TITLE: Tribal Access to Criminal Background Databases for Criminal and VAWA 2013 Purposes

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, various federal laws since VAWA 2005 was enacted have increased the necessity for including tribal records in federal records databases like NCIC; such federal laws include Adam Walsh Sex Offender Registration and Notification Act (SORNA) July 2006, NICS Improvement Amendments Act of 2007; Tribal Law and Order Act of 2010 and VAWA Act of 2013; TLOA specifically states in section 28 U.S.C. 534 that “[t]he Attorney General shall permit tribal and Bureau of Indian Affairs law enforcement agencies—(1) to access and enter information into Federal criminal information databases; and (2) to obtain information from the databases; and

WHEREAS, specifically Tribal Court Domestic Violence Misdemeanor Convictions may create a nationwide firearm possession prohibition per 18 U.S.C 922 (g)(9) and may serve as a predicate for the crime of domestic assault by a habitual offender per 18 U.S.C. 117 and could be used in sentencing factors for federal court judges; and

WHEREAS, tribal access for law enforcement purposes is generally “read-only” and in the state of California, tribal law enforcement agencies are directly blocked from immediate access, which creates offer safety issues at traffic stops; and

WHEREAS, tribal entry of protection orders into the database, both for criminal and civil matters is accomplished generally through agreements with state or county agencies and entry of tribal orders is frequently denied or delayed, thus jeopardizing victim safety, notice to law enforcement and possible subsequent prosecutions of violations of these orders; and
WHEREAS, the Federal Bureau of Investigation (FBI) who administers the National Crime Information Center (NCIC) that process state requests for these criminal background checks is under DOJ and the Attorney General; and

WHEREAS, neither the FBI or DOJ made attempts to discuss these policy interpretations with tribes as is required by the DOJ Statement on Tribal Consultation.

NOW THEREFORE BE IT RESOLVED, that NCAI does hereby request that the Attorney General direct DOJ to immediately review its decision about how criminal databases are accessed, enter into consultation with tribal governments on developing a comprehensive remedy for tribal government access to criminal databases, and provide tribes a direct portal that provides both immediate (name-based review) and full access (fingerprint and order entry) consistent with federal laws that authorize this access, and in consideration that without access, the serious consequences that could result to victim safety issues if a protection order is not timely entered or to police officer safety if a complete and accurate criminal history is not provided through normal law enforcement activities and proceed with tribal consultation to provide fair and equal access to tribal governments in the same manner as the States, the District of Columbia and all territories enjoy; and

BE IT FURTHER RESOLVED, that NCAI does hereby request that the FBI develop tribal seats on their national policy workgroup who are appointed through tribal consultation; and

BE IT FURTHER RESOLVED, that NCAI does hereby request that the State of Washington and other states modify their statutes and regulations to include a mandatory requirement to enter into agreements for the authority to release criminal background check findings to tribes without direct access to these databases, to include intertribal agreements between tribes that may not have the infrastructure for direct access, consistent with all federal laws, which includes access to name-based as well as fingerprint-based backgrounds and entry of orders and warrants to tribal governments; and

BE IT FINALLY RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2014 Annual Session of the National Congress of American Indians, held at the Hyatt Regency Atlanta, October 26-31, 2014 in Atlanta, Georgia, with a quorum present.

President

ATTEST:

Recording Secretary