

U.S. DEPARTMENT OF JUSTICE CONSULTATION WITH TRIBES
Savanna's Act: Data Relevance and Access
June 17 and 18, 2021

BACKGROUND

Public Law 116-165, 25 U.S.C. 5701, et seq., Savanna's Act (the Act), directs the Department of Justice (DOJ), in cooperation with the Department of the Interior (DOI), to conduct formal Tribal consultations on how to further improve Tribal data relevance and access to databases. Formal consultations were held on June 17 and 18, 2021, at 3p.m. Eastern Time; both sessions were held telephonically.

The Act specifies that DOJ seek Tribal feedback on the following databases:

- (A) the National Crime Information Center database;
- (B) the Combined DNA Index System;
- (C) the Next Generation Identification System; and
- (D) any other database relevant to responding to cases of missing or murdered Indians, including that under the Violent Criminal Apprehension Program and the National Missing and Unidentified Persons System.

In accordance with (D) DOJ included the National Incident-Based Reporting System (NIBRS), Violent Criminal Apprehension Program (ViCAP), and National Missing and Unidentified Persons System (NamUs) in framing documents as well as the discussions.

DOJ is also directed to confer with Tribal organizations and urban Indian organizations on how to further improve American Indian and Alaska Native data relevance and access to databases. DOJ will post information on setting up conferences on the Tribal Justice and Safety website.

The Department of Justice is committed to fully implementing Savanna's Act, and since its enactment, the Biden Administration and the Department of Justice have taken steps to build on the important mandates in this legislation. On November 15, 2021, President Biden signed Executive Order No. 14053, "Improving Public Safety and Criminal Justice for Native Americans and Addressing the Crisis of Missing or Murdered Indigenous People" (the "EO"). The EO reflects the Administration's commitment to a whole-of-government approach to addressing missing or murdered Indigenous persons and to addressing broader issues of violent crime. Section 4 of the EO focuses on improving data collection, analysis, and information sharing, and pursuant to that directive, the Department of Justice will build on ongoing efforts in this area, including efforts to fulfill Savanna's Act requirements. Deputy Attorney General Monaco has also established a Steering Committee to coordinate DOJ's efforts to address the

issues of missing or murdered indigenous persons, which will strengthen the Department's work to improve access to and relevance of data for Tribes and Tribal organizations, including urban Indian organizations.

DISCUSSION SUMMARY

The following is a summary of input received during the consultations and the initial response by the Department. As always, we remain open to continued dialogue on these issues and you may contact us at OTJ@USDOJ.GOV.

Request: DOJ should expand the Tribal Access Program (TAP) to all Tribes. It's an effective program and provides necessary and easy access to law enforcement databases.

DOJ Response: The Department is only authorized to provide TAP to federally-recognized Tribes that meet program eligibility requirements. This year, twelve additional tribes were selected for expanded access through TAP bringing the total number of tribes participating in TAP to 108. Pursuant to Executive Order No. 14,053, "Improving Public Safety and Criminal Justice for Native Americans and Addressing the Crisis of Missing or Murdered Indigenous People," the Department will also take additional steps to expand the number of Tribes participating in TAP.

Any federally-recognized Tribes that operate one or more of the following government programs are eligible and encouraged to apply: 1) a Tribal sex offender registry authorized by the Adam Walsh Child Protection and Safety Act, 2) a Tribal law enforcement agency that has arrest powers, 3) a Tribal court that issues orders of protection, or 4) a Tribal government agency that screens individuals for foster care placement or that investigates allegations of child abuse/neglect. A full list of eligibility requirements and more information about the program may be found on the Tribal Justice and Safety website at [Tribal Access Program \(TAP\) | TRIBAL | Department of Justice](#). The Department has limited funding to operate TAP; the Department will continue to expand TAP as funding allows.

Request: TAP should be accessible to a wider group of users, including Guardians Ad Litem and other court personnel.

DOJ Response: Federal laws define who may access criminal justice databases. Currently, Tribal Court personnel who handle criminal justice matters are eligible to access FBI CJIS systems through DOJ TAP. See 28 C.F.R. 20.3(b) & (g)(1). Tribal government agencies authorized by Congress to access FBI CJIS systems for criminal justice purposes are listed at 28 U.S.C. 534(d).

Request: The need to re-train personnel can be burdensome to Tribal agencies, is there a more efficient way to handle turnover?

DOJ Response: DOJ TAP provides training to authorized users at no cost to participating TAP Tribes. Training on various topics is regularly provided in both live and online formats. DOJ welcomes input on improving training efficacy by any TAP participant.

Comment: Tribes need more assistance to build infrastructure. In the context of database access, this includes broadband and telecommunications support. Tribes need flexible and steady funding streams to build critical infrastructure.

DOJ Response: DOJ does not provide funding for broadband capacity development. However, interested tribes may want to explore grant funding opportunities offered by the Department of Commerce, National Telecommunications and Information Administration (<https://broadbandusa.ntia.doc.gov/resources/tribal-nations>) and other federal agencies.

Comment: Tribes need the various databases to “talk” with each other, particularly with NamUs because that is the only database that is accessible by people outside law enforcement.

DOJ Response: The FBI NCIC shares data with the National Missing and Unidentified Person System (NamUs) to the extent currently allowed by law. While the current legal framework does not authorize NamUs to have direct access to the NCIC, the CJIS Division has developed a legally and technically feasible option for information sharing with NamUs until legislative authority is approved. Under this option, the CJIS Division creates an extract of the data residing in NCIC and provides it to the record-owning agency. The agency, in turn, provides the data to NamUs. In addition, the DOJ National Institute of Justice has created mechanisms for vetted agencies to directly transfer cases to the NamUs database. Agencies must meet strict data transfer requirements and have available resources to support this.

Comment: Databases need to work better across jurisdictions. Tribal agencies are uniquely impacted when databases do not “talk” across jurisdictions.

DOJ Response: We appreciate this comment and recognize the unique impact on Tribes. However, the different jurisdictions and agencies within jurisdictions often operate different databases. Criminal justice agencies use systems that work to meet their own needs, subject to budgetary guidelines and internal policies which may, or may not, match other systems used throughout the country. The differences in these systems can create obstacles to communication between databases.

For NCIC purposes, law enforcement agencies, including Tribal law enforcement agencies, have the capability to both enter and receive NCIC data. Though this does not cover all available databases, it allows for some communality of data and better communication between jurisdictions. In addition, NamUs professional users (law enforcement and medical examiners/coroners) can see case information from across the country regardless of jurisdiction. Entering cases into NamUs ensures this information is visible to any of these professional users for investigative purposes.

Comment: As a general matter, Tribes do not have easy access to databases because there are so many restrictions on who may have access and there are so many different databases.

DOJ Response: Access to FBI CJIS systems is controlled by federal law. See 28 U.S.C. 534 and 28 C.F.R. 20.3. Tribal government agencies that meet applicable requirements are eligible to access those systems for authorized purposes. We would be happy to discuss specific issues a Tribe may be experiencing in this area with an eye to improving access.

Comment: Users need a lot of support in accessing these various databases. Increased training opportunities, which may require increased funding, would be helpful.

DOJ Response: DOJ TAP provides training to authorized users at no cost to participating TAP tribes. In addition, FBI CJIS also provides training at no cost to authorized users upon request. NamUs staff have delivered numerous trainings over the years to agencies of all types, including Tribal agencies and individuals. Requests for NamUs training can be made directly to the appropriate Regional Program Specialist of the National Institute of Justice. Trainings can be delivered either in person or virtually. These trainings can be tailored to the audience and be constructed for the needs of the audience. DOJ is committed to developing new training modules specific to non-law enforcement users of publicly available systems, such as NamUs and the FBI's Uniform Crime Reporting (UCR) program. There is a great deal of publicly available information through those systems, and DOJ is committed to providing additional training resources to ensure that the non-law enforcement community is able to make use of the information.

Comment: There are groups of non-sovereign entities that have legitimate need to access these databases, such as urban Indian communities. A number of studies show that the majority of MMIP cases occur off Tribal lands. When attempting to access data on missing and murdered individuals, Tribal public health authorities are often barred from accessing raw data and/or provided with read-only datasets for analysis. Tribal organizations have relied on state law Freedom of Information Act (FOIA) type requests with local law enforcement agencies to collect data with very low response rates. Urban service providers are an untapped nexus for data collection and reporting on MMIP cases. Urban Indians are profoundly impacted by the

violence of MMIP, and the needs and voices of urban Indian organizations (UIOs) must be incorporated into improving data relevancy, access, and resources.

DOJ Response: DOJ is committed to developing new training modules specific to non-law enforcement users of publicly available systems, such as NamUs and the FBI's Uniform Crime Reporting (UCR) program, which is intended in part to better support UIOs. However, federal law currently limits access to FBI CJIS systems to criminal justice agencies for criminal justice purposes, as these systems contain sensitive data pertinent to ongoing criminal investigations and prosecutions. *See* 28 U.S.C. 534 and 28 C.F.R. 20.

Comment: DOJ should implement an urban confer policy to establish a formal mechanism for engagement. This could be integrated into the existing DOJ consultation policy or established as a stand-alone policy.

DOJ Response: Although the DOJ Tribal consultation policy is limited to consulting with federally recognized tribes (<https://www.justice.gov/otj/consultation-policies>), DOJ would welcome the opportunity to confer with non-governmental organizations, including UIOs, on MMIP data matters as appropriate.

Comment: There has not been enough federal outreach to non-profit and advocacy groups who are working hard, and effectively, on these issues. These groups have not stalled their work while waiting for outreach from federal agencies and have made real progress. For example, there has been extensive work in King County, Washington, and the collaborative process has led to significant improvements. These groups would like to share information about urban Indian data resources and best practices with federal agencies to inform approaches to address MMIP.

DOJ Response: The Department appreciates the important work that non-profit and advocacy groups do to address MMIP. After the Department's listening sessions, the Deputy Attorney General issued a memorandum establishing a Steering Committee to coordinate the Department's MMIP work and directed the Steering Committee to "seek and consider the views of stakeholders," including victim advocates and urban Indian organizations while conducting its work. DOJ thus looks forward to opportunities to work with non-governmental organizations on MMIP data matters as appropriate including the sharing of information and recommendations for best practices.

Question: How does DOJ define "access?" Tribal agencies should be able to run reports and queries, input, extract, etc. There are categories of Tribal personnel that can view data but not actually make use of it; that does not satisfy Tribal agencies' access needs.

DOJ Response: Access to FBI CJIS systems is controlled by federal law. See 28 U.S.C. 534 and 28 C.F.R. 20.3. Tribal government agencies that meet applicable requirements are eligible to access those systems. Such access includes the ability to enter and retrieve relevant data for authorized purposes. 28 U.S.C. 534(d). No cost training about access is available to Tribal TAP participants from both TAP and FBI CJIS.

Comment: The databases discussed during consultation do not operate under a standard definition of American Indian/Alaska Native. Definitions and collection practices need to be standardized where possible. Collection of race, ethnicity and, where appropriate, Tribal affiliation, should be mandated.

DOJ Response: The Department is only able to standardize collection practices and definitions at the federal level, and with the exception of the FBI's National Crime Information Center (NCIC), most federal databases are repositories of data received by non-federal agencies or members of the public and do not define American Indian or Alaska Native. As separate sovereigns, Tribal and state agencies control how data is collected and input into federal databases. Indeed, Tribal and state agencies are not required to input any data into federal databases, with the exception of missing persons under the age of 21. Notwithstanding those limitations, the Department currently provides training on collecting and inputting data for federal, state, and Tribal agencies and will continue to update those modules to reflect best practices and the concerns raised during the listening sessions.

Comment: The data in these databases is not representative of what Tribal communities experience because law enforcement and others are not trained on entering demographic data properly. As a result, reports of murders or missing persons that should be attributed to Native communities are misreported as other ethnic communities. The real impact to Native communities is not evident in existing data. DOJ needs to provide regular training on collecting demographic data.

DOJ Response: DOJ will look at ways to improve the accuracy of reporting Native American status in the FBI CJIS National Crime Information Center's Missing Persons File. Relevant changes have already been made to the National Institute of Justice's National Missing and Unidentified Persons System (NamUs). There are more than 18,000 federal, Tribal, state, county, and local law enforcement agencies in the U.S., all of which have their own standard operating procedures and guidelines for data collection and entry in case management systems. The federal government does not dictate specific classifications nor verification of race or ethnic origin in the data. In many cases, law enforcement relies on family and friends of the individuals (if known) who go missing to specify race/ethnicity. Similarly, in cases where it is determined that the cause of death was homicide, family, friends, and loved ones are depended on to discern race/ethnicity. Without some form of identification from the missing person (i.e., Tribal

enrollment ID card, Certificate of Degree of Indian Blood, or some other government document with demographic information) public safety and health professionals are sometimes left with exercising visual verification practices or not indicating race or ethnicity at all.

DOJ recognizes that it is in a position to make best practices available to a wide group of database users and offer improved training on database inputs to interested agencies. DOJ will therefore work to develop and deliver relevant materials, including training models, which reflect input by subject matter experts and UIOs.

Comment: Paramount to narrow questions of database access, law enforcement data tools are only as useful as the quality, scope, analysis, and application of data collected. There are foundational issues to address to ensure that law enforcement database access provides the information our Native community and non-Native partners need to make data-driven decisions.

DOJ Response: DOJ looks forward to opportunities to work with federally recognized Tribes and also non-governmental organizations on the development of effective policies pertaining to data collection best practices.

Comment: DOJ should increase investments to enhance access to national crime information databases. The Tribal Access Program (TAP) provides federally recognized tribes the ability to access and exchange data with national crime information databases. Increased investment into data systems is needed to lower barriers on the interoperability of these systems to ensure sensitive information is stored and available across systems for pertinent case investigation information including race, ethnicity, location of incident, etc. Investment ensures modernization and standardization of data collection, increased data reuse, and reduced exclusivity in data access. We recommend further investments in systems like TAP for Tribes, Tribal organizations, and public health authorities to improve data infrastructure and access to national crime information databases.

DOJ Response: The DOJ TAP is a key component to improving public safety for Tribal communities. As such, DOJ supports and is actively engaged in continued expansion of TAP which provides means for authorized Tribal government agencies to access FBI CJIS systems. We welcome ideas for TAP-like systems from any Tribe or Tribal organization.

Comment: The lack of data sharing agreements between Tribal law enforcement and non-Tribal law enforcement is well known. Efforts such as this DOJ consultation are a positive effort to begin to address gaps in data access for Tribal law enforcement. To collectively address the MMIP issue, local, state, and federal government entities must create data sharing agreements with Tribal public health authorities. Most data on American Indian and Alaska Native

populations are collected and maintained by non-Native entities including city, county, state, and federal entities.

DOJ Response: The sharing of critical information between federal, Tribal, state, and local criminal justice agencies is critical to effectively addressing MMIP matters. DOJ encourages collaborative sharing of such data through Information Exchange Agreements and other arrangements consistent with applicable law and policy.

Comment: Data on American Indian and Alaska Native populations are often omitted from data analysis due to small population sizes, larger margins of error, and issues related to the validity and statistical significance of data. These practices effectively eliminate or erase Native people from programming and policy decision-making. Best practices and strategies for evaluating, analyzing, and reporting on American Indian and Alaska Native data, include aggregating data across time and/or geography, using weighted sampling for American Indian and Alaska Native populations, limiting stratification in analysis to restrict reduction of sample size, oversampling the American Indian and Alaska Native population, conducting mixed-methods research (quantitative and qualitative), reporting limitations of data collection and analysis.

DOJ Response:

The Bureau of Justice Statistics (BJS) is in the process of developing and implementing a better system for collecting tribal data. As part of this process, BJS is working to improve the availability and quality of available data pertaining to law enforcement, courts, and jails that serve Tribal communities. In July 2021, BJS published *Tribal Crime Data Collection Activities, 2021*, which provides detailed information about the latest efforts regarding Tribal data collection activities. That report can be accessed at <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/tcdca21.pdf>. BJS-specific data collection efforts include:

- Census of Tribal Law Enforcement Agencies – BJS’s first Tribal-specific law enforcement data collection was completed in 2019 and a report is forthcoming.
- Survey of Jails in Indian Country – An annual survey, with the most recent report available at <https://bjs.ojp.gov/content/pub/pdf/jic1718.pdf>.
- Tribal Courts in the United States – Results of BJS’s first Tribal court-specific data collection were published in 2021 and can be found at https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/tcus14st_0.pdf.
- Working with Tribes, FBI CJIS, and BIA OJS to increase the number of tribes reporting at least twelve consecutive months of crime data published in the FBI’s *Crime in the United States* report, the number of agencies increased from 12 Tribal agencies in 2008 to a high of 168 in 2011. Tribal crime data files published for 2008 through 2019 can be found on BJS website at [Tribal Crime | Bureau of Justice Statistics \(ojp.gov\)](https://www.bjs.ojp.gov/tribal-crime)

- Awarding grants totaling more than \$800,000 to Tribes to improve and automate their criminal history records and databases.

BJS continues to work to address challenges to improve relevant data pertaining to law enforcement, courts, and jails that serve Tribal communities and will continue to work with Tribes and non-governmental organizations to improve data reliability.

Comment: Alaska Native communities are truly unique in their needs in this area. In many cases, Alaska Native communities are still working to establish viable law enforcement infrastructure, so there is limited access to data. Alaska Native communities need a dedicated source of funding for public safety needs across the board. State support and information sharing has been unreliable. Many Alaska Native organizations have given a lot of thought to these challenges and would like to discuss some possible solutions.

DOJ Response: DOJ looks forward to opportunities to discuss funding opportunities to assist Tribal law enforcement programs in Alaska.