

## MEMORANDUM REQUESTING CCH REPORTING

The purpose of this memorandum is to outline the justifications for requiring that tribal court criminal convictions be reported to the State of Michigan's Computerized Criminal History (CCH) System. The Criminal Justice Information Center (CJIC) is the state repository for all arrests, charges, and convictions of serious crimes committed in Michigan. All law enforcement agencies, prosecutors, and courts send information that is matched together and forms the criminal history record database.

In addition, the Michigan Law Enforcement Information Network (LEIN) is a statewide computerized information system, which was established July 1, 1967, as a service to Michigan's criminal justice agencies. The goal of LEIN is to assist the criminal justice community in the performance of its duties by providing and maintaining a computerized filing system of accurate and timely documented criminal justice information readily available to all criminal justice agencies. Access to LEIN is restricted to criminal justice agencies or those agencies statutorily granted authorization. FBI CJIS has strict criteria for what must be shown on an approved network diagram, and access to LEIN will not be granted if these criteria are not met. Network diagrams must be specific to the agency applying for access; they cannot be a generic vendor or county provided diagram.

### JUSTIFICATION FOR REQUEST

- 1) Tribal Court convictions currently DO NOT show up on an individual's Computerized Criminal History (CCH).** The Sault Ste. Marie Tribal Court criminal convictions are not sent to the State of Michigan (Michigan State Police) for inclusion on an individual's centralized computerized criminal history.
- 2) Tribal Criminal History Records Improvement Program (T-CHRIP) funded by the Bureau of Justice Statistics (BJS) supports the data sharing of criminal histories.** T-CHRIP supports federally recognized tribes to promote justice related data sharing across tribal, State, and national criminal records systems. The capturing, reporting, and sharing of fingerprints and access to complete arrest disposition records will improve the ability of justice agencies to identify individuals for criminal justice purposes. T-CHRIP's goal is to improve public safety in Indian Country by enhancing the quality, completeness, and accessibility of criminal history records.
- 3) Sovereignty strengthened.** If tribes are aware of other tribal court convictions there is a greater chance the tribe can/will handle offenders in the tribal court system at the level that is most appropriate for the offenders true criminal activity. Criminal offenders sometimes travel from one tribal jurisdiction to another tribal jurisdiction. If tribal court

convictions are reported, potentially all tribes would know of an offenders criminal past and therefore, be able to charge and sentence more appropriately. In addition, having some confirmation that there is NO criminal history is just as valuable as knowing there is one. Reporting all convictions eliminates speculation.

**4) Accurate CCH's are important.** If tribal court convictions were included on an individual's CCH, it would give law enforcement and the judicial system a more accurate picture of a person's prior criminal conduct. **Having accurate information about someone's criminal history is important because:**

**a) Prior convictions can be used to enhance criminal charges.** For example, in the state system, many criminal charges have enhanced penalties if they are 2<sup>nd</sup> or subsequent offenses. For example, Domestic Violence first offense is punishable by 93 days in jail and/or a \$500.00 fine. Domestic Violence second offense is punishable by 1 year in jail and or a \$1,000.00 fine. Domestic Violence third offense is a felony punishable by up to 2 years in prison and/or a \$2,000.00 fine. Currently, because tribal convictions are not reported to the centralized system, no other criminal justice system (including other tribes, state and federal) has accurate information about individuals who have Sault Chippewa Tribal Court convictions.

**b) Prior criminal conduct can sometimes be used as evidence in a new case.** In both sexual assault and domestic violence cases this is particularly important. Domestic Violence is defined as "a pattern of assaultive and/or coercive behaviors, including physical, sexual, and psychological attacks, as well as economic coercion, that adults or adolescents use against their intimate partners." **The predominant way for criminal justice systems to know if an individual has prior criminal activity is to run a CCH.**

**c) More appropriate dispositions or sentences.** Judges routinely tailor sentences to the particular facts and circumstances of every case and individual. Probation officers make recommendations for sentences based on a person's history and the unique facts of the instant case. When the criminal justice system is aware of a person's prior criminal history they can make better decisions about the type of sentence that would benefit the Defendant and the community as a whole. For example, there is a state statutory provision that allows for a one time deferred sentence for first time domestic violence offenders. If the state criminal justice system is unaware of a tribal conviction for domestic violence, they may offer a deferred sentence to someone who wouldn't otherwise qualify had their tribal conviction been placed on the CCH. The best way to insure accurate information of historical criminal activity is to abstract tribal criminal convictions.

**d) Domestic Violence Court Recommendations.** Our tribe is extremely fortunate to have a domestic violence court replete with a MENS batterer program. The recommendations from those who run the program are invaluable. If it is known that an individual has been through the program, one can look to the recommendations of the tribal system for clarity on what type of sentence is warranted. Having that arrest, charge, conviction or deferral on the CCH would put everyone on notice that there was prior criminal activity (or that there wasn't) and more appropriate sentences could be delivered. The best way to insure we know if someone has been through DV Court is to require placement of any arrests, charges or convictions on an individual's CCH.

**e) System will know what other programs Defendant has been through.** Having an accurate CCH assists CJ system in knowing what programs the Defendant has been through. In order to examine whether a defendant has been through a rehabilitative program, one must know of the prior criminal activity. The best way to insure we know of prior criminal activity is to abstract tribal court criminal convictions.

**f) Good for Victims.** When victims know that they are not the only ones who have suffered harm from someone, it makes it much easier on them. Countless therapists have shared their belief that victims find comfort in knowing that they are not alone. One of the ways to insure that we know about prior criminal activity is to require tribal court criminal convictions be reported and documented on CCH.

**g) Victims and Community are safer.** To provide optimum safety to victims and the community, law enforcement, probation agents and the courts must know of an individual's prior criminal activity. One of the best predictors of a person's behavior is to look at historical conduct. Reporting criminal conduct is imperative to everyone's safety including the victim, the officer(s) at scene and the community at large.

**h) Child Protection.** Law Enforcements ability to view a criminal history instantly on the LEIN system gives them sometimes crucial information in determining how to deal with a criminal offender. Children are often the victims of criminal conduct and quick knowledge of an offender's past provides protection to children caught in the cross fires of criminal activity.

**i) Other Tribes report criminal histories.** Other Tribes have recognized the importance of reporting criminal histories to state and federal agencies. For example, LTBB currently reports criminal histories to LEIN.

j) **TLOA effectuated.** The Tribal Law and Order Act gives tribes the ability to enact more serious crimes and prosecute them in the tribal court. Prior to TLOA, the maximum penalty for a criminal offense on tribal land was one year in jail. TLOA allows tribes to enact tribal ordinances that carry up to 3 years of incarceration. Generally, more serious offenses are charged for repeat offenders. The tribal code could include graduated penalties for repeat offenders. For example, a domestic violence first offense could be a misdemeanor offense punishable by up to one year in jail and a domestic violence third offense could be punishable by up to 3 years in prison. The best way to know of an individual's prior criminal history is to verify in the CCH.

\*Note - our tribe has not yet enacted any legislation allowed under TLOA, however, proposed language for such changes will be forthcoming.

**4) Tribal Members with Criminal Convictions should not benefit from Prosecution in Tribal Court.** Because tribal court convictions are not contained on a CCH, individuals with tribal criminal records are not properly charged as habitual offenders or with enhanced charges. Repeat offenders are therefore rewarded for their cases being heard in tribal Court. The effect of a tribal conviction is completely minimized unless it can be shared with other law enforcement agencies.

**5) Penalties for misuse of LEIN exist and could be incorporated into Tribal Code:** There are criminal charges and penalties for the misuse of any LEIN information which are outlined in MCL 28.214 and states as follows:

Criminal penalties for the misuse of LEIN are provided in Section 4 of the **LEIN Policy Council Act, MCL 28.214**, which specifically states:

- For a first offense, guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both.
- For a second or subsequent offense, guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$2,000.00, or both.

Use of driver information obtained thru LEIN is also prohibited by state and federal Driver Privacy Protection Acts:

- MCL 257.903 states: "a person who uses personal information for a purpose other than a permissible purpose in MCL 257.208c or 257.232 is guilty of a felony".
- 18 USC 2724 permits a criminal fine and allows for civil action to be taken: "A person who knowingly obtains, discloses or uses personal information, from a motor vehicle record, for a purpose not permitted under this chapter shall be liable

to the individual to whom the information pertains, who may bring a civil action in a United States district court."

**6) Cost Considerations.** Sault Tribe Law Enforcement Department currently has a livescan instrument that could be used for electronic reporting of criminal convictions. The cost of implementing the system appears to be that of training law enforcement and court personnel on the methods of entering data into the central registry.

**7) Use of CCH for background checks (Gaming) would be more efficient:** The use of the CCH could be used by law enforcement or other authorized agencies to conduct background checks more efficiently. Currently, a background check consists of checking the CCH and checking with tribal court for any tribal convictions. If tribal convictions were on the CCH, law enforcement/authorized gaming LEIN operator's would only need to check the CCH to determine if there were prior convictions. There would be no need to further check with tribal court.



# Bureau of Justice Statistics Program Report

July 2007, NCJ 218913

## *Tribal Criminal History Records Improvement Program (T-CHRIP)*

# Improving Criminal History Records in Indian Country, 2004-2006

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Between FY 2004 and 2006, the Bureau of Justice Statistics (BJS) made 17 awards totaling nearly \$2.8 million to tribal justice agencies through the Tribal Criminal History Records Improvement Program (T-CHRIP). (See adjacent table.) The main goal of the program is to improve the completeness, quality, and accessibility of tribal criminal history records. Federally recognized tribes located in New Mexico and Arizona received more than half of the T-CHRIP funds awarded.

Among the 341 federally recognized tribes located in the 48 contiguous States, 165 operated a tribal police department, 175 operated a tribal court, and 71 operated a tribal jail or detention facility, according to information in the BJS *Census of Tribal Justice Agencies, 2002*. More than half of the federally recognized tribes are located in Public Law 83-280 States, where primary jurisdiction for felonies falls under the State authority.\*

Established in 2004, T-CHRIP supports federally recognized tribes to promote justice related data sharing across tribal, State, and national criminal records systems. The capturing, reporting, and sharing of fingerprints and access to complete arrest disposition records will improve the ability of justice agencies to identify individuals for criminal justice and noncriminal justice purposes. Noncriminal justice purposes include identifying persons —

- subject to protection orders
- ineligible to be employed or licensed for specific occupations
- subject to sex offender registration
- ineligible to purchase firearms.

\*Public Law 83-280 (commonly referred to as Public Law 280 or P.L. 280), enacted in 1953, transferred Federal jurisdiction over offenses involving Indians in Indian Country to States or gave States an option to assume jurisdiction. See <<http://www.ojp.usdoj.gov/bjs/pub/pdf/ctjaic02.pdf>>.

**T-CHRIP has awarded nearly \$2.8 million, FY 2004-2006**

| State and Tribe   | Dollar amount | Percent of total funding <sup>a</sup> | Number of awards |
|---|---------------|---------------------------------------|------------------|
| Total   | \$2,760,769   | 100%                                  | 17               |
| Arizona   |               |                                       |                  |
| Fort McDowell Yavapai Nation                            | 49,936        | 2                                     | 1                |
| Hopi Tribe <sup>b</sup>                                 | 225,000       | 8                                     | 1                |
| Michigan  |               |                                       |                  |
| Lac Vieux Desert Band of Lake Superior Chippewa Indians | 21,834        | 1                                     | 1                |
| Little Traverse Bay Bands of Odawa Indians <sup>c</sup> | 276,986       | 10                                    | 2                |
| Minnesota   |               |                                       |                  |
| White Earth Indian Reservation                          | 350,000       | 13                                    | 1                |
| Montana   |               |                                       |                  |
| Confederated Salish and Kootenai Tribes                 | 86,477        | 3                                     | 1                |
| New Mexico  |               |                                       |                  |
| Pueblo of Isleta  | 184,552       | 7                                     | 1                |
| Pueblo of Acoma <sup>b,c</sup>                          | 335,758       | 12                                    | 2                |
| Pueblo of Laguna <sup>b,c</sup>                         | 335,758       | 12                                    | 2                |
| Zuni Tribe of the Zuni Reservation <sup>b,c</sup>       | 560,758       | 20                                    | 3                |
| North Carolina  |               |                                       |                  |
| Eastern Band of Cherokee Indians                        | 291,430       | 11                                    | 1                |
| Wisconsin   |               |                                       |                  |
| Stockbridge Munsee Community                            | 42,280        | 2                                     | 1                |

<sup>a</sup>Detail does not sum to total due to rounding.

<sup>b</sup>Amounts assigned equally among participants of single multi-tribal award.

<sup>c</sup>Aggregated for recipients of multiple awards.

The capacity of tribal justice agencies in Indian Country to share criminal history data varied by State and tribe. In the 2002 census an estimated 72% of tribes reported that they did not regularly submit criminal history records to State or Federal databases. Fewer than 25% said they submitted basic criminal records to State or Federal repositories. Three-quarters of the tribes did not submit sex offender information to the National Sex Offender Registry (NSOR), and fewer than 20% indicated that their justice agencies were electronically networked within their jurisdiction or with Federal, State, or local law enforcement agencies.

**Allowable cost activities under the Tribal Criminal History Record Improvement Program, 2004-2006**

| State and Tribe                           | Allowable cost activities |               |                                   |                                   |                      |          |
|---|---------------------------|---------------|-----------------------------------|-----------------------------------|----------------------|----------|
|   | Record Automation         | AFIS/Livescan | Tribal Justice Agency Integration | Tribal Justice Information System | Technical Assistance | Training |
| Arizona                                   |                           |               |                                   |                                   |                      |          |
| Fort McDowell Yavapai Nation              | ■                         | ■             |                                   |                                   |                      |          |
| Pueblos of Hopi                           | ■                         |               | ■                                 |                                   | ■                    | ■        |
| Michigan                                  |                           |               |                                   |                                   |                      |          |
| Lac Vieux Desert Band of Lake Superior    | ■                         | ■             |                                   |                                   | ■                    | ■        |
| Little Traverse Bay Band of Odawa Indians | ■                         | ■             | ■                                 |                                   | ■                    | ■        |
| Minnesota                                 |                           |               |                                   |                                   |                      |          |
| White Earth Indian Reservation            |                           | ■             |                                   |                                   | ■                    | ■        |
| Montana                                   |                           |               |                                   |                                   |                      |          |
| Confederated Salish and Kootenai Tribes   | ■                         | ■             |                                   |                                   | ■                    | ■        |
| New Mexico                                |                           |               |                                   |                                   |                      |          |
| Pueblo Isleta                             | ■                         | ■             | ■                                 | ■                                 | ■                    | ■        |
| Pueblos of Acoma                          | ■                         | ■             | ■                                 | ■                                 | ■                    | ■        |
| Pueblos of Laguna                         | ■                         | ■             | ■                                 | ■                                 | ■                    | ■        |
| Pueblos of Zuni                           | ■                         | ■             | ■                                 | ■                                 | ■                    | ■        |
| North Carolina                            |                           |               |                                   |                                   |                      |          |
| Eastern Band of Cherokee Indians          | ■                         |               | ■                                 |                                   | ■                    | ■        |
| Wisconsin                                 |                           |               |                                   |                                   |                      |          |
| Stockbridge Munsee Indians                |                           | ■             |                                   |                                   |                      | ■        |

■ Funds were used for the marked activities.

In FY 2004 and 2005 BJS awarded approximately \$1.5 million in T-CHRIP funds to nine tribes in six States to promote the development of a criminal history infrastructure. In FY 2006 BJS awarded approximately \$1.2 million in additional T-CHRIP funds to six tribes in three States. The tribes received direct funding to purchase and install electronic livescan fingerprinting equipment that conforms to State and FBI standards and to train staff in its use.

**Program goal emphasizes information sharing**

The goal of T-CHRIP is to improve public safety in Indian Country by enhancing the quality, completeness, and accessibility of criminal history records and by implementing criminal justice and noncriminal justice background check systems. Objectives of T-CHRIP include:

- providing direct financial and technical assistance to improve criminal history records systems and facilitate background checks for criminal justice and authorized noncriminal justice purposes
- developing the infrastructure to connect tribal record systems to State or FBI records' systems and criminal records databases of other tribes
- providing training and technical assistance to tribes to ensure that record systems conform to State and FBI standards, use the most appropriate technologies, and adhere to privacy and confidentiality regulations
- evaluating improvements in tribal and national record holdings and criminal records sharing.

Criminal history records represent a chronological description of offenders and their contacts with the criminal justice system. These records include offender fingerprint identifi-

cation and notations of arrest and subsequent court dispositions. Criminal record systems are dependent on up-to-date automated fingerprint identification systems to ensure transactions accurately identify the correct individual and that such records can be reliably linked across jurisdictions in a timely manner.

**T-CHRIP supported range of activities**

T-CHRIP allowable expenses include AFIS participation, record automation, and training and technical assistance (See table above).

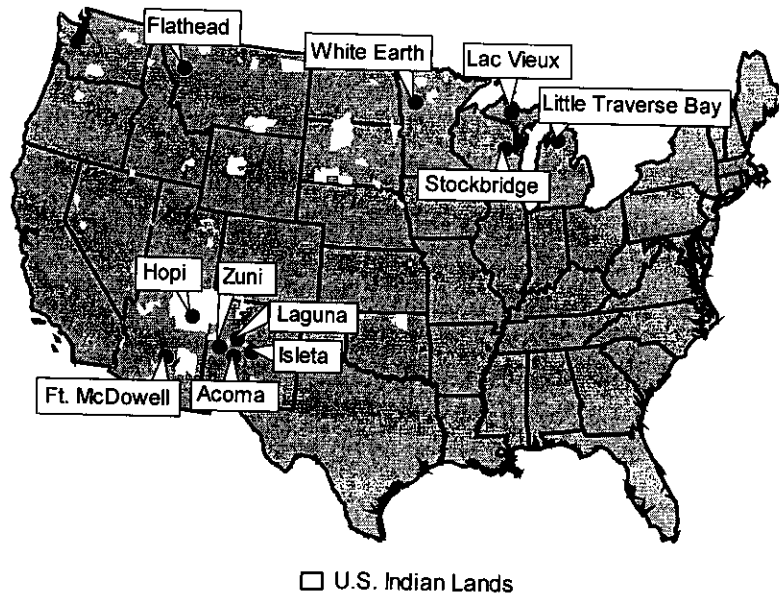
*Automated Fingerprint Identification Systems*

T-CHRIP has supported tribal participation in electronic fingerprinting systems for 11 tribes across the U.S. (See map on page 3.) T-CHRIP awards may be used to purchase equipment, develop procedures, and implement protocols related to activities involving the Automated Fingerprint Identification System (AFIS), State repository, and the operation of the offender registry. This may include purchase of fingerprint capture and storage equipment for relevant agencies. Funds for this purpose must be justified on the basis of geographic, population, criminal and noncriminal background check inquiries, or other related factors. LiveScan can only be purchased where the State has established an AFIS system compatible with FBI standards. Systems funded under T-CHRIP must be compatible with FBI standards for national data systems.

*Record automation*

Complete criminal history records require disposition information. Tribal record automation includes activities to develop electronic criminal justice records. T-CHRIP funds may be used to convert manual fingerprint records to elec-

**Tribes participating in Automated Fingerprint Identification System (AFIS)**



tronic records that conform to FBI specifications and requirements (i.e., scanning inked fingerprint cards into an AFIS system). T-CHRIP funds may be used to automate and update criminal records, including arrest records, court dispositions, domestic violence and protection/restraining orders, DWI/DUI convictions, and sex offender records. The funds can be used to enhance the transmission of tribal records to State and national systems.

*Training and Technical Assistance*

Limited funds may be used to cover costs of training and participation in State, regional, or national meetings (including travel) on the use and implementation of livescan. BJS also makes available technical assistance to tribal authorities through the Tribal Violence Prevention Technology Assistance Program. (See page 4.)

**T-CHRIP funded 12 tribal projects from FY2004 to 2006; four projects received multiple awards**

*Fiscal Year 2004*

1. American Indian Development Associates (AIDA): Pueblos of Acoma, Laguna, and the Zuni Tribe of the Zuni Reservation (New Mexico), \$400,000.
2. Stockbridge Munsee Community (Wisconsin), \$48,280.
3. Little Traverse Bay Bands of Odawa Indians (LTBB) (Michigan), \$139,222.
4. Eastern Band of Cherokee Indians (North Carolina), \$291,430.
5. National Center for Rural Law Enforcement (NCRLE) at the University of Arkansas, Hopi Tribe (Arizona) and the Zuni Tribe of the Zuni Reservation (New Mexico), \$450,000.

*Fiscal Year 2005*

1. Fort McDowell Yavapai Nation (FMYN) (Arizona), \$49,936.
2. Confederated Salish and Kootenai Tribes, located on the Flathead Indian Reservation (Montana) \$86,477.
3. Lac Vieux Desert Band of Lake Superior Chippewa (Michigan), \$21,834.

*Fiscal Year 2006*

1. National Center for Rural Law Enforcement (NCRLE): White Earth Indian Reservation (Minnesota), \$350,000.
2. Little Traverse Bay Bands of Odawa Indians (LTBB) (Michigan), \$137,764.
3. Pueblo of Isleta (New Mexico), \$184,552.
4. American Indian Development Associates (AIDA): Pueblos of Acoma, Laguna, and the Zuni Tribe of the Zuni Reservation (New Mexico), (2007-2008) \$607,273.

**OJP launches Indian Country Justice and Safety Web site**

The new Tribal Justice and Safety in Indian Country web site is a resource available to improve the safety of Native American communities. This web site contains information on crime statistics, crime prevention, courts, corrections, law enforcement and other public safety issues. For additional resources that are available to improve tribal criminal data access and collection, research and evaluation, and information sharing, see <<http://www.tribaljusticeandsafety.gov/index.htm>>.





Washington, DC 20531

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Penalty for Private Use \$300

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### **Tribal Violence Prevention Technology Assistance Program**

BJS has funded SEARCH (the National Consortium for Justice Information and Statistics) to provide tribal jurisdictions with technical assistance for criminal record development and improvement. This includes participation in the National Sex Offender Registry (NSOR), National Sex Offender Public Registry (NSOPR), State and Federal protection order registries, National Instant Criminal Background Check System (NICS), National Crime Information Center (NCIC 2000), and the Integrated Automated Fingerprint Identification System (IAFIS).

Technical assistance is also available to help tribal jurisdictions respond to criminal history record-related provisions contained in two recent legislative enactments:

- Violence Against Women and Department of Justice Reauthorization Act of 2005 (Public Law No: 109-162)
- Adam Walsh Child Protection and Safety Act of 2006 (Public Law No: 109-248).

For information on technical assistance, contact SEARCH at <<http://www.search.org>>.

The Bureau of Justice Statistics is the statistical agency of the U.S. Department of Justice. Jeffrey L. Sedgwick is director.

This Program Report was written by Steven W. Perry, under the supervision of Steven K. Smith. Kristen A. Hughes provided verification. Joanna S. Bradford produced and edited the report under the supervision of Doris J. James. Jayne Robinson prepared the report for final printing.

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This report in portable document format and in ASCII and its related statistical data and tables are available at the BJS World Wide Web Internet site: <<http://www.ojp.usdoj.gov/bjs/abstract/ichric06.htm>>.

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