207(a-c))

- Requires background checks for persons being considered for employment by Tribes (that receive federal contract/compact funding) in positions that have regular contact or control over Indian children.
- Tribes can set standards more stringent than DOI or HHS standards.
- 25 USC 3207(a-c)

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Native American Child Safety Act (2016)

- Requires background checks for persons being considered to serve as tribal court ordered foster parents. Must do:
 - FBI - national background check, and
 - Also, check state child abuse/neglect registries, National Sex Offender Public Registry, tribal records & registries.

- 25 USC 3207(d)

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Head Start Act

- Requires background checks for tribal Head Start employees. Must do:
 - FBI - national criminal history check,
 - State - criminal history check, or
 - Tribal - criminal history check.

- 42 USC 9843a(g)

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Purpose Code X

- 28 CFR 901.2 & 901.3 – allows for name-based check to be followed by the delayed submission of fingerprints.
- BIA OJS submitted a proposal for approval to the National Crime Prevention and Privacy Compact Council to assist tribal agencies during emergency child placements, in absence of state laws governing such access.
- Compact Council approved on May 13, 2015.

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Purpose Code X

- Each tribe must be approved to participate by BIA OJS.
- Exigent name-based check to be conducted by BIA OJS upon tribal government agency request.
- Residents must consent to provide fingerprints for a national check; if residents fail to consent, child may not be placed in that home.
- Fingerprint-based check to be submitted within 15 calendar days.

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Criminal Justice Employment

- Criminal history record information can be accessed by criminal justice agencies to screen employees and applicants for employment for criminal justice agencies.
- 28 CFR 20.33(a)(1)

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National Instant Criminal Background Check System (NICS)

- FBI CJIS NICS Rulemaking
 - 79 FR 69047-51 (Nov. 20, 2014) – effective Jan. 20, 2015
- 28 CFR 25.6(j)(3) - allows tribal criminal justice agencies to access NICS for background checks pertaining to disposal of firearms in possession of tribal criminal justice agencies.

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National Instant Criminal Background Check System (NICS)

- ❑ FBI CJIS NICS Rulemaking
 - 79 FR 69047-51 (Nov. 20, 2014) – effective Jan. 20, 2015
- ❑ 28 CFR 25.6(j)(1) - allows tribal criminal justice agencies to access NICS for background checks pertaining to issuance of firearms-related permits or licenses (including firearm possession, acquisition, transfer, or carrying of a concealed firearm).

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Uniform Crime Reporting

- ❑ FBI CJIS Uniform Crime Reporting
- ❑ Tribal statistics in Offenses Known to Law Enforcement – Table 11.
- ❑ Helps tribal officials spot trends and plan effectively.

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- Questions?

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