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TECHNICAL REPORT

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Tribal Crime Data Collection Activities, 2016

Steven W. Perry, *BJS Statistician*

Background

Enacted in 2010, the Tribal Law and Order Act (TLOA) requires the Bureau of Justice Statistics (BJS) to (1) establish and implement a tribal data collection system, (2) consult with Indian tribes to establish and implement this data collection system, and (3) annually report to Congress the data collected and analyzed in accordance with the act (P.L. 111-211, 124 Stat. 2258, § 251(b)). This report describes the fiscal year (FY) 2016 activities in support of BJS's tribal crime data collection system and summarizes findings and program enhancements.

A total of 566 tribal entities in the lower 48 states and in Alaska were eligible for funding and services from the Bureau of Indian Affairs (BIA) in 2016.[1] There were 334 federally and state-recognized American Indian reservations in 2010, the most recent available data.[2] An estimated 4.8 million people lived on American Indian reservations or in Alaska Native villages in the United States in 2010. About a quarter (1.1 million) of these individuals in 2010 classified themselves as American Indian or Alaska Native (AIAN).

The tribal justice system in Indian country varies across tribal nations and regions of the country. Criminal jurisdiction in Indian country—federally recognized reservations, tribal communities, and identified trust lands—varies by type of crime committed, whether the offender or victim is a tribal member, and the state in which the offense occurred. Due to the sovereign status of federally recognized tribes in the United States, crimes committed in Indian country are often subject to concurrent jurisdiction among multiple criminal justice agencies.

[1] See *Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs* at https://www.federalregister.gov/articles/2016/01/29/2016-01769/indian-entities-recognized-and-eligible-to-receive-services-from-the-united-states-bureau-of-indian#h-4.

[2] For more information about federally recognized tribes, reservations, and Alaska Native village statistical areas, see *Tribal Crime Data Collection Activities, 2012* at http://www.bjs.gov/content/pub/pdf/tcdca12.pdf.

HIGHLIGHTS

Funding

- During fiscal year (FY) 2016, BJS held meetings with justice professionals from state, local, and tribal law enforcement and state and local prosecutor offices to obtain input on the planning and development of surveys of state and local justice agencies that serve tribal lands.
- The Census of State and Local Law Enforcement Agencies Serving Tribal Lands and the Census of State and Local Prosecutor Offices Serving Tribal Lands are now under review at the Office of Management and Budget.
- In 2015, BJS awarded a cooperative agreement to fund the 2016 Census of Tribal Law Enforcement Agencies, the first BJS statistical collection targeting tribal law enforcement and Bureau of Indian Affairs' agencies in the lower 48 states and Alaska.
- Data collection for the National Survey of Tribal Court Systems concluded at the end of 2015.

Most recent findings

- At midyear 2014, a total of 2,380 inmates were confined in 79 Indian country jails—a 4% increase from the 2,287 inmates confined at midyear 2013 (Survey of Jails in Indian Country).
- At midyear 2014, local jails held about 10,400 American Indian and Alaska Native (AIAN) inmates (i.e., nontribal and tribal AIAN), which was 1.4% of the total (744,600) jail inmate population in the United States (Annual Survey of Jails).
- During 2013, a total of 2,882 AIAN (both tribal and nontribal) were arrested by federal law enforcement agencies, 1,429 were sentenced in U.S. district courts, 1,740 entered federal prison, and 1,737 exited federal prison (Federal Criminal Case Processing Statistics).

More than 300 tribes in the United States are under mandatory or optional Public Law 83-280 jurisdictions. Public Law 83-280 (commonly referred to as Public Law 280 or P.L. 280) conferred criminal jurisdiction from the federal government to six state governments: California, Minnesota (except the Red Lake Reservation), Nebraska, Oregon (except the Warm Springs Reservation), Wisconsin, and Alaska. These states have mandatory jurisdiction over crimes committed in Indian country. P.L. 280 also permitted other states to acquire optional jurisdiction either in whole or in part over Indian country within their boundaries: Nevada, Idaho, Iowa, Washington, South Dakota, Montana, North Dakota, Arizona, and Utah. In states where P.L. 280 does not apply, the federal government retains criminal jurisdiction for major crimes committed in Indian country.[3]

This report summarizes—

- Tribal data collection activities during fiscal year 2016 including—
  - Census of State and Local Law Enforcement Agencies Serving Tribal Lands
  - Census of State and Local Prosecutor Offices Serving Tribal Lands
  - Census of Tribal Law Enforcement Agencies
  - National Survey of Tribal Court Systems
- Tribal participation in national records and information systems, including the National Criminal History Improvement Program and the National Instant Criminal Background Check System Act Record Improvement Program
- Most recent findings and access to tribal information.

Tribal data collections during fiscal year 2016

Census of State and Local Law Enforcement Agencies Serving Tribal Lands and Census of State and Local Prosecutor Offices Serving Tribal Lands

During FY 2016, BJS continued efforts to fill the information gap on the role of nontribal state and local law enforcement agencies and prosecutor offices in providing and supporting criminal justice functions and services on tribal lands. The services and functions on tribal lands are based on federal mandates (Public Law 280) or consensual jurisdictional arrangements made between tribal and state governments.

BJS has designed two surveys to document tribal-related law enforcement and courts activities and caseloads: the Census of State and Local Law Enforcement Agencies Serving Tribal Lands and the Census of State and Local Prosecutor Offices Serving Tribal Lands. These data collections will provide information on the legal and structural procedures in place to address crime on tribal lands.

In FY 2016, BJS formed an expert panel comprised of state, local, and tribal law enforcement officers and prosecutors to provide input on designing the two data collections. Participants on the panel included representatives from—

- Alaska State Troopers, Alaska
- Apache Junction Police Department, Arizona
- Association of Prosecuting Attorneys, Washington, D.C.
- Beadle County State's Attorney Office, South Dakota
- Cass County State's Attorney Office, Minnesota
- Cherokee Nation Marshal Service, Oklahoma
- International Association of Chiefs of Police, Indian Country Law Enforcement Section, Washington, D.C
- Miccosukee Tribal Police Department, Oklahoma
- National District Attorneys Association, Virginia
- National Sheriffs Association, Indian Affairs Committee, Washington, D.C.
- Prosecuting Attorneys Coordinating Council, Michigan
- Riverside County Sheriff's Office, California
- Roosevelt County Sheriff's Office, Montana
- San Diego District Attorney's Office, California
- South Dakota Highway Patrol, South Dakota
- Sycuan Tribal Police Department, California

BJS pilot tested drafts of the law enforcement and prosecutor censuses in August and September 2015. The data collection instruments were revised and improved using feedback from the pilot study and are pending final approval from the Office of Management and Budget (OMB).

Although BJS has included tribal law enforcement agencies in previous iterations of the Census of State and Local Law Enforcement Agencies (CSLLEA), those surveys were not specifically designed to capture information on the unique nature and characteristics of policing in Indian country. For instance, the CSLLEA was not designed to gather data on (1) the administration and management of tribal law enforcement agencies and (2) the various changes that resulted from passage of the TLOA that enhanced the sentencing authority given to tribes, the Violence Against Women Act of 2005 (VAWA) requirement to establish protection order registries, and the VAWA Reauthorization in 2013 that expanded criminal jurisdiction over non-Indians regarding selected domestic violence matters. In addition, the CSLLEA does not collect information about the progress made by tribal law enforcement agencies responsible for monitoring and managing sex offenders since passage of the Adam Walsh Child Protection and Safety Act of 2006.

[3] Federal jurisdiction in Indian country is established under the Indian Country Crimes Act (18 U.S.C. § 1152), the Indian Country Major Crimes Act (18 U.S.C. § 1153), and the Assimilative Crimes Act (18 U.S.C. § 13).

Census of Tribal Law Enforcement Agencies

In 2015, BJS awarded the independent research organization NORC, at the University of Chicago, the cooperative agreement to conduct the 2016 Census of Tribal Law Enforcement Agencies (CTLEA). NORC partnered with the International Association of Chiefs of Police to administer the data collection. This is the first BJS data collection targeted solely at tribal law enforcement agencies. The survey is being designed to capture the unique attributes of these agencies, including information on—

- criminal jurisdiction, staffing, and recruitment
- officer training, budgets, and sources of funding
- workloads and arrests
- access to and participation in regional and national justice database systems
- special topics like human trafficking, domestic violence, and child abuse
- access to domestic violence and protection order registries
- monitoring of sex offenders on tribal lands
- reporting of crime data to the FBI's Uniform Crime Reporting Program
- special jurisdiction over non-Indian offenders for select domestic violence cases.

The CTLEA will collect information from all tribal law enforcement agencies in the lower 48 states, the VPSOs in Alaska, and police agencies operated by the BIA. Due to their inherent differences, each type of agency will have its own customized survey form with a common core of items along with a set of items designed to collect its unique attributes.

Since December 2015, BJS has coordinated meetings to identify information needs with various Department of Justice (DOJ) components (including the Bureau of Justice Assistance, the National Institute of Justice, Office of Juvenile Justice and Delinquency and Prevention, Office for Victims of Crime, Community Oriented Policing) and the Department of Interior's (DOI) Bureau of Indian Affairs' Office of Justice Services. These components provided valuable input on the gaps in available information and the type of data that would help them better understand the challenges faced by tribal law enforcement agencies. This input will help guide the contents of the CTLEA survey instruments.

To ensure tribal governments and their law enforcement agencies have a central role in the development, design, and implementation of the CTLEA, BJS established a tribal justice and law enforcement panel comprised of tribal leaders and law enforcement representatives from across the country and representatives from the DOJ's Office of Tribal Justice, the FBI's Indian Country Crimes Unit, and the DOI's Office of Justice Services.

In addition, as part of the outreach and collaboration plans for the CTLEA, the BJS acting director will send a letter to all federally and state-recognized tribes across the United States announcing the new survey and its significance and inviting input from tribal nations in the design and development of the survey instrument. Prior to conducting the CTLEA, BJS, with the help of tribal justice experts, will explore methods to achieve high survey response rates and will conduct field tests of the various survey instruments. Following this work, BJS will submit to OMB a request to approve the fielding of the CTLEA.

National Survey of Tribal Court Systems

On December 31, 2015, BJS concluded the data collection for the National Survey of Tribal Court Systems (NSTCS). The NSTCS is BJS's first statistical collection focusing solely on tribal justice systems since the 2002 Census of Tribal Justice Agencies gathered limited data on all justice agencies—law enforcement, courts, and corrections. The NSTCS gathered information on the administrative and operational characteristics of tribal justice systems (including budgets, staffing, the use of juries, and the appellate system); indigent defense services; pretrial and probation programs; protection orders; criminal, civil, domestic violence, and juvenile caseloads; implementation of various enhanced sentencing provisions of the TLOA; and various indigenous or traditional dispute forums operating within Indian country. NSTCS used three separate but compatible survey instruments customized to the type and location of the tribal courts: tribal courts in the lower 48 states, Alaska Native villages, and the BIA's Code of Federal Regulation (CFR) courts.

BJS mailed surveys to 237 tribal courts or judicial forums identified in the lower 48 states, to 75 in Alaska Native villages, and to 7 BIA CFR courts. The NSTCS had an overall response rate of 81%, which varied by the respondent type (table 1). The response rate for the NSTCS was 83% for tribal courts in the lower 48 states, 72% for the judicial forums in Alaska Native villages, and 100% for the 7 CFR courts (that have jurisdiction over 22 separate tribes or service areas).

TABLE 1

NSTCS Universe of identified or eligible tribal courts, by response rates, 2014

Respondent type	Universe of identified or known tribal court systems	Completed and partial surveys	Response rate
All respondents	319	257	81%
Lower 48 states	237	196	83%
Alaska Native villages	75	54	72%
CFR courts	7	7	100%

Source: Bureau of Justice Statistics, National Survey of Tribal Court Systems, 2014.

The development and implementation of the NSTCS received invaluable assistance from several organizations and tribes:

- American Indian Development Associates, New Mexico
- American Probation and Parole Association, Kentucky
- Bristol Bay Native Association
- Bureau of Indian Affairs' Office of Justice Services
- Hamline University School of Law, Minnesota
- Kansas University School of Law's Tribal Law and Government Center
- National Judicial College, the National Tribal Judicial Center, Nevada
- National American Indian Court Judges Association
- Standing Rock Sioux Tribe, South Dakota
- The Supreme Court of the Navajo Nation, Arizona
- Syracuse University College of Law, the Center for Indigenous Law, Governance, and Citizenship, New York
- Tanana Chiefs Conference
- Tanana Chiefs Conference, Alaska
- Tribal Law and Policy Institute
- Tribal Law and Policy Institute, California
- University of Colorado at Boulder, American Indian Law Clinic
- University of North Dakota School of Law's Tribal Judicial Institute.

Tribal participation in national records and information systems

During 2016, BJS continued to focus on improving tribal participation in national record and information systems through expanding tribal funding eligibility for the National Criminal History Improvement Program (NCHIP) and the National Instant Criminal Background Check System (NICS) Act Record Improvement Program (NARIP).

Federally recognized tribal governments are eligible to apply for NCHIP funding, and tribes may submit applications as part of a multi-tribe consortium. NCHIP serves as an umbrella for various record-improvement activities and funding sources, each of which has unique goals and objectives. BJS strongly encourages states and tribes to ensure integrated record-improvement initiatives, regardless of the funding source.

The NCHIP aims to improve the nation's safety and security by enhancing the quality, completeness, and accessibility of criminal history record information by ensuring the nationwide implementation of criminal justice and noncriminal justice background check systems. Despite the tremendous progress made toward criminal record improvements among states, several significant shortcomings remain among tribal justice agencies.

BJS has identified challenges confronting tribal nations. Many tribes do not have the capabilities or requisite technologies to support the transmission of records to national systems, either through their own infrastructure or via the state. Additionally, some tribes have not yet converted their manual records to electronic versions. Some entities are not yet submitting qualifying records to the National Crime Information Center Protection Order File, and the FBI reports continued problems with the appropriate flagging of protection orders regarding the prohibition for firearm purchases.

Federally recognized Indian tribal governments are eligible to apply for NARIP funding. NARIP helps states and tribal governments identify individuals prohibited by federal or state law from possessing firearms.

NARIP seeks to address the gap in information available to NICS about prohibiting mental health adjudications and commitments, and other prohibiting factors. Filling these information gaps will better enable the system to operate as intended—to keep guns out of the hands of persons prohibited by federal or state law from receiving or possessing firearms. The automation of records will also help reduce delays for law-abiding persons purchasing guns. NARIP authorizes a grant program to help states and tribes provide information to NICS and prescribes grant penalties for noncompliance with the act's goals for complete records.

NARIP provides grants to each state or tribal government for use by the court systems to improve automation and transmittal to federal and state repositories. Repository records consist of (1) criminal history dispositions, (2) records relevant to determining whether a person has been convicted of a misdemeanor crime of domestic violence or whether a person is the subject of a prohibiting domestic violence protection order, and (3) prohibiting mental health adjudications and commitments.

Most recent findings and access to tribal information

Jails in Indian country

The Survey of Jails in Indian Country (SJIC) is BJS's only national data collection that provides annual data on the estimated 79 Indian country jails and detention facilities. BJS initiated the SJIC in 1998 as a component of the Annual Survey of Jails. The SJIC includes Indian country facilities operated by tribal authorities or the BIA. The survey collected data on the number of inmates, percentage of capacity occupied based on the average daily population, midyear population, and peak population in the facilities in June 2014. It also gathered information on staffing, offense types, and conviction status. The findings of the most recent SJIC data are available in *Jails in Indian Country, 2014* (NCJ 248974, BJS website, October 2015).

In June 2014, local jails operated by county or municipal authorities held about 10,400 AIAN inmates (both tribal and nontribal AIAN), which was 1.4% of the total (744,600) jail inmate population. See *Jail Inmates at Midyear, 2014* (NCJ 248629, BJS web, June 2015.) Half of all AIAN jail inmates were held in western states at yearend 2013 (the most recent state-level data). See *Census of Jails: Population Changes, 1999–2013* (NCJ 248627, BJS web, December 2015.) In comparison, an estimated 2,380 inmates were confined in 79 Indian country jails at midyear 2014, a 4% increase from the 2,287 inmates confined at midyear 2013. The average number of inmates per operating facility increased from 26 inmates in 2000 to 30 inmates in 2014. At midyear 2014, the jail facilities in Indian country were rated to hold an estimated 3,720 inmates, up from 3,482 in 2013.[4] Approximately 1,230 jail operations staff were employed to supervise the confined inmates in 2014, up slightly from the 1,180 jail operations staff at midyear 2013.[5]

Since 2000, the distribution of Indian country jail inmates by sex and age has changed slightly. Although males represent the largest portion of the inmate population in Indian country jails, the percentage of female jail inmates increased from 20% of all inmates in 2000 to 25% in 2014. The juvenile proportion of the Indian country jail population declined from 16% in 2000 to 8% at midyear 2014. The distribution of inmates by conviction status and offense type also showed some change. After the percentage of convicted inmates peaked in 2009 at 69%, it declined to 51% by midyear 2014.

Since 2010, about 30% of inmates held in Indian country jails were confined for a violent offense, a decline from a peak of 41% in 2007. At midyear 2014, domestic violence (12%) and aggravated or simple assault (9%) accounted for the largest percentage of violent offenders. Inmates held for unspecified violence (5%) and rape or sexual assault (2%) accounted for about 7% of the jail population.

Patterns of decline were also observed among inmates held for alcohol- and drug-related offenses. Inmates held for driving while intoxicated or driving while under the influence of drugs or alcohol declined from 16% of the total inmate population in 2000 to 9% at midyear 2014. The percentage of inmates held for a drug law violation declined from 8% in 2000 to 5% at midyear 2014.

In 2013, BJS enhanced the SJIC offense category questionnaire item to include burglary, larceny-theft, and public intoxication. The enhancement permitted better classification of previously unspecified offenses. At midyear 2014, about a quarter of persons being held in tribal jails were charged with public intoxication (20%), burglary (2%), or larceny-theft (1%), proportions similar to those in 2013.

[4] A rating official assigns the maximum number of beds or inmates a facility can hold, excluding temporary holding areas.

[5] Jail operations staff include correctional officers, guards, and other staff who spend more than 50% of their time supervising inmates.

Federal justice statistics

The Federal Justice Statistics Program (FJSP) provides annual data on workload, activities, and outcomes associated with federal criminal cases. It acquires information on all aspects of processing in the federal justice system, including arrests, initial prosecution decisions, referrals to courts or magistrates, court dispositions, sentencing outcomes, sentence length, and time served. The FJSP collects data from the U.S. Marshals Service, the Executive Office for U.S. Attorneys, the U.S. Office of Probation and Pretrial Services, the Administrative Office of the U.S. Courts, the U.S. Sentencing Commission, and the Federal Bureau of Prisons. Through FJSP, BJS compiles comprehensive information describing suspects and defendants processed in the federal criminal justice system.

The FJSP captures an offender's race, but it does not provide information on tribal membership. During 2013 (the most recent federal data available), 2,882 AIAN were arrested and booked by federal law enforcement agencies, up from 2,482 in 2012. There were 1,429 AIAN sentenced in U.S. district courts in 2013, up from 1,355 in 2012. In 2013, 1,740 AIAN offenders entered federal prison and 1,737 offenders exited federal prison. At fiscal yearend 2013, 3,725 AIAN were held in federal prison (1.9% of all prisoners).

BJS Indian country justice statistics webpage

The BJS Indian country webpage presents in one place information on and updates to BJS's tribal data collections.[6] The page provides links to the latest victimization, law enforcement, courts, corrections, and criminal justice data improvement information. Links to the FBI's extract files on the BJS website of violent and property offenses known to tribal law enforcement by state from 2008 to 2014 are also available on the this page.

Previously released reports

Tribal Crime Data Collection Activities, 2015 (NCJ 248785)

Jails in Indian Country, 2014 (NCJ 248974)

Tribal Crime Data Collection Activities, 2014 (NCJ 246917)

Jails in Indian Country, 2013 (NCJ 247017)

Tribal Crime Data Collection Activities, 2013 (NCJ 242584)

Jails in Indian Country, 2012 (NCJ 242187)

Tribal Crime Data Collection Activities, 2012 (NCJ 239077)

Tribal Crime Data Collection Activities, 2011 (NCJ 234518)

Jails in Indian Country, 2011 (NCJ 238978)

Jails in Indian Country, 2010 (NCJ 236073)

Jails in Indian Country, 2009 (NCJ 232223)

Jails in Indian Country, 2008 (NCJ 228271)

[6] BJS Indian country justice statistics page is at http://www.bjs.gov/index.cfm?ty=tp&tid=200000.

Tribal Law Enforcement, 2008 (NCJ 234217)

Summary: Tribal Youth in the Federal Justice System (NCJ 234218)

State Prosecutors' Offices with Jurisdiction in Indian Country, 2007 (NCJ 234241)

Jails in Indian Country, 2007 (NCJ 223760)

Improving Criminal History Records in Indian Country, 2004–2006 (NCJ 218913)

Jails in Indian Country, 2004 (NCJ 214257)

Jails in Indian Country, 2003 (NCJ 208597)

Census of Tribal Justice Agencies in Indian Country, 2002 (NCJ 205332)

American Indians and Crime (NCJ 203097)

Jails in Indian Country, 2002 (NCJ 198997)

Jails in Indian Country, 2001 (NCJ 193400)

Jails in Indian Country, 2000 (NCJ 188156)

Tribal Law Enforcement, 2000 (NCJ 197936)

Jails in Indian Country 1998–1999 (NCJ 173410)

American Indians and Crime (NCJ 173386)

BJS-sponsored research

Examining Indian Country Cases in the Federal Justice System (NCJ 248656), produced by the Urban Institute, February 2015.

Summary: Tribal Youth in the Federal Justice System, 1999–2008 (NCJ 234218), produced by the Urban Institute, May 2011.

The Bureau of Justice Statistics of the U.S. Department of Justice is the principal federal agency responsible for measuring crime, criminal victimization, criminal offenders, victims of crime, correlates of crime, and the operation of criminal and civil justice systems at the federal, state, tribal, and local levels. BJS collects, analyzes, and disseminates reliable and valid statistics on crime and justice systems in the United States, supports improvements to state and local criminal justice information systems, and participates with national and international organizations to develop and recommend national standards for justice statistics. Jeri M. Mulrow is acting director.

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