



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #ATL-14-048

TITLE: Tribal Access to Criminal Background Database Information for Civil Purposes

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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, several Federal laws require Indian Tribes to conduct background checks on certain employees, prospective foster care, guardianship, and adoptive homes, including the Indian Self-Determination Act PL 25 U.S.C. 450 et. seq., Tribally Controlled Schools, 25 U.S.C. 2501 et. seq., Indian Child Protection and Family Violence Prevention Act, 25 U.S.C. 3207, and the Social Security Act 42 U.S.C 671 (a) (20); and

WHEREAS, Federal Law 42 U.S.C. § 16961 states: “the Attorney General shall ensure access to the national crime information databases by (2) governmental social service agencies with child protection responsibilities.... [and] access...shall be defined by the Attorney General” In addition federal law 28 U.S.C. § 534(d) states: “(d) Indian Law Enforcement Agencies.— The 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, the Attorney General has delegated this responsibility to the states in situations where tribes do not have the infrastructure or resources to establish a direct relationship with the FBI Criminal Justice Information Services Division to conduct their own criminal background checks which has led to states dictating the terms of use, including provisions that require a tribe to waive its sovereign immunity; and **WHEREAS**, the FBI has also established criminal justice information security procedures (version 5.3 released in 2014) that are so stringent that some states and many tribes cannot meet these without significant financial investments that are beyond their resources, therefore causing states to restrict tribal access to criminal background checks findings performed for tribes for fear of being out of compliance and losing their access; and

WHEREAS, for example, recently in the state of Washington, the Washington State Patrol without objection from the Department of Justice (DOJ) and without consultation with Indian Tribes within the state of Washington, concluded that the state does not have the authority to provide tribes with the findings from criminal background checks they previously performed for tribes and ceased providing these as of July 1, 2014; and

WHEREAS, this shift in policy has created a major barrier to tribes being able to conduct criminal background checks on their prospective child placements and employees working with children in a timely manner (emergency and pending) and ensure the safety of their children; 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 and security procedures revisions with tribes as is required by the DOJ Statement on Tribal Consultation; and

WHEREAS, the impact of this policy interpretation is having serious impacts on the ability of tribes to conduct criminal background checks on the families that care for their children to ensure child safety or to conduct thorough background checks on employees working with children.

NOW THEREFORE BE IT RESOLVED, that NCAI does hereby request that the Attorney General direct DOJ to immediately review its decision regarding how NCIC is accessed and the security procedures required for handling of NCIC information in consultation with tribes and provide tribes a direct portal that provides both immediate (name-based review) and full access (fingerprint) consistent with federal laws that require these checks, and in consideration that without access, the serious consequences that could result to a tribe's most vulnerable population, its children, and proceed with tribal consultation to provide fair and equitable access to tribal governments as the States, the District of Columbia and all territories enjoy; and

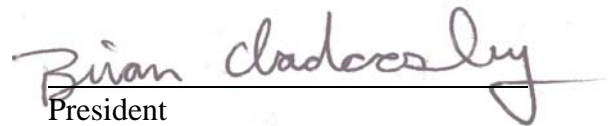
BE IT FURTHER RESOLVED, that NCAI does hereby request that the FBI develop tribal seats on their national policy workgroup who are identified, selected and appointed through the NCAI process; and

BE IT FURTHER RESOLVED, that NCAI does hereby request that the FBI work with tribes to encourage the State of Washington and other states to modify their statutes and regulations to include the authority for the release of criminal background check findings to tribes without direct access to these databases consistent with all federal laws, which includes access to name-based as well as fingerprint-based backgrounds to tribal governments; and

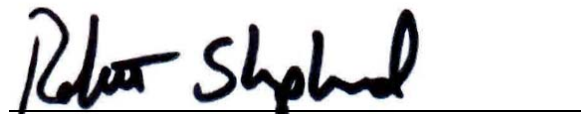
BE IT FINALLY RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

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