

SUPPORTING STATEMENT

2014 National Survey of Tribal Court Systems

Overview

The Bureau of Justice Statistics (BJS) requests clearance to conduct the 2014 National Survey of Tribal Court Systems (NSTCS). To understand tribal court systems operating under the authority of American Indian tribes and Alaska Native villages, it is important to appreciate the complexity surrounding tribal, state, and federal jurisdictions; and the interrelationships that exist among the different court systems in Indian Country. The NSTCS is a new survey collection that will build upon the *2002 Census of Tribal Justice Agencies* (CTJA), BJS' first comprehensive collection of statistical information on tribal law enforcement, courts and administration, corrections and intermediate sanctions, criminal history records and justice statistics.¹ The NSTCS will advance BJS's efforts to understand tribal justice systems by generating data on the administration and operations of tribal courts, including indigenous forums, both tribal trial and appellate court systems operating in the United States.

There are a total of 566 federally recognized American Indian and Alaska Native (AIAN) tribes in the contiguous 48 states and Alaska that may reside on the estimated 334 federally and state-recognized American Indian reservations or villages.² In 2010, about 4.6 million people lived on American Indian reservations or in Alaska Native villages, with 76% (3.5 million) being described as non-Indians during the decennial census. Federally recognized tribes have certain immunities and privileges by virtue of their government-to-government relationship with the United States. Through the enactment of the Indian Reorganization Act (25 U.S.C.A. § 461, et. seq.) of 1934, AIAN tribes began to exercise their inherent sovereignty to establish their own constitutions, judicial codes and operate judicial systems enforcing those laws.³

Significant variation exists in the types of tribal courts and how they apply tribal laws. Traditional justice systems (e.g., peacemaking, elders' councils, and sentencing circles) were well established before European settlers came to this country, and remain in use among many tribes. Some tribal courts resemble Western-style courts in that written laws and court procedures are applied based on the adversarial process and shaped by federal and state statutes and cases.⁴ The

¹ Bureau of Justice Statistics, *Census of Tribal Justice Agencies in Indian Country, 2002* (NCJ 205332), Dec. 2005. See: <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=543>

² Information on federally recognized tribes can be found in the Federal Register, Vol. 87, No. 87, May 6, 2013, entitled Indian Entities Recognized and Eligible to Receive Service from the United States Bureau of Indian Affairs, Department of the Interior, Bureau of Indian Affairs, issued by the Office of Management and Budget (see <http://www.gpo.gov/fdsys/pkg/FR-2013-05-06/pdf/2013-10649.pdf>)

³ Tribal law and Policy Institute, Tribal Court Clearinghouse, see: <http://www.tribal-institute.org/lists/justice.htm>

⁴ Lisa Jaeger, Tanana Chiefs Conference, *Types and History of Tribal Courts A Brief Summary*, March 2000, See: <http://www.tananachiefs.org/wp-content/uploads/2012/07/History-of-Tribal-Courts.pdf>

Bureau of Indian Affairs (BIA) also manages a small number of CFR (Code of Federal Regulations) courts that serve tribal lands.

Tribal courts are diverse, with some being extensively elaborate in their development and others just beginning to develop a modern judicial system. Some tribes utilize the adversarial process and others utilize traditional dispute resolution, with a growing number using a hybrid of both traditional and modern westernized forums depending on the nature of the case. To increase our understanding of the judicial systems operating under the authority of American Indian tribes and Alaska Native villages and the federal government on tribal lands. BJS proposes to conduct a census of the trial and appellate courts in Indian country. The NSTCS will focus on the organizational structure of tribal court systems throughout Indian country, including indigenous forums, tribal courts, inter-tribal courts, and Court of Federal Regulations (CFR), as well as existing appellate courts.

BJS has created three questionnaires to collect detailed data about tribal court systems. These questionnaires reflect and accommodate the variations in jurisdictional authority in Indian country. Each survey is tailored to the unique cultural and operational characteristics of the dominant tribal court systems, while still collecting core information about the judicial systems. One questionnaire will target tribal courts in the lower 48 contiguous states; another is designed for tribal courts in Alaska Native villages; while the third focuses on the Code of Federal Regulations (CFR) courts operated by the BIA. Each survey form, where applicable, will collect data on the tribal court interconnection with tribal law enforcement and corrections, as well as:

- trial and appellate processes;
- types of specialty courts;
- criminal and civil matters filed and filed;
- tribal codes and laws;
- jury selection and qualifications;
- staffing, budgets and revenue sources;
- prosecution and indigent defense services;
- pretrial release, probation and reentry programs and services;
- sentencing authority and sanctions available;
- juvenile case processing; and
- domestic violence cases and protection orders.

Also, the NSTCS will collect information on the tribal judicial information systems and technology; access to and entry of criminal history record information into regional and national databases; sex offender registration databases; and victim notification systems used in the tribal courts.

The reference period for the data collected will be January through December 2014. The resulting data will be integrated into a web-based query tool hosted by BJS and will support the production of two reports.

1. Necessity of Information Collection

BJS seeks to implement this new data collection on tribal court systems under its existing authorizing legislation. Under Title 42, United States Code, Section 3732 (Attachment A) as amended by the Tribal Law and Order Act of 2010 (TLOA), BJS is authorized and directed to collect and analyze statistical information regarding the operation of the criminal justice system at the federal, state, local and tribal levels. TLOA amended BJS's authorizing legislation to add the term "tribal," emphasizing that the Congress wants BJS to provide a more comprehensive focus on tribal issues ensuring Indian country justice statistics are incorporated throughout existing statistical programs (e.g. victimization, law enforcement, courts, corrections and data improvement programs).

An essential component of the criminal justice system in any society is the judicial system in which the courts serve as the venue where disputes are settled and justice is administered. Although information has been regularly generated and analyzed regarding state and federal courts, this is not the case for tribal court systems. BJS efforts to collect statistical information on tribal court systems have been limited. Currently, there is a significant need for relevant, timely and on-going data collection about the administrative and organizational characteristics of tribal courts in the lower 48 states, Alaska Native Villages and the Court of Federal Regulations (CFR Courts), all of which serve tribal communities.

The number of tribal courts, as well as their responsibilities, has expanded significantly in recent decades due to their development by individual tribes, Federal case law and legislative mandates; however data on their contextual, structural and operational characteristics have remained extremely limited.

The **Indian Reorganization Act (IRA) of 1934** is widely considered the legislation that provided legitimacy to tribal courts.⁵ Tribal court criminal jurisdiction in Indian country is divided among the federal, state, and a tribe and depends on the nature and severity of the offense, whether the offender or victim was an AIAN, and the state in which the crime occurred. In 1953, Congress enacted Public Law 83-280 (commonly referred to as Public Law 280 or P.L. 280), which established the criminal and civil justice jurisdiction boundaries.⁶ The NSTCS will serve as the primary statistical resource on the growth and development of the tribal judicial system.

⁵ Indian Reorganization Act, codified as Title 25, Section 476 of the U.S. Code,

⁶ Steven W. Perry, Bureau of Justice Statistics, Census of Tribal Justice Agencies in Indian Country, 2002 (NCJ 205332), Dec. 2005. See: <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=543>

More recently, the **Tribal Law and Order Act of 2010 (TLOA)** had significant implications for the administration and operational capacity of tribal justice systems, as well as directing BJS to collect improved tribal statistical data.⁷ TLOA provided additional legislative authority and resources to tribal communities across the United States to enhance their tribal justice systems. This legislation authorized expanded sentencing authority for tribal justice systems; clarified jurisdiction in P.L. 280 states; required enhanced information sharing; authorized liaisons within each U.S. Attorney's Office; and encouraged more intergovernmental collaboration between tribal, federal, state, and local governments. Under TLOA, DOJ was directed to establish a pilot program involving a four year pilot program that allows any federally recognized tribe to request that the Bureau of Prisons incarcerate a tribe member convicted under the terms of the Act.⁸ TLOA also required to (1) establish and implement a tribal data collection system and (2) support tribal participation in national records and information systems (P.L. 111-211, 124 Stat. 2258, § 251(b)). The act further required BJS to consult with Indian tribes to establish and implement the data collection system and to report to Congress within one year of enactment, and annually thereafter, the data collected and analyzed in accordance with the act (see Attachment 2).

In passing the **Violence against Women Act and Department of Justice Reauthorization Act of 2005, Public Law 109–162**, Congress found that Indian tribes require additional criminal justice and victim services resources to respond to violent assaults against women and the United States has a Federal responsibility to assist tribal governments in safeguarding the lives of Indian women.⁹ Provisions in the Violence against Women Act of 2005 (VAWA 2005) were aimed at decreasing the incidence of violent crimes against Indian women; strengthening the capacity of tribes to exercise their sovereign authority to respond to violent crimes committed against Indian women; and ensuring that perpetrators of violent crimes committed against Indian women are held accountable for their criminal behavior. VAWA 2005 also direct DOJ, through the Attorney General, to 1) implement a national study focused on the analysis and research on violence (domestic violence, dating violence, sexual assault, and stalking) against Indian women and 2) provide mechanisms for the tracking of violence against Indian women including a national tribal sex offender registry and a tribal protection order registry. The NSTCS will help inform DOJ about protection orders issued in Indian country and reciprocity between tribal-State orders of protection. The NSTCS will collect data on domestic violence, sexual assault and child abuse cases adjudicated through tribal courts, as well as information on the tribal courts' ability to track and monitor protection orders. The NSTCS will also help BJS understand the tribal

⁷ Full Text of the Tribal Law and Order Act: <http://www.justice.gov/usao/az/IndianCountry/Tribal%20Law%20%20Order%20Act%202010.pdf>

⁸Tribal Law and Order Act (TLOA) Long Term Plan to Build and Enhance Tribal Justice Systems, Bureau of Justice Assistance, August 2011, See: <https://www.bja.gov/Publications/FinalTLOATribalJusticePlan.pdf>

⁹ Violence against Women Act and Department of Justice Reauthorization Act of 2005, Public Law 109–162, See: <http://niwaplibrary.wcl.american.edu/immigration/vawa-self-petition-and-cancellation/statutes/VAWA-2005-Senate-House-Passed-Pub.-L.-109-162.pdf>

justice system capacity to provide due process protections afforded by the Constitution for non-Indian defendants pursuant to authorizing expanded jurisdictional authority.

Violence Against Women Reauthorization Act of 2013 (VAWA) was passed with one of its goals to bridge the gaps that occur in Indian country when a non-Indian commits domestic violence against an American Indian or Alaska Native woman.¹⁰ The previous precedent established by the *Oliphant vs. Suquamish Indian Tribe* case in 1978, which determined that tribal governments had no inherent authority over non-Indians. VAWA 2013 seeks to remedy this by allowing tribal courts to prosecute non-Indians in cases where they have committed acts of domestic violence, dating violence, or violated protections orders issued in Indian Country.¹¹ The full enactment of this legislation is March 2015, giving three tribes that are ready sooner the opportunity to participate in a pilot project.

The NSTCS will allow BJS to gather useful knowledge about tribal courts pre- and post-implementation of VAWA 2013 jurisdictional expansion in 2015. Prior to the full enactment of VAWA, the NSTCS will collect information on judicial qualifications; indigent defense services, jury compositions and selection criteria, and procedures for maintaining records of court proceedings that are required for tribes to be able demonstrate compliance.

Finally, the **Sex Offender Registration and Notification Act (SORNA)**, passed as part of the Adam Walsh Child Protection and Safety Act of 2006 (P.L. 109-248), created standards for sex offender registration and notification programs in states, tribes, and territories.¹² SORNA closed potential gaps and loopholes that existed under prior law and generally strengthens the nationwide network of sex offender registration and notification programs, as well as to included federally recognized Indian tribes. The Act requires tribal governments to affirmatively elect to maintain a sex offender registry; tribes will also be required to comply with the notification requirements and maintain a web site making sex offender registry information available to the public.“ The SORNA prescribes a means to track and monitor sex offenders on tribal lands. The NSTCS collect data on how the tribal courts process these matters. The NSTCS will also collect data on the magnitude of sex crimes adjudicated through the various tribal courts; and the system in place for monitoring offenders.

¹⁰ On March 7, 2013, President Obama signed into law the Violence Against Women Reauthorization Act of 2013, or "VAWA 2013." VAWA 2013 recognizes tribes' inherent power to exercise "special domestic violence criminal jurisdiction" (SDVCJ) over certain defendants, regardless of their Indian or non-Indian status, who commit acts of domestic violence or dating violence or violate certain protection orders in Indian country. This new law generally takes effect on March 7, 2015, but also authorizes a voluntary "Pilot Project" to allow certain tribes to begin exercising SDVCJ sooner. On February 6, 2014 the Pascua Yaqui Tribe of Arizona, the Tulalip Tribes of Washington, and the Umatilla Tribes of Oregon Information were selected for this Pilot Project. VIOLENCE AGAINST WOMEN REAUTHORIZATION ACT OF 2013, See: <http://www.gpo.gov/fdsys/pkg/PLAW-113publ4/pdf/PLAW-113publ4.pdf>

¹¹ Gillette, J., & Galbraith, C. (2013, March 7). *President Signs 2013 VAWA-Empowering tribes to protect native women*. Retrieved from the White House Blog: <http://www.whitehouse.gov/blog/2013/03/07/president-signs-2013-vawa-empowering-tribes-protect-native-women>

¹² Adam Walsh Child Protection and Safety Act of 2006, See: <http://www.ojp.gov/smart/sorna.htm>

2. Needs and Uses

Pursuant to TLOA, one of BJS's primary FY 2014 objectives is to improve the availability of justice statistics in Indian country.¹³ The NSTCS will address the tribal justice issues occurring in Indian country, especially as they relate to tribal courts and traditional forums of dispute resolution. The information collected through the NSTCS will inform a variety of audiences.

The NSTCS will build and expand upon the first national census of tribal justice agencies conducted over a decade ago, enabling some comparisons of the changes and growth the tribal court systems. In 2002, BJS sponsored the *Census of Tribal Justice Agencies (CTJA)*, a data collection examining the organizational characteristics of the various agencies in the tribal justice system (see full report link below).¹⁴ The CTJA data provided baseline information on the number of tribal law enforcement, courts, and correctional agencies in the lower 48 states. BJS found there were four basic types of judicial forums: *indigenous or traditional forums, tribal courts, appellate courts, and CFR Courts* operating in Indian country in 2002. About 60% (188) of the 314 responding tribes in the lower 48 states reported having some form of a justice system in the CTJA. These data were presented at tribal conferences and informed numerous policy decisions for the improvement of tribal justice systems.

The 2002 CTJA was limited in several key areas. First, the estimated 200 Alaska Native villages and 25 CFR Courts were excluded from the CTJA study due to their geographic dispersion and limited understanding of their responsibility. The proposed NSTCS will include all known tribal courts, especially those within the Alaska villages. Second, 2002 CTJA only captured limited administrative and operational information on tribal courts since the focus was on a broad cross-section of all justice agencies, include law enforcement, courts, corrections and criminal justice information sharing. The NSTCS will collect more detail tribal court specific information providing comparison points for data on the administrative and operational characteristics of those tribal justice systems that reported in 2002, will provide baseline for all tribal justice systems that may report in the future.

As a result of the 2002 CTJA, BJS learned that a single questionnaire does not necessarily work well for Indian country to address the variations in the tribal justice systems across 566 tribes and the complexity of the jurisdictional arrangements established by federal law. As a result, BJS has developed three questionnaires for the 2014 NSTCS:

- **NSTCS-Lower 48 survey** will focus on tribes in the lower 48 states. Tribes located in non-PL 280 (Federal jurisdiction for major crimes) or PL 280 states (major crime

¹³ Strengthening Federal Statistics from the *Analytical Perspectives Budget Volume*, see: http://www.whitehouse.gov/sites/default/files/omb/inforeg/statpolicy/strengthening_fed_stats_fy2014.pdf

¹⁴ Bureau of Justice Statistics, *Census of Tribal Justice Agencies in Indian Country, 2002* (NCJ 205332), Dec. 2005. See: <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=543>

jurisdiction transferred to the states) may retain concurrent jurisdiction for crimes involving AIANs and primary jurisdiction for most civil matter occurring on tribal lands. Second,

- **NSTCS-Alaska survey** will focus on Alaska tribes that were excluded from the in 2002 CTJA. Alaska tribes (located in a PL 280 tend to be smaller, less economically well off, geographically dispersed and have less formally organized tribal courts relative to tribes in the lower 48 states, . Unlike tribes in the lower 48 States that reside on reservations, the tribes in Alaska reside in village areas
- **NSTCS-CFR survey** will include the Court of Federal Regulation. Courts of Indian Offenses are established under the Code of Federal Regulations and most commonly referred to as the “CFR Courts.”¹⁵ CFR Courts, using Federal laws, have generally acted as a tribe’s judicial system until the tribe established its own court.¹⁶ The CFR Court is a trial court in which parties present their cases before a Magistrate and appeals may be taken from the trial court to the Court of Indian Appeals.

The administration and operation of tribal courts may vary depending on the state in which the tribe is located and the type or magnitude of cases handled by their respective tribal courts. In light of these complexities, the NSTCS will provide a mechanism to delineate the roles played by the modernized tribal courts, Court of Indian Offenses, and indigenous and traditional forums across the U.S.

The NSTCS will focus on several topic areas to help provide clarity on the tribal judicial system. These sections include collecting data on: support agencies, administration, operations, appellate systems, prosecution and indigent defense services, juvenile services, TLOA enhanced sentencing and criminal jurisdiction, domestic violence and protection orders, justice information systems access and entry.

The NSTCS will enable BJS, DOJ, policy and decision-makers, and tribal nations to work toward meeting and measuring the objectives in various legislative mandates enacted over the past decade, as well as gauge emerging issues. For example, the NSTCS will provide new data tribal court compliance with TLOA on the protections provided to indigent defendants in tribal courts; qualifications of judges presiding over enhanced sentencing trials; and whether records of the criminal proceedings are maintained. In addition, the results will measure the prevalence of non-Indians being adjudicated in tribal courts. The NSTCS will provide a fundamental data on what exactly is a tribal court, how it is staffed, what qualifications the judges hold, what

¹⁵ 25 CFR Part 11 - COURTS OF INDIAN OFFENSES AND LAW AND ORDER CODE, See : <http://www.law.cornell.edu/cfr/text/25/part-11>

¹⁶Bertman, Eugene K (2013). *Tribal Appellate Courts: A Practical Guide to History and Practice*, Oklahoma Bar Journal, Oklahoma Bar Journal, October 2013, Vol. 84, No. 27 <http://www.okbar.org/members/BarJournal/archive2013/OctArchive13/OBJ8427Bertman.aspx>

protections are provided tribal and non-tribal defendants, and the types and the number of criminal and civil cases handled throughout Indian country.

The multiple versions of the NSTCS will enable BJS to collect information on the administrative or operational differences in the variations of tribal courts, in the lower 48 and Alaska. Based on the anticipated NSTCS results, BJS will be positioned to address the significant knowledge gap about the administrative or operational differences of tribal courts in both Public Law 280 and non-PL 280 locations. For example, does the tribal court staffing, budgets and caseloads differ; or what types of specialty courts are available?

At the basic level, the NSTCS will provide information on:

- the structure, administration and operation of the trial and appellate courts in Indian country;
- types of courts available;
- types of jurisdiction;
- criminal and civil caseloads;
- appellate process and caseloads;
- budgets, staffing;
- prosecution and indigent services;
- juvenile services;
- TLOA enhanced sentencing authority;
- domestic violence;
- protection orders;
- sex offenders;
- victim services; and
- access to regional and national criminal justice database systems.

Due to the wide spread need for data on tribal courts across the Department of Justice, BJS organized a tribal court advisory panel comprised of various offices and components with current tribal justice initiatives. The coordination of a tribal courts panel helped to ensure the appropriate information would be collected about the tribal judicial system in the NSTCS. The internal DOJ users of the NSTCS data include: the Bureau of Justice Assistance (BJA), the Office for Victims of Crime (OVC), National Institute of Justice (NIJ), Office of Juvenile Justice and Delinquency Prevention (OJJDP), Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking (SMART), Office on Violence Against Women (OVW), Office on Tribal Justice (OTJ), and the staff of the Access to Justice Initiative (ATJ).

The NSTCS data will be important to BJS and tribal nations themselves, as this information will aid in understanding the role of tribal courts in in the justice system. Outside of Indian country, very little is known about the significant role played by tribal courts in providing justice on tribal lands. The limited understanding about tribal courts is perhaps the result of Indian country

representing a small segment of the U.S. population; their jurisdiction being limited to matters between AIAN and misdemeanors on tribal lands; and the absence of specific policies that encourage criminal justice data reporting or a demonstrated beneficial need for tribes to report. However, the recent expanded possibilities of increased jurisdiction over non-Indians, as well as the mandated development of tribal databases and criminal justice registries, has spawned a reciprocal reaction among tribes to report tribal data.¹⁷ The following are some of the major reasons the NSTCS is needed and areas the information collected will address.

1. The NSTCS data will help BJS better understand the types of tribal courts and appellate forums, as well as the volume of criminal and civil matters arising and resolved on tribal lands. Tribal court caseload data for both criminal and civil matters may be used by DOJ and other federal and state agencies to develop programs to target issues, allocate funding and conduct comparative analyses. Some tribal courts dispense justice entirely through traditional forums—such as elder councils or peacemakers—while others apply more contemporary law and order codes or administer justice through a combination of both. For example, the Navajo Peacemaker Court established in 1982 seeks to resolve disputes using more traditional Navajo practices.
2. In recent years, joint jurisdiction courts have emerged to bridge jurisdictional gaps and provide justice for issues (such as drug and alcohol abuse) where tribal lands overlap with local governments. Joint State and Tribal courts are aimed to break down barriers of mistrust and hostility in the prosecution and adjudication of matters by the State courts affecting the lives of tribal members typically without representation on the bench in these jurisdictions.¹⁸ For instance, the Leech Lake-Itasca County Wellness Court has two judges, one State and Tribal, that hear each case together and issue court orders that are binding in either State or tribal jurisdictions. The NSTCS will help BJS identify those states and tribes that have entered into agreements in the spirit of cooperation to better address justice issues in tribal communities.
3. BJS will use the NSTCS to better understand the appellate courts in Indian country. Court systems typically have two or more layers, a court of original jurisdiction and courts of appellate jurisdiction. However, there is no Federal law that requires tribes to have appellate courts or sets standards for their operations.¹⁹ In 2002, BJS found that 103 tribes in the Lower 48 States indicated they operated an appellate court. The NSTCS will enable BJS to describe the variation in the operation of tribal courts, indigenous or traditional forums, Joint State-Tribal courts,

¹⁷ As a result of the BJS sponsored Tribal Crime Data Project, the participation of tribal law enforcement agencies in the FBI's Uniform Crime Reporting Program increased from 12 tribes in 2008 to 168 tribes in 2011 reporting violent and property crimes known to law enforcement. Tribal Crime Data Collection Activities, 2013, See: <http://www.bjs.gov/content/pub/pdf/tcdca13.pdf>

¹⁸ Arnold, Aaron F., Sarah Reckless and Robert Wolf (2012). *State and Tribal Courts: Strategies for Bridging the Divide*. Gonzaga Law Review, Vol. 47:3, See: http://www.law.gonzaga.edu/law-review/files/2012/06/Arnold.final_revised.pdf

¹⁹ Bertman, Eugene K (2013). *Tribal Appellate Courts: A Practical Guide to History and Practice*, Oklahoma Bar Journal, Oklahoma Bar Journal, October 2013, Vol. 84, No. 27

appellate courts and source of authority; types of specialty courts; criminal and civil jurisdiction; access to tribal laws and codes; jury qualification and selection.

4. There are an estimated 225 tribes currently under contract or compact with the BIA to perform the adjudication function in Indian country, with about 29 Courts of Indian Offenses exercising direct federal authority.²⁰ Tribal courts are either directly funded by the BIA or provided funding through Indian Self-Determination Act via contracts or Self-Governance compacts,²¹ but a large number of tribal courts are also funded by the tribe themselves and/or supplemented by Federal and State grants.

5. The NSTCS data on tribal court budgets and staffing will help inform BJS on what it costs to run the tribal courts, what staffing positions or functions are covered in the budgets, and who provides the funds. These data will also be useful to BJS to conduct analyses on the judicial expenditures and employment in Indian country that can be used for program improvements. For example, the Office of Justice Programs through the Bureau of Justice Assistance provides funding to tribal courts via its **Tribal Courts Assistance Program (TCAP)**, the NSTCS results will provide a national perspective on the funding and staffing for tribal courts to aid DOJ's and OJP's effort to allocate financial resources, as well as help identify operational gaps. For example, the NSTCS data on court staffing, training and technical assistance may be used to develop short and long term initiatives.

6. The NSTCS will further help answer questions about similarities and differences in tribal court administration and operations across Indian country, specifically asking about the tribal judges, prosecutors and defense counsel. BJS seeks to learn about the diverse ways in which tribal courts process cases in their trial and appellate courts. For example, the judge, prosecutor and defense counsel are a key part of the typical courtroom workgroup in State and Federal courts. The NSTCS will help BJS expand its understanding of which courts have permanent personnel in these functions, as well as their qualification for the positions.

7. The NSTCS will further allow BJS to understand the indigent defense services provided in Indian country. Although Federal and State courts are required to provide counsel in criminal cases to represent defendants who are unable to afford to pay their own attorneys,²² these protections may not be guaranteed to all defendants in tribal courts. Variation may exist among the tribal courts in 1) the availability of free (or pro-rated) criminal and civil defense services, 2) the availability of free legal representation for juvenile law violating cases, 3) the contracting out for public defenders, or 4) the charging of defendants for public defender services based on their ability to pay.

8. The NSTCS results on public defenders and civil defense services on tribal land will be of great utility to understand tribal compliance with DOJ's Access to Justice Initiative, TLOA and

²⁰ <http://www.bia.gov/FAQs/>

²¹ P.L. 93-638 (25 U.S.C. § 450, et seq)

²² *Gideon v. Wainwright*, 372 U.S. 335 (1963)

VAWA 2013 policy objectives. For instance, VAWA 2013 grants tribal courts special domestic violence criminal jurisdiction (SDVCJ) over certain defendants, regardless of their Indian or non-Indian status, who commit acts of domestic violence or dating violence or violate certain protection orders in Indian country.²³ Also, TLOA enhanced sentencing authority provisions grant tribal courts the power to increase the sentence for AIAN defendants from 1 year to 3 years in a tribal jail or the Bureau of Prisons pilot program. Among the implementation requirements for both VAWA and TLOA, tribal courts must ensure defendants are afforded the due process protections equal to that provided in the U.S. Constitution. The NSTCS will ask courts if they provide free criminal defense services; the qualifications for tribal judges; the methods for recording court proceedings; the nature of jury selection; and sentencing options available for adults and juveniles in tribal courts.

9. The juvenile justice data collected by the NSTCS will provide useful information on the number and types cases handled in tribal courts. The NSTC will help BJS and DOJ better understand the challenges involving native juveniles encountered in the courts, as well as establish baseline data for trend comparisons in future iterations. The Office of Juvenile Justice and Delinquency Prevention (OJJDP), in OJP, through the its' **Tribal Youth Program** provides grants to tribes to develop and implement programs to address at-risk factors for delinquency, interventions for court-involved youth, improvements to the juvenile justice system, alcohol and substance abuse prevention programs, and mental health program services. The NSTCS results will generate data on the existence of juvenile courts, the variation in juvenile law-violating cases handled, caseloads, and indigent defense for juveniles, sentencing and sanction options, probation and reentry programs, and the types of Indian child welfare cases.

10. The issue of domestic violence and sexual assaults on tribal lands has gained widespread attention in recent years.²⁴ To add complexity to a difficult subject, timely and accurate federal, state and tribal statistical data on the prevalence and incidences of domestic and sexual violence against women on reservations, or "Indian country", is extremely elusive.²⁵ Considerable discussion has focused on the declination of cases for prosecution by the U.S. Attorneys, but very little has been known on the types and magnitude of domestic violence or sexual assault cases handled by tribal justice systems. Comprehensive data on violence against women and children under the jurisdiction of tribal courts has not been systematically collected and analyzed. The NSTCS will collect data on variations in the tribal courts issuance of protection

²³ <https://www.federalregister.gov/articles/2013/11/29/2013-28653/pilot-project-for-tribal-jurisdiction-over-crimes-of-domestic-violence>

²⁴ Tjaden, P. & Thonennes. (2000). The Prevalence, Incidence, and Consequences of Violence Against Women: findings from the National Violence Survey Against Women. National Institute of Justice & the Centers for Disease Control & Prevention. <http://www.ncjrs.gov/textfiles1/nij/183781.txt>

²⁵ The Facts on Violence Against American Indian/Alaskan Native Women, see: <http://www.futureswithoutviolence.org/userfiles/file/Violence%20Against%20AI%20AN%20Women%20Fact%20Sheet.pdf>

orders; the number of domestic violence cases filed; state reciprocity of tribal court orders; protection orders prohibition against firearms; sexual crime cases filed; and child abuse cases filed. The results from the NSTCS will serve as a vital resource for DOJ/OJP and the Office on Violence against Women (OVW), a component of the U.S. Department of Justice, in developing the capacity of tribal governments and courts to reduce violence against native women, strengthen services to victims of domestic violence, dating violence, sexual assault, and stalking.

11. The NSTCS will provide crucial information on the ability of tribal court systems to collect, report and share case information. Determining crime rates, improving justice data reporting and information sharing systems in Indian country remains one of the vexing challenges facing DOJ. Through a series of legislation and initiatives in the past decade, tribes have been directed to establish protection order registries and sex offender registries, as well as encouraged to participate in national and regional justice database systems. Even with these projects, the capacity of tribal courts to effectively respond to the technological challenges is not fully known to BJS.

The NSTCS will help BJS and DOJ to understand the capacity of tribal courts to meet the challenges of collecting, reporting and sharing of criminal justice information. For instance, the NSTCS results will describe the variation among tribes in their information sharing policies; methods of managing court cases; network capabilities; access criminal justice databases; submission of case disposition to the criminal justice repositories; maintenance of convicted persons database; and use of victim notification systems. Components within DOJ and OJP (including BJS, BJA, SMART, OVW, and OVC) have an interest in information system use, access and capacity to inform the design of their funding programs to address Indian country information system challenges. For example, BJS has the National Criminal History Improvement Program; OVW provides funding to support tribe develop protection order databases; the SMART Office provides funds to develop sex offender websites and monitoring systems; OVC provides funds to support the development of victim notification systems; and the FBI manages the National Protection Order File.

The NSTCS will provide current information that can be utilized to inform grant and funding efforts, research publications, policy development, and program design. Table 1 demonstrates the type of information that will available through the data generated by each survey form (see Attachments 1 through 3 for referenced questions in the sections).

Table 1. National Survey of Tribal Court Systems Content Summary, 2014

NSTCS Data Sections and Type Collected	NSTCS-L48	NSTCS-AK	NSTCS-CFR
Tribal justice systems: type of court system in operation; type of law enforcement; enrollment	Section A	Section A	Section A

count; resident population; use of indigenous traditional justice system			
Tribal court administration: length (in years) of court system operation; types of specialty courts in operation; civil jurisdiction; criminal jurisdiction; case counts and dispositions; public availability of tribal law and code; tribal bar association in operation; alternative dispute resolution use; jury use and qualifications for service	Section B	Section B	Section A
Appellate systems: appellate court or court of appeals in operation; count and use of judges; procedural components; process for writ of habeas corpus; process for petition for stay of detention; case counts	Section C	Section C	Section B
Tribal court operations: frequency of court sessions; fiscal year calendar; court operating budget; funding sources; court positions and services funded; court position qualifications; court personnel counts; process for personnel selection; terms of office; training and technical assistance received	Section D	Section D	Section A
Tribal prosecution: tribal prosecution office in operation; court position qualifications; process for personnel selection; contracts with outside prosecution service sources	Section E	Section E	Section C
Tribal defense and civil legal services: tribal defense office in operation; court position qualifications; process for personnel selection; availability of and qualification for free criminal defense services; availability of and qualification for free civil legal services	Section F	Section E	Section C
Pretrial, Probation and Reentry Programs and Services: whether tribal court operate a pre-trial diversion and/or release program; who carries out your tribal court's pretrial function; type(s) of pretrial; and defendant's criminal history and ties to the community when making a pretrial release decision. Next, the respondents will focus on tribal probation programs: does your tribal court have a probation program; tribal court-ordered sanctions are handled through your probation; who serves as the probation officer; how is probation funded; and how many probation offers does your tribal justice system employ? Finally, this section captures data on reentry programs: does your community	Section G	Section F	Section D

supervise individuals coming out of a secure facility; with which facilities does your community work on reentry supervision; whether tribal court involved in assisting with or developing reentry plans for tribal members that return to your community following a period of secure confinement; and does your community have transitional living facilities to assist tribal members returning to the community?			
Juvenile cases: case types; case counts; availability of and qualification for free legal representation services; sentencing options in use; probation/parole function for juveniles; reentry program provision; Indian child welfare/dependency matter case types; case counts (including case transfers) and dispositions; access to Guardian Ad Litem and/or Court Appointed Special Advocate services	Section H	Section G	Section E
Domestic Violence and Protection Orders: issuance of protection orders; domestic violence cases filed; State reciprocity of tribal court orders; protection orders prohibit firearms; sexual crime and child abuse cases filed	Section I	Section H	Section F
TLOA enhanced sentencing and criminal jurisdiction (or restraining and protection orders): use of TLOA-provided enhanced sentencing authority; barriers to use of enhanced sentencing authority; use of restraining and/or protection orders; order counts; state recognition of tribal court-issued orders; order qualification under the federal Gun Control Act ²⁶ ; enforcement of state-issued orders; ability to meet TLOA enhanced sentencing authority requirements; methods for recording court proceedings; criminal sentencing options available	Section J	N/A Alaska Exempted from TLOA	N/A CFR Apply Federal law

²⁶ The Gun Control Act (18 U.S.C. Chapter 44) is a federal statute regulating the sale and manufacturing of firearms.

<p>Information systems access and data entry: policies in use regarding the sharing of criminal justice information; methods for case management; electronic networking capability; criminal justice information data-sharing policies; agencies/entities with electronic data access to or shared with tribal court; activities within the FBI Criminal Justice Information Services (CJIS); electronic database availability; criminal history repository type; sex offender registry maintenance; victim notification system in operation; restraining order and/or protection order registry maintenance; use of the FBI’s National Crime Information Center Protection Order File</p>	Section K	Section I	Section G
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3. Use of Information Technology

The NSTCS will be sent to respondents via email and hardcopy only. Due to the costs to automate three questionnaires and the small number of respondents that will receive them, BJS will not automate the NSTCS during this iteration. The use of three questionnaires has made it financially unfeasible to program an automated web-based survey that will serve the needs of the various regions and jurisdictions. In addition, BJS is taking this approach because of the limited or sporadic nature of internet connections in some rural and isolated communities may make access to an internet based survey difficult for some respondents—it is estimated that only 50% of the targeted respondents will have Internet access.

Tribal court participants will have the option to complete an electronically (email) delivered version of the survey or complete a hard copy (sent via posted mail) which can be submitted via a self-addressed stamped envelope, email, or by fax.

BJS’s data collection agent, Kauffman & Associates, Inc. (KAI), has also created and maintains a dedicated Help Desk email address (NSTCS@kauffmaninc.com) and an informative website (<http://www.tribalcourtsurvey.org>), designed to improve response rates by making it easier for respondents to get help.

4. Efforts to Identify Duplication

BJS conducted an extensive review of prior data collection and projects internally and externally involving tribal courts and/or justice systems to locate any duplication of effort. BJS existing or prior data collection efforts that included information involving Indian country in any regards include:

- **Census of State and Local law Enforcement Agencies** series (OMB NO. 1121-0240: Approval Expired 10/31/11) included tribal law enforcement agencies. This survey collects administrative and operational tribal law enforcement data (e.g. staffing, budgets, services rendered, etc.), but it does not capture any data on the number of arrests made, charges filed or the tribal court that handles the matters they investigate.
- The **State Court Organization** series (OMB Number 1121–0283) includes a single table that indicated the estimated number of tribal courts in a State and their jurisdiction type (e.g. PL 280). BJS has discontinued funding of this project and the last report produced was completed in November 2013.
- **National Census of State Prosecutors** series (OMB No. 1121-0149: Approval Expired 05/31/2008) is a survey of prosecutors in state courts. The 2007 survey was the first version that included questions about state court prosecution of felony cases arising on tribal lands. This survey collects administrative and operational data (e.g. staffing, budgets, caseloads, etc.) for state prosecutors’ services, but does not capture any information about tribal prosecutors or the work in or by tribal courts.
- **Jails in Indian Country** series (OMB No.1121-0094: Approval Expired 6/30/2013) is a survey of administrative and operational data (e.g. budget, staffing, inmates, capacity) for tribal detention facilities, but does not capture any data on the tribal court that sentenced the inmates to the jails. BJS funded a project in 2009 to determine to the extent to which the BJS Federal Justice Statistics Program data could be used to identify and describe tribal youth processed in the federal justice system.
- The report, “**Tribal Youth in the Federal Justice System**” (NCJ 234549) was published in 2011. As this project focused on tribal youth in the federal system, it does not contain any information on the nature of any interaction, role or action played by the local tribal courts.²⁷
- **Census of Tribal Justice Agencies** (OMB No 1121-0252 Approval Expired 12/31/2004) was BJS first and only data collection that included a series of questions (e.g. types of courts, staffing, and sanctions) on tribal courts. This study included law enforcement, courts, corrections, and supplemental information about criminal history records and information. Data from this study will serve as the baseline measures for the NSTCS.

Internally to DOJ, the NSTCS does not duplicate any current collection efforts, but will provide a means to link tribal court information to existing tribal data collections on tribal law enforcement and jails. The NSTCS will help extend BJS tribal law enforcement data utility by connecting the agencies that investigate crimes to the tribal courts that adjudicate the matters. The NSTCS data can also be appended to the *Jails in Indian Country* data to allow BJS to identify the courts that sentenced the inmates to respective Indian county jails. The NSTCS will go beyond the limited scope of the count of tribal courts in the various states, by providing the rich contextual information of their administration and operations that may supplement data on youth and adults in the Federal justice system. In addition, unlike the 2014 National Survey of Prosecutors (NSP) that collects basic data on state and local prosecutors that serve on tribal

²⁷ Tribal Youth in the Federal Justice System, See summary report: <http://www.bjs.gov/content/pub/pdf/tyfjs.pdf> (NCJ 234218); or full report: <https://www.ncjrs.gov/app/Publications/abstract.aspx?ID=256507> (NCJ 234218)

lands, the NSTCS will gather estimates on the number of tribal prosecutors serving in tribal courts. This information will be used by BJS to develop a universe of tribal prosecutors to incorporate into future NSP collections or the design of targeted sample surveys in the future on prosecutors in tribal courts.

External to BJS, we found that several ad hoc tribal court related surveys have been conducted by various organizations for unique purposes:

- Government Accountability Office (GAO) in 2012 surveyed all 171 tribes that received federal funding from BIA and the Edward Byrne Memorial Justice Assistance Grant (JAG) only.²⁸ The purpose of the survey was to ask the tribes about their plans to exercise the new sentencing authority TLOA provides. This study was limited in its scope to a single topic, provided no data file for public analysis, and excluded any tribal court that did get funding from BJA or DOJ. The results were reported in "*Tribal Law and Order Act: None of the Surveyed Tribes Reported Exercising the New Sentencing Authority, and the Department of Justice Could Clarify Tribal Eligibility for Certain Grant Funds.*"
- In addition, GAO selected these same 171 tribal courts for a survey conducted from December 2011 through February 2012 for the purposes of reviewing the extent to which federal funding is used to support state, local, and tribal indigent defense services.²⁹ This survey was limited to a single topic, provided no data file for public analysis, and excluded tribes that did not get BIA or DOJ funding. The results were reported in, "*Indigent Defense: DOJ Could Increase Awareness of Eligible Funding and Better Determine the Extent to Which Funds Help Support This Purpose.*"
- **Alaska Tribal Court Survey** was conducted by the Alaska Legal Services Corporation in 2011, with the assistance of staff from the Native Children Project.³⁰ The stated purpose was to estimate the number of tribal judicial systems in Alaska; identify the kinds of cases handled; and identify technical assistance and training needs among the tribes to expand their justice systems.

²⁸ Government Accountability Office. (2012). "Tribal Law and Order Act: None of the Surveyed Tribes Reported Exercising the New Sentencing Authority, and the Department of Justice Could Clarify Tribal Eligibility for Certain Grant Funds." Washington, DC: GAO. See: <http://www.gao.gov/assets/600/591213.pdf>

²⁹ Government Accountability Office. (2012). "Indigent Defense: DOJ Could Increase Awareness of Eligible Funding and Better Determine the Extent to Which Funds Help Support This Purpose." Washington, DC: GAO. <http://tloa.ncai.org/documentlibrary/2012/05/GAO%20Indigent%20Defense.pdf>

³⁰ Alaska Tribal Court Survey, created a tribal court survey in the spring of 2011, with assistance from the Justice for Native Children Project. See: https://www.tribalcourtsurvey.org/_files/2011-2012AlaskaTribalCourtSurveyReport.pdf

- **Indigenous Peacemaking Initiative Survey**, a joint project conducted by the Native American Rights Fund and Fox Valley Technical College, in 2011.³¹ The stated purpose beyond traditional justice forums is unclear from the report. It captured information limited quantitative information, but focused on the qualitative aspects of the technical assistance and training needs for indigenous and traditional justice forums.
- **Survey of Tribal Justice Systems and Courts of Indian Offenses** (OMB clearance 1076-0144, Expired September 30, 2001) was conducted in 1999 by the American Indian Law Center, Inc., under contract for the Bureau of Indian Affairs. The actual data are not publicly available, as the purpose of the survey was for the BIA to determine the resources and funding needed to administer justice in Indian country.³²

These external surveys focused on various facets or components of tribal courts, Court of Indian Offenses, and Indigenous forums separately and mostly for a specific organizational purpose. They also are not regular on-going surveys that permit comparative analyses and offer no indication they will be conducted again. The raw data from the surveys are not publicly available for analysis to permit further analyses and many were not approved through the OMB clearance process. Therefore, building upon the CTJA conducted by BJS in 2002, the NSTCS will address the many oversights in these one-shot surveys and collect crucial information.

BJS also coordinated with staff from various DOJ and the Office of Justice Program components found that no other offices or bureaus were conducting or have conducted a similar tribal court survey. BJS also contacted the Office of Justice Support, of the Department of Interior, to ensure there was no duplication of effort. The proposed NSTCS does not duplicate any current effort or soon to be available data from surveys or other data collection efforts conducted by agencies or entities.

5. Efforts to Minimize Burden

The proposed 2014 NSTCS instruments were designed to minimize the respondents' burden, as much as possible for the tribal courts. Due to the often differing organizational and structural arrangements among tribal governments, as well the sheer lack of data on tribal courts, the amount of burden time required is needed to establish baseline estimates.

³¹ Indigenous Peacemaking Initiative Survey, See: https://www.tribalcourtsurvey.org/files/PeacemakingSurveyResults_508.pdf.

³² Survey of Tribal Justice Systems and Courts of Indian Offenses, See: https://www.tribalcourtsurvey.org/files/Survey_of_Tribal_Justice_Systems_and_CIOs_2000.pdf

Since many tribal courts may need to seek out multiple information sources within their organizations to answer different sections, we minimized the number of questions that were not germane to the courts. We also incorporated skip directions for respondents to bypass questions or sections not applicable to their court.

Respondents who lack the capability to get the survey instrument via email will receive a paper-based survey by fax or mail with paper-based instructions. Kauffman and Associates (KAI) will also create a help desk that will provide assistance by phone and email to all respondents. The help desk will be staffed during normal business hours (Eastern Time) and will be available to all respondents through a toll-free number.

A data collection manager will oversee the help desk. When the manager is not available, calls will automatically be routed to another team member for immediate response. Voice mail will be available during off hours and a dedicated KAI e-mail address will be provided with the introductory letter and survey packet. Phone numbers and e-mail addresses for the survey principal investigator will be provided to respondents to ensure timely communications.

BJS sought input on the content of the surveys from panels of court leaders and substantive experts (see Attachments 4 and 5 for panel member information) to help include only the critically important questions. Additional input was also provided from DOJ tribal justice experts, which were relevant to on-going policy discussions. KAI and BJS also sought guidance on survey content and design during pilot testing of all three versions of the NSTCS instrument, in an effort to remove difficult to complete questions. Working with Tribal Law and Policy Institute (TLPI), as well as panel members, nine pilot sites were identified to review the instruments to ensure we reduced the potential of confusing or misleading questions that could be misinterpreted (see Attachment 10 lists the pilot test participants). Debriefing interviews were held with each field test participant following submission of the completed survey. Respondents were asked to describe time needed to complete each survey, identify questions or sections in need of clarification, and overall impression of the survey participation experience. Corrections and revisions were made to question wording, terms used, and the removal of items not applicable in the tribal justice systems.

The findings from the pilot testing phase suggest that the average survey completion times vary by survey type:

- NSTCS-14L48 = 2 hours, 15 minutes
- NSTCS-14AK = 2 hours
- NSTCS-14CFR = 1 hour, 30 minutes

6. Consequences of Less Frequent Collection

Based on the recommendations from the National Research Council, in *Principles and Practices for a Federal Statistical Agency*, one of BJS goals with this statistical collection is to provide data that are timely and relevant to policy issues in Indian country. The potential negative or inadvertent consequences of not collecting this collection could slow progress in addressing the crime and justice challenges facing Indian country. For example,

- The last data collection by BJS that included tribal courts was done in 2002 and the limited information gathered then is well over decade old.
- The lack of routine and on-going statistical collections on crime and tribal justice systems in Indian country have allowed debates about public safety matters on tribal lands to continue without empirical guidance on the critical issues faced by tribal justice systems.

Crime and justice challenges facing Indian country, as well as the lack of accurate and timely tribal justice data and information sharing, have become lightning rod issues over the past decade. Not conducting the NSTCS may open DOJ and BJS to criticisms that they failed to provide adequate information for policymakers to make informed decisions or develop programs to ensure the safety of over 1.1 million American Indians and Alaska natives residing on tribal lands. For instance,

- Currently, no national statistical criminal justice data are available on the number of violent crimes, domestic violence and child abuse cases handled in tribal courts.
- In spite of the lack of national tribal court data, violence in Indian country, especially against native women and children, were judged to be so egregious, tribal jurisdiction over non-Indians for domestic violence on tribal lands has been granted with the recent passage of the VAWA reauthorization legislation.
- In March 2015, tribal court jurisdiction over non-Indians for select domestic violence offenses goes into full effect and the NSTCS will provide pre-implementation data on the tribal courts capacity to fulfill the compliance requirements to better inform DOJ in its decision making.

Recognizing the knowledge deficiencies for crime and justice issues in Indian country, Congress and the President has acted to bring about changes and encourage better data collection in Indian country through passage of the Tribal Law and Order Act of 2010. Following TLOA, the NSTCS will be the first BJS statistical collection gathering any information on tribal courts since 2002. The benefits for collecting this information now rather than later include:

- The 2002 CJTA data are so old they can no longer inform the ongoing discussions at the highest levels about the criminal justice problems on tribal lands.
- The NSTCS collection will establish the baseline data at the beginning of the implementation of TLOA, which provided for enhanced sentencing authority for tribal justice systems.

- The NSTCS collection will provide baseline data prior to the full implementation of VAWA 2013, authorizing tribal jurisdiction over non-Indians for domestic violence crimes committed on tribal lands.
- The NSTCS will fill a void due to the lack of tribal court information from Alaska and the CFR Courts.
- The NSTCS results will enable DOJ and funding programs the opportunity develop and design strategies based on empirical data to support tribal justice systems.
- Conducting the NSTCS now will provide BJS an opportunity to learn of the challenges in collecting of national tribal court data, as well as use that information to better develop strategies for future collections.

Contingent upon available budget and resources, BJS proposes to conduct the NSTCS about every four years to measure the changes and trends in the administrative and operational characteristics of tribal courts (e.g. 2014, 2018, and 2022). Subsequent iterations may be reduced to contain core items only or include supplements focused on relevant emerging criminal justices issues or challenges identified through previous studies or policy changes.

7. Special Circumstances

No special circumstances have been identified for this project.

8. Adherence to 5 CFR 1320.8(d) and Outside Consultations

The NSTCS questionnaire design and development was discussed with several groups: Federal partners, tribal justice experts and tribal leaders, as well as nonprofit organizations that specialize in criminal justice matters. During 2013 and 2014, BJS met with the various DOJ components, at various times or in small group settings or invited appointments, to determine the need and types of tribal court data that should be collected in the NSTCS. In addition, BJS met with the Office of Justice Services of the Department of Interior; this office is responsible for funding tribal courts that are under contract with the Bureau of Indian Affairs (BIA) and provide oversight of the Court of Federal Regulations (CFR). Both DOJ and DOI components expressed the need for and interest in various tribal court data topics based on their program areas (see table 2).

The federal components consulted included the FBI's Criminal Justice Information Services Division, DOJ's Office for Access to Justice Initiative, the SMART Office, the Bureau of Justice Assistance, Office on Violence against Women, Office on Victims of Crime, Office of Juvenile

Justice and Delinquency Prevention, and the Department of Interior's Office of Justice Support. BJS scheduled group meetings with all federal offices:

Table 2. Federal component advisory panel for the National Survey of Tribal Court Systems.

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Christopher Holloway
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U.S. Department of Justice

Barbara Tatem Kelley
Juvenile Justice Program Specialist
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202-616-9517

Eugenia Tyner-Dawson (Sac and Fox)
Senior Advisor to the Assistant Attorney General for Tribal Affairs
Office of the Assistant Attorney General, Office of Justice Programs
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202.353.3442

Leslie A. Hagen
National Indian Country Training Coordinator
US Department of Justice
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Columbia, SC 29201

Tricia Tingle
Associate Director
Tribal Justice Support Directorate
Bureau of Indian Affairs
U.S. Department of Interior
1849 C Street NW Washington, DC 20240

In addition to the federal components, BJS met with a panel of tribal justice experts and leaders to design and develop the NSTCS (Attachment 4). A general list of proposed topics focusing on court characteristics and structures were provided to the tribal justice experts and tribal leaders. A meeting of the tribal justice expert panel group was held at the Office of Justice Programs in May 2012. This group consisted of members from academia and tribal justice organizations listed below (see table 3).

Table 3. Tribal Justice Expert Panel Group Members, May 16-17, 2012

<u>Participant</u>	<u>Organization</u>
Mary Jo Brooks Hunter	Hamline University School of Law
Christine Folsom-Smith	National Tribal Judicial Center
Carrie Garrow	Center For Indigenous Law, Governance & Citizenship College of Law, Syracuse University
Lisa Jaeger	Tanana Chiefs Conference

Ada Pecos Melton	American Indian Development Associates
Jill Tompkins	University of Colorado – Boulder
Herb Yazzie	Supreme Court of the Navajo Nation
William Zuger	Standing Rock Sioux Tribe

BJS met with a group of tribal court judges and professional from Indian country in August of 2012, in Rapid City, South Dakota (Table 4, See also Attachment 5). The tribal judges group was provided an initial draft of the NSTCS and asked to review the topics, sections and draft questions and to advise BJS on the appropriate language, concepts and terms. Further, the tribal judges were asked to advise BJS on the relative ease and access of tribal court personnel to the requested information.

Table 4. Tribal Judges Attendees for the 2014 National Survey of Tribal Court Judges Panel, August 2012

Participant	Title and Tribal Court/affiliation
Gary Bass	Judge, Tulalip Tribes Tribal Court
William Boyum	Chief Justice, Eastern Band of Cherokee Supreme Court
Anthony Brandenburg	Chief Justice, Intertribal Court of Southern California
Roman Duran	Judge, Pueblo of Tesuque Tribal Court
Mike Jackson	Tribal Court Director, Organized Village of Kake
B.J. Jones	Chief Judge, Sisseton-Wahpeton Tribal Court
Philip Lujan	Chief District Judge, Citizen Potawatomi Nation
Kimberly Martus	Tribal Court Enhancement Program Manager, Bristol Bay Native Association
Sherman Marshall	Chief Judge, Rosebud Sioux Tribal Court
Michael Petoskey	Chief Judge, Pokagon Band of Potawatomi
William Platero	District Judge, Tohajiilee District Court
David Voluck	Magistrate/Judge, Central Council of Tlingit and Haida Tribes

After the 60 Days’ Notice was posted in March 2014, BJS received additional comments and input from several agencies. Where applicable, BJS worked to incorporate any corrections, modifications and/or over looked questions. Some of the recommendations were tabled for future iterations, as to include all comments would added substantial respondent burden beyond the baseline measures or were out of scope for this particular survey. The following is a brief summary of the feedback BJS received since the 60 days’ notice was posted and which have been incorporated into the NSTCS-14:

Staffing, Budgets. Tricia Tingle, Associate Director of the Tribal Justice Support Directorate, at the Bureau of Indian Affairs, of the Department of Interior, recommended improvements to

several questions to include the distinction between law trained and non-law trained judges, prosecutors and public defenders serving in tribal courts. In addition, questions were suggested to capture the annual number of convictions for violation of protection orders. Specifically, related to the Code of Federal Regulation (CFR) survey, BIA suggested it was critical to identify whether in addition to the CFR court, the tribe also operated a separate tribal court and capturing their multiple funding streams. These comments and suggestions have been incorporated into the survey Tribal Court Administration and Operation sections.

Pretrial. John Clark, a Senior Project Associate, at the Pretrial Justice Institute (PJI), in Washington, DC suggested the kinds of questions that would be important from a pretrial perspective about Indian country should include:

- Does your tribal court operate a pre-trial release program?
- Who carries out your tribal court's pretrial service function?
- What type(s) of pretrial services does your tribal court offer?
- Does your tribal court receive information about the defendant's criminal history, record of appearance in court, and ties to the community when making a Pretrial release decision?
- Which of the following options are provided by your tribal court regarding the release of a defendant from detention prior to trial?

BJS inserted the above questions on pretrial in the section for Pretrial, Probation and Reentry Programs and Services.

Probation and Parole. Kim Cobb, Research Associate, at the American Probation and Parole Association (APPA), in Lexington, Kentucky, suggested the kinds of questions that would be important from a probation, parole and reentry perspective about Indian country should include:

- Does your tribal court have a probation program?
- Which of the following tribal court-ordered sanctions are handled through your probation program
- Who serves as the probation officer within your tribal court's jurisdiction?
- How tribal probation is funded?
- Who oversees the probation function in your community?
- Does the tribal court have separate adult and/or juvenile probation programs?
- Who fills the probation positions;
- Does the tribal probation office cross-collaborate with other justice systems?

BJS inserted the above questions on probation and parole in section, Pretrial, Probation and Reentry Programs and Services. In addition, the APPA also suggested questions on reentry programs and services, which have been incorporated.

- Does your community supervise individuals coming out of placement in a secure facility?
- With which facilities does your community work on reentry supervision?

- Is your tribe involved in assisting with or developing reentry plans for tribal members returning to your community following a period of secure confinement?
- Does your community have transitional living facilities to assist tribal members returning to the community?

BJS inserted the above questions on reentry in the section for Pretrial, Probation and Reentry Programs and Services.

DUI and DWI Conviction Sharing. Kenneth Copeland, Regional Program Manager, of the National Highway Traffic Safety Administration, suggested the need for additional information as it relates to how tribal courts handle driving under the influence (DUI) and driving while intoxicated (DWI) matters. For instance, the Indian Highway Safety Program suggested the following questions are important regarding Indian country:

- Does the tribal court have a separate DUI or DWI Court or docket?
- How many DUI/DWI convictions during 2014?
- What are the available sanctions issued by the tribal court for DUI/DWI convictions? and
- Does your tribal court share DUI/DWI conviction information with State Administering agencies (e.g. Motor Vehicle Authority, DMV, etc.)?

BJS inserted the above questions on DUI/DWI in Tribal Court Administration section.

BIA Indian Highway Safety Program

The Indian Highway Safety Program, at the Bureau of Indian Affairs, suggested the need for additional information as it relates to:

- What does the tribal court recognize as acceptable evidence to determine Blood Alcohol Content for DUI and/DWI case?
- Does the court provide defense counsel?

BJS inserted the above questions the Tribal Court Administration and Public Defense section.

General Comments and suggestions. Jerry Gardner, of the Tribal Law and Policy Institute, and the Indian Country Justice Partners organization both submitted similar comments and recommendations for question improvements. These groups went line by line through the NSTCS-14 survey and their comments have been incorporated where applicable and/or items deleted as needed throughout the various versions. As their documents were too extensive to itemize here, both will be made available to the public with the submission of this package.

9. Paying Respondents

Neither BJS nor Kauffman and Associates will provide any payment or gift of any type to respondents. Respondents will participate on a voluntary basis.

10. Assurance of Confidentiality

According to 42 U.S.C. 3735 Section 304, the information gathered in this data collection shall be used only for statistical or research purposes, and shall be gathered in a manner that precludes their use for law enforcement or any purpose relating to a particular individual other than statistical or research purposes. The data collected through the 2014 NSTCS represent institutional characteristics of tribal courts operating Indian country. The fact that participation in this survey is voluntary and that information about individual agency responses will be available to the public is included on the first page of the survey instrument. Respondents will also be informed in written communications sent to them that the information provided about their court will be in the public domain. However, it will also be made clear to them that BJS and KAI will not release the names, phone numbers, or email addresses of the actual persons responsible for completing the 2014 NSTCS instruments.

11. Justification for Sensitive Questions

There are no questions of a sensitive nature in the proposed 2014 NSTCS.

12. Estimate of Respondent Burden

BJS has estimated the total respondent burden for the proposed 2014 NSTCS Survey at 1350 hours (Table 5). This estimated total burden includes the time for completion by each federally recognized tribe, the tribal court of federal regulations, and subsequent time for non-response follow-up or validation. BJS will conduct a complete census of each tribal court, by location and type.

Table 5. NSTCS-14 estimated respondent burden, by tribal location and type, 2014.

NSTCS-14	Total Respondents	Average completion time	Estimate completion time	Nonresponse follow-up hours	Total NSTCS Burden Hours requested
All Tribes & CFR Courts	N = 595	--	1259.5 hours	86.5 hours	1350 hours
NSTCS-14L48	n = 336	2.25 hours	756 hours	40 hours	800 hours
NSTCS-14AK	n = 230	2 hours	460 hours	40 hours	500 hours
NSTCS-14CFR	n = 29	1.5 hours	43.5 hours	6.5 hours	50 hours

The 2014 NSTCS respondent burden of 2 hours is calculated using an estimate of per respondent by tribe, location or type of court. The burden hours were calculated as follows:

- NSTCS-14L48 = 2 hours, 15 minutes (336 Lower 48 Courts/tribes* 2.25 = 756 hours). About 336 tribes are located in the lower 48 states and will be sent this version of the survey.
- NSTCS-14AK = 2 hours (230 Alaska Courts * 2 hours = 460 hours). About 230 tribes or native villages are located in Alaska and will be sent this version of the survey.
- NSTCS-14CFR = 1 hour, 30 minutes (29 CFR Courts * 1.5 hours = 43.5 hours). About 29 CFR courts will be sent this version of the survey.

The combined estimated respondent burden for completion of all three questionnaire instruments is 1259.5 hours. BJS added 7% or about 86.5 additional burden hours for the non-response follow-up to make a total of 1350. The average burden estimates for each version of the survey as shown in Table 5 are based on feedback received during the administration of the NSTCS instrument pilot test, comments from the tribal justice expert and judges panels. More specifically, nine tribal courts reviewed a paper-based version of the draft 2014 NSTCS instrument. Respondents were asked to complete the survey, consider the clarity of survey questions, and provide time burden estimates for completion of the survey. Respondents were also interviewed by phone with specific follow up questions about each section and the overall survey. While surveys will be sent to all 566 tribes in the lower 48 States and in Alaska, it is very likely that some of these tribes do not have a tribal court system and will therefore end the survey after completing the initial screening questions. BJS does not have an estimate of these tribes so our burden estimate (that assumes all will respond to the complete survey) is likely an overestimate of the true burden.

13. Estimate of Respondent's Cost Burden

BJS anticipates that the full-time equivalent of one employee person per tribal court survey will complete the data collection instrument, with pay approximately equivalent to the GS-12 / 01 level (\$75,621 per year). Based on the estimated time burden, the agency cost of employee time would be approximately \$39.39 per hour. The base respondent employee time cost burden is estimated at \$53,177 (based on 1350 total burden hours). Fringe benefits costs are estimated to average 46% of the base cost at \$24,461, resulting in a total salary and benefits cost of \$77,638. Indirect costs are estimated to average 37% of the salary and benefits total, or \$28,726, for an overall total respondent cost burden of \$106,364.

There are no anticipated costs to respondents beyond the employee time expended during completion of the survey instrument and addressed in the above section. This expectation was further reinforced through the pre-test results and none of the eight responding tribal court reported additional costs incurred by survey participation.

14. Costs to Federal Government

The total expected cost to the Federal Government for this data collection is \$948,042, to be borne entirely by the BJS over a three year period. This work consists of planning, developing the questionnaire, preparation of materials, collecting the data, evaluating the results, and generating of reports. A BJS Statistician, GS-Level 14, will be responsible for overseeing the work on this project. The budget for this project is shown on the following page:

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Estimated Costs for the 2014 NSTCS Survey

<u>Bureau of Justice Statistics</u>	
Staff salaries	
GS-14 Senior Statistician (40%) x 3 years	\$144,516
GS-13 Editor (10%)	\$8,992
Other Editorial Staff	\$5,000
Senior BJS Management	\$10,000
Subtotal salaries	\$168,508
Fringe benefits (28% of salaries)	\$47,182
Subtotal: Salary & fringe	\$215,690
Other administrative costs of salary & fringe (15%)	\$32,354
Subtotal: BJS costs	\$248,044
<u>Data Collection Agent (Kauffman and Associates)</u>	
Personnel	\$254,814
Fringe Benefits	\$75,756
Travel	\$9,367
Equipment	\$0
Supplies	\$1,080
Consultants/Contracts	\$114,393
Other	\$7,885
Total Direct Costs	\$463,295
Total Indirect	\$236,703
Subtotal Data Collection Agent	\$699,998
Total estimated costs	\$948,042

Change in Burden

The total estimated respondent burden time is 1350 hours for the 2014 NSTCS, as this collection is substantially different from the previous collection on tribal justice systems. The average burden for the current collection is 2 hours per respondent and much larger than the 20 minutes estimated for the 2002 CTJA. The respondent burden has increased because the overall

questionnaire has increased in the number of questions and its specific focus on various stages of the tribal court system. The gaps in available data on tribal courts has been so extensive, it has forced BJS to cover a wider range of items in this iteration. The previous collection gathered aggregated totals and excluded the estimated 220 Alaska tribes and 20 or more CFR courts. The passage of TLOA enhanced BJS mission focus to develop tribal justice statistics and to address the need for reliable information on tribal justice systems and crime. Both the tribal justice experts and tribal judge's panel strongly advocated for the gathering of reliable data on caseloads and operational information to better understand crime in their communities and tribal justice systems as a whole across Indian country.

16. Project Schedule

Pending OMB approval, the 2014 NSTCS data collection period is scheduled to begin in January 2015 (see Attachments 1-3 for the survey instruments). The data collection period is scheduled to end no later than May 31, 2015. Once all data are collected, and cleaning and verification are completed, final analytical work will begin with plans to issue multiple BJS reports:

First, BJS plans to release three short fact-sheet type reports once the data becomes available: ***Tribal Courts of Federal Regulations*** (July 2015), ***Tribal Courts in the Lower 48 States*** (August 2015) and ***Tribal Court Justice in Alaska*** (September 2015).

Next, BJS plans a more in-depth comprehensive report, ***Tribal Courts Systems in the United States, 2014***, no later than December 2015. This report will provide readers with general information on the characteristics of all tribal trial and appellate courts in terms of their types, budgets, staffing, prosecution and indigent defense services, juvenile justice, domestic violence cases, and information systems. Some of the research questions this report will address include:

- How many criminal and civil cases were filed by tribal courts during 2014?
- How many tribal courts operate across the U.S.?
- What is the operational budgets for tribal court systems?
- What types of employees work in the tribal courts?
- How many tribal prosecutors and public defenders work in tribal courts?
- Do tribal court submit case disposition records to regional and national criminal justice databases?

It is anticipated that many tribal courts will vary in their ability to provide case counts and BJS plans to use imputation for missing items for critical items, such as staffing, expenditures, and caseloads.

Third, BJS plans to release a Special Bulletin, ***Implementation of TLOA, VAWA, and Adam Walsh Act Provisions among Tribal Courts, 2014***, no later than February 2016. This report will provide readers with data on the characteristics of tribal courts, as it relates to the recent enhanced sentencing requirements and expanded jurisdiction over non-Indians for domestic violence cases. Some of the research questions this report will address include:

- Do tribal courts provide protections equal to those guaranteed by the U. Constitution for defendants?
- How many tribal courts are implementing the enhanced sentencing requirements?
- How many domestic violence cases were filed during 2014?
- How many protection order issued by tribal courts?
- How are jurors selected from the tribal community?
- What type of methods are used to keep records of criminal proceedings?

The publication of findings from the NSTCS will be available in electronic formats; specifically, they will be available on the BJS website as a PDF file. The dataset, and supporting documentation will be made available for download without charge at the National Archive of Criminal Justice Data at the Inter-University Consortium for Political and Social Research (ICPSR) and at Data.gov. It is expected the data will be available to the public for download in March 2016. Access to these data permits analysts to identify the specific responses of individual tribal courts across the country and to conduct statistical analyses. These data will have agency and jurisdiction specific identifiers that will permit the public use of these data in combination with other BJS tribal data files with similar agency or location identifiers.

17. Display of Expiration Date

The expiration date will be shown on the survey form.

18. Exception to the Certificate Statement

BJS is not requesting an exception to the certification of this information collection.