



NATIONAL AMERICAN INDIAN COURT JUDGES ASSOCIATION

*Emerging Practices in Civil Legal Assistance
and Criminal Indigent Defense*

**Webinar 3 – “EXPUNGEMENT AND
INDIAN COUNTRY: The Need to Address
Past Criminal Histories for a Better Future”**

**February 18, 2015
3:00 – 4:30 p.m. (ET)**

Presentation Overview

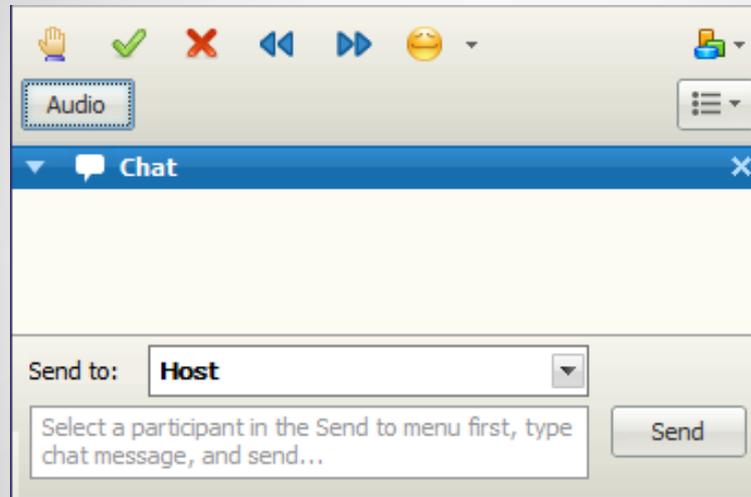
- Introduction
- Overview
- Presentation
- Q & A
- BJA Resources

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- The webcast and slides from this webinar will be emailed to all attendees shortly after the session.

Moderators

Nikki Borchardt Campbell, Program Administrator
National American Indian Court Judges Association

Francine Jaramillo, Staff Attorney
American Indian Law Center, Inc.

Presenters

Colline Keely, Executive Director,
Oklahoma Indian Legal Services

C. Steven Hager, Director of Litigation, OILS

Niki Lindsey, Managing Attorney,
OILS Ada, Oklahoma office

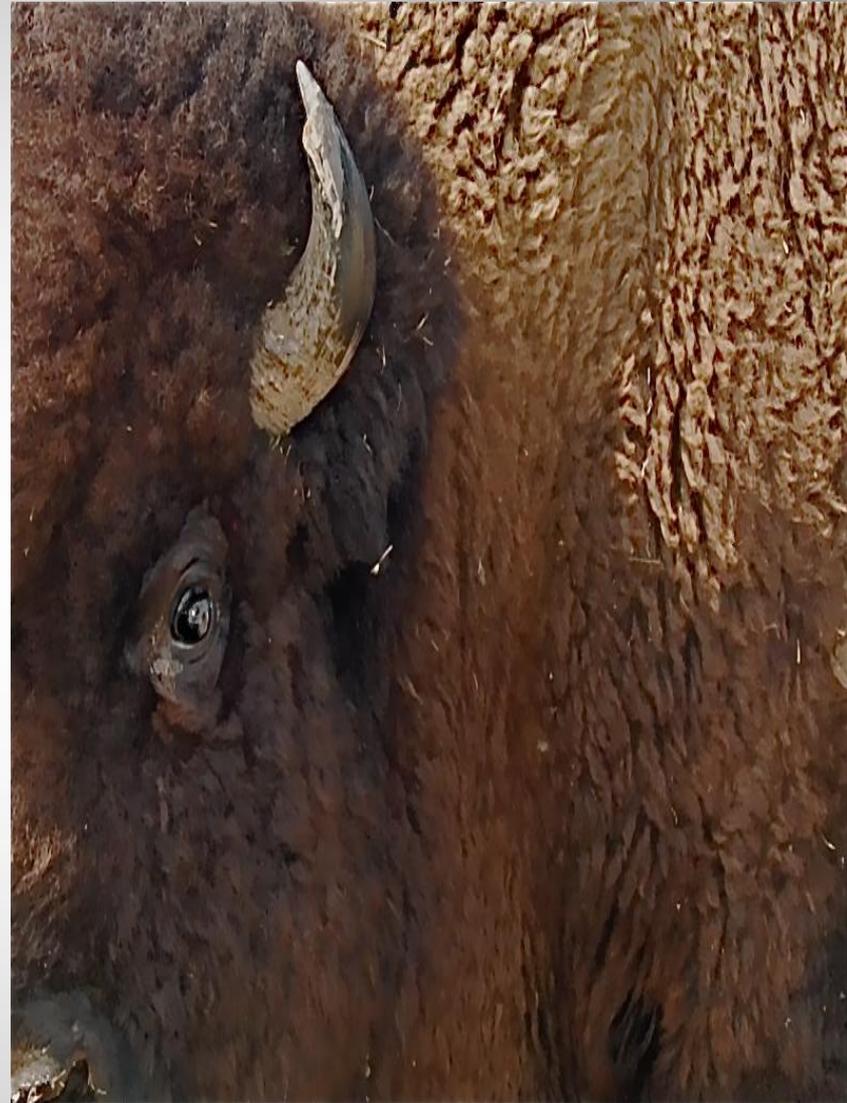
The National American Indian Court Judges Association



- TTA Provider under the Tribal Civil and Criminal Legal Assistance Program
- Planning and Coordination Meeting in 2012
- Emerging Practices webinar series

Expungement and Indian Country:

The Need to Address
Past Criminal Histories
for a Better Future



EXPUNGEMENT

To destroy; blot out; obliterate; erase; efface designedly; strike out wholly. The act of physically destroying information-including criminal records-in files, computers, or other depositories.

EXPUNGEMENT

- Specific to each jurisdiction.
- Many different levels of expungement, for different types of crimes or convictions.
- Very difficult for people to do without an attorney: expungement requires knowledge related to the type of crime, the time since the sentence was imposed, and other specific legal understanding.

WHAT CAN BE EXPUNGED?

- Client's past conviction and arrest records can be expunged.
- Criminal charges that were improperly filed may be expunged.
- Crimes for which the client has been pardoned may be expunged (but not automatically).
- Some jurisdictions limit the types of crimes that can be expunged; some limit misdemeanors; some have time limits.
- Some jurisdictions may automatically expunge certain records, such as juvenile crimes.

WHY DO PEOPLE HAVE PROBLEMS UNDERSTANDING EXPUNGEMENT?

- People don't understand the nature of their criminal charges; some think that a nolo contendere plea means they are not guilty of anything.
- Others think that they are automatically expunged when their sentence is finished or their probation is complete.
- Some attorneys or D.A.s will tell clients that a deferred sentence "won't be on your record."

THE IMPACT OF A CRIMINAL RECORD

- When a client discovers that their criminal record is impacting their current life, they often don't know what to do about it; the criminal record can seem overwhelming.
- Education is a vital component of the expungement process; clients must be given the opportunity to understand what expungement can – and can't – do for them.

WHAT CAN IT DO FOR YOUR CLIENT?

- Expungement deletes criminal conviction and/or arrest records from public databases.
- Expungement deletes or modifies local court records and/or criminal arrest records from State jurisdictions.
- However, not all records will be expunged from all sources; police and prosecutors may be able to access records that the public cannot access.

HOW WILL THIS HELP YOUR CLIENT?

- May allow him or her to answer “no” to the question whether they have been convicted of a crime.
- May allow them to answer “no” to the question whether they have ever been arrested.

HOW DOES THIS HELP YOUR CLIENT?

- Possibly improves job opportunities; expunged records are eliminated from consideration in some jobs; for example, people seeking a job in tribal casinos (one of the larger employers in Indian country) are able to truthfully respond to questions involving past criminal records.

HOW WILL THIS HELP YOUR CLIENT?

- Client may qualify for housing assistance after expungement of their records.

HOW DOES THIS HELP YOUR CLIENT?

- Expungement protects the client's privacy; their names will no longer be on the arrest and conviction databases of the state's law enforcement agencies.
- But many employers and landlords look at the state's online public database system and determine their actions based on what they find there, without proper context of the records. Expungement can remove the client's records from the online public database.

HOW DOES THIS HELP YOUR CLIENT?

- Expungement is also a cultural component.
- Clients could consider expungement to be a new beginning. Expungement is a holistic opportunity for a client to correct their past mistakes and “start over.”
- This is particularly important in some tribal cultures. The ability to erase one’s mistake and set a clean slate is essential in some cultural paradigms and may be the most important component of expungement.

GENERAL ELEMENTS OF EXPUNGEMENT

- First, the advocate must determine if the Client's criminal records are expungeable; expungement is to eliminate limited actions; it is not to offer protection to career or habitual criminals.
- Clients cannot be relied upon to provide accurate information:
 - They may not accurately remember their records.
 - They may be uncomfortable in discussing their past.
- Advocates should seek records from state agencies to determine the client's accurate criminal records.

GENERAL ELEMENTS

- If client's records are not able to be expunged at that time, then the client should be informed as to if and when they will qualify to have their records expunged.
- If the Client's records can be expunged, then the advocate must determine what actions are necessary.

OKLAHOMA EXPUNGEMENT

- Oklahoma Indian Legal Services recognized the need for expungement when OILS began representing criminal cases in tribal court.
- Clients and court personnel told OILS about the difficulty in clearing up their records and eliminating issues.
- Without money to hire private attorneys, it was unlikely that the records would be expunged.

WHY UNLIKELY? THERE ARE THREE WAYS TO CLEAN UP A CLIENT'S RECORD IN OKLAHOMA

1. Title 22 O.S. Section 991c.
2. Title 22 O.S. Sections 18 and 19.
3. Parole Board Pardon – Formerly
“Governor’s Pardon.”

§ 991c

- A. Applies **ONLY** to deferred or delayed sentences.
- B. Acts as a formal dismissal of charge and vacates prior guilty plea or judgment of guilt.
- C. Technically seals local court records.
- D. Updates OSBI records to reflect “Pled not guilty, case dismissed.”

RECORDS ARE ALWAYS AVAILABLE TO LAW ENFORCEMENT AND CAN BE USED
AGAINST YOU IN A COURT OF LAW

§ 991c Eligibility

1. Completed a deferred sentence without revocation.
2. Completed ALL terms of probation.

WHAT CLIENT GETS:

- Defendant is discharged without a court judgment of guilt.
- Guilty plea or plea of nolo contendere is ordered to be removed or expunged.
- Charge dismissed with prejudice.
- *Is retroactive to date of completion of deferred sentence.*

Does not apply to a sex offense that requires registration pursuant to the Sex Offenders Registration Act.

WHAT' S NEXT?

- All references to the name of the defendant **shall** be deleted from the docket sheet;
- The public index of the filing of the charge shall be expunged by deletion, mark-out or obliteration;
- Court clerk shall keep a separate confidential index of case numbers and names that are expunged;
- Only accessible by written court order or upon request in writing by the defendant to update OSBI records;
- Law enforcement always has full access to records;
- OSBI will update the arrest record to reflect “Pled not guilty, case dismissed.” **AT NO COST**

22 O.S. § § 18 & 19

- Allows Client to delete entire OSBI arrest record (background checks).
- Deletes local records.
- In some cases, the statute specifically gives client the right to “honestly” answer “no” to questions of whether you have been arrested or convicted of a crime.

RECORDS ARE ALWAYS AVAILABLE TO LAW ENFORCEMENT AND CAN BE USED AGAINST CLIENT IN A FUTURE COURT PROCEEDING

§ 18 ELIGIBILITY

1. Client must have been Acquitted;
2. Conviction reversed on appeal with instructions to dismiss or appellate court reversed and DA dismissed;
3. Factual innocence established by DNA;
4. Client received a full pardon on the basis of a written finding by the Governor of actual innocence;
5. Client was arrested and no charges of any type are filed and the statute of limitations has expired OR the D.A. has declined to file charges;
6. The Client was under 18 at the time of the offense and has received a full pardon;
7. The Client was charged with one or more misdemeanor or felony crimes
 - All charges have been dismissed
 - The Client has never been convicted of a felony
 - No misdemeanor or felony charges are pending against the Client
 - The statute of limitations for refiling the charge or charges has expired or the DA confirms that the charge or charges will not be refiled

Excludes a dismissal following the completion of a deferred judgment or delayed Sentence.

§ 18 ELIGIBILITY (continued)

8. The Client was charged with a misdemeanor
 - The charge was dismissed following the successful completion of a deferred judgment or delayed sentence;
 - The Client has never been convicted of a misdemeanor or felony;
 - No misdemeanor or felony charges are pending against the Client; and
 - 1 year has passed since the charge was dismissed.
9. The Client was charged with a nonviolent felony offense (defined in 57 O.S. 571)
 - The charge was dismissed following the successful completion of a deferred judgment or delayed sentence;
 - The Client has never been convicted of a misdemeanor or felony;
 - No misdemeanor or felony charges are pending against the Client; and
 - 10 years have passed since the charge was dismissed.
10. The Client was convicted of a misdemeanor offense
 - The Client has not been convicted of any other felony;
 - No felony or misdemeanor charges are pending against the Client; and
 - 10 years have passed since the conviction.

§ 18 ELIGIBILITY (continued)

11. The Client was convicted of a nonviolent felony offense (57 O.S. 571) and
 - Has received full pardon;
 - Has not been convicted of any other felony;
 - No separate misdemeanor in the last fifteen years;
 - No felony or misdemeanor charges are pending; and
 - Ten (10) years have passed since the conviction.
12. The Client has been charged or arrested or is the subject of an arrest warrant for a crime that was committed by another person who has appropriated or used the Client's name or other identification without the person's consent or authorization.

§ 18 CLARIFICATIONS

- Expunged means the sealing of the criminal records.
- # 8, 9, 10, 11 & 12 are sealed to the public but not to law enforcement agencies for law enforcement purposes.
- # 8, 9, 10 & 11 crimes are admissible in later criminal prosecutions to prove prior bad acts without a court order to unseal.
- Records expunged on # 4,6, and 11(actual innocence, etc.) may also include the sealing of pardon and parole board records as to the public database.

§ 18 CAN GET YOU § 19 RELIEF

- Upon finding by the court that the harm to the privacy of the person or unwarranted adverse consequences outweigh the public interest, the court can order the record sealed except for basic identification information.
- Oklahoma State Bureau of Investigation will delete the arrest record, **AT A COST OF \$150.00 PER CASE.**
- If in the same county in Oklahoma, a civil petition naming multiple cases can save the client money; the OSBI will delete multiple records listed under the civil case as one case with one fee; it is much more effective than proceeding piecemeal.
- This does not include Department of Correction Records; they are not specifically addressed in Oklahoma law.
- The official actions are deemed to never have occurred.
- Inspection of the records only allowed upon petition of the defendant, Attorney General or DA for specifically identified purposes.

§ 19 RELIEF (continued)

- Employers, educational institutions, state and local government agencies, officials and employees shall not, in any application or interview require an applicant to disclose sealed information and the person may state no such action ever occurred and no such application may be denied solely based on refusal to disclose arrest or criminal records that have been sealed.
- DOES NOT MEAN THE PHYSICAL DESTRUCTION OF ANY CRIMINAL JUSTICE RECORDS (MAY BE DESTROYED AFTER 10 YEARS).
- DA, arresting agency, OSBI or other interested person or agency may petition for unsealing of the record and notice of the hearing must be given.
- Still may be used to impeach the credibility of a witness or used as character evidence.

PARDON

- Must show enough evidence to prove Client has “turned their life around.”
- DOES NOT EXPUNGE OR SEAL CLIENT ‘S CRIMINAL RECORD.
- Likely have to disclose expunged crimes.
- May make Client eligible for a § 18 expungement (actual innocence and under 18) and is required for a § 18 non-violent felony conviction expungement.
- Must pardon all felonies for Client to get a liquor license.

PARDON

- Other agencies may require a pardon for the Client in order to obtain a license.
- May help in job applications.
- Will allow Client to register to vote.
- Will not change the law that prevents a person convicted of murdering or manslaughter from inheriting from the victim.
- In some instances will allow Client to own a firearm again (non-violent felonies).
- Does not remove requirement to register as a Sex Offender.
- Will still allow the conviction to be considered in future felony cases (“former felony”).

WHAT DOES THE CLIENT NEED?

- Outside of proving mistaken identity or actual innocence, the client may need a 22 O.S. section 18 expungement and section 19 relief.
- In many cases, a section 991c action may accomplish what the client needs and may be required to obtain further relief under sections 18 and 19.
- If all else fails, a pardon may be needed.

Since 2013, Oklahoma Indian Legal Services has completed 58 expungement cases, and advised many more clients on when their cases will be available for services.



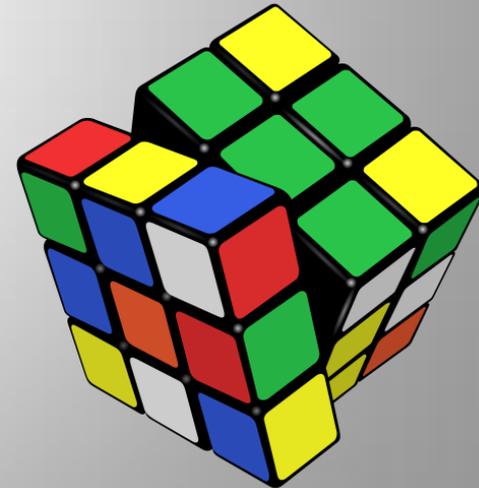
COMPREHENSIVE SERVICES

- Expungement doesn't help clients if the clients are unaware that their records may be expunged
- OILS holds regular expungement clinics to:
 - Inform people of their rights.
 - Make initial assessment of qualification and records of clients.
 - Advise the clients of what an expungement is and is not.

COMPREHENSIVE SERVICES

- If Advocates can determine from records on the site that the client is ineligible, they can inform the client of how they may become eligible in the future, or their alternatives, such as a pardon.
- If a client may be eligible, advocates can gather information and order law enforcement records to determine if they actually qualify for expungement comprehensive services possible.

-- Records can be like a Rubik's Cube – expungement of this record may lead to expungement of another record, which may lead to the expungement of another. The advocate must have a holistic understanding of the entirety of the client's history in order to provide the most effective services.



CLINIC ADVANTAGES

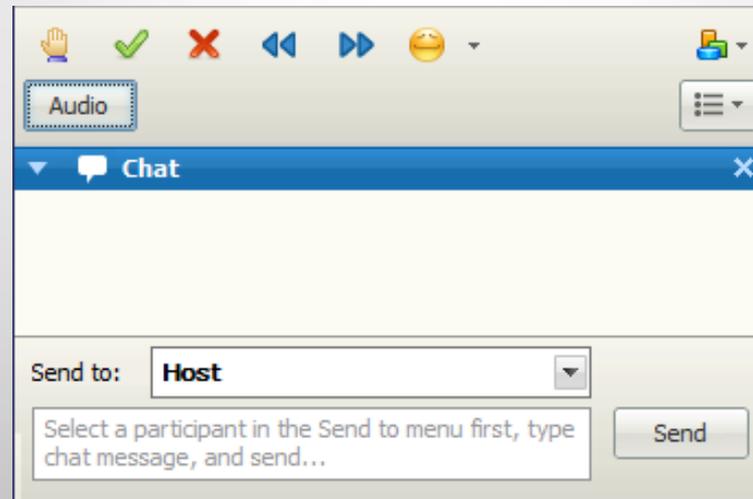
- Usually in client's home area.
- Can often make an immediate determination as to client's eligibility for expungement.
- Can provide maximum services for minimal costs.
- Can provide services across the service area.
- Can use pro bono attorneys and law students to assist in clinics.
- Helps train future advocates.

CLINIC DISADVANTAGES

- Must have a robust internet connection.
- Need tribal assistance for space/time considerations.
- Need ability to follow up with clients and access their records.
- But clients can always call in and complete applications for services.

Submit Your Questions

If you would like to ask a question please use the “Chat” feature found on the right side of your screen.



Questions & Answers with the Presenters

- Colline Keeley, Executive Director, OILS
- C. Steven Hager, Director of Litigation, OILS
- Niki Lindsey, Managing Attorney, OILS Ada Office

ABOUT THE SPEAKERS

Colline Keeley

- (Comanche) has served as the Executive Director of OILS since 2000. She worked as a staff attorney at OILS beginning in 1989. Ms. Wahkinney-Keely is responsible for all functions of OILS, including administrative issues. She graduated from the University of Oklahoma College of Law in 1987.
- Ms. Wahkinney-Keely is widely considered to be one of the nation's foremost authorities on restricted Indian land titles, and is the editor of several editions of the *The Indian Child Welfare Act: Case and Analysis*. Ms. Wahkinney-Keely is the author of an article entitled *The Need For Indian Legal Aid*, published in the February 2010 Oklahoma Bar Journal's Indian Law Issue.
- She has served as the treasurer of the Oklahoma Indian Bar Association, and was the 2005 chair of the Indian Law Section of the Oklahoma Bar Association. Ms. Wahkinney-Keely also serves on the steering committee of the National Association of Indian Legal Services and on the Respect Diversity committee of the Oklahoma Bar Association. She can be reached at keely@oilsonline.org.



ABOUT THE SPEAKERS

C. Steven Hager

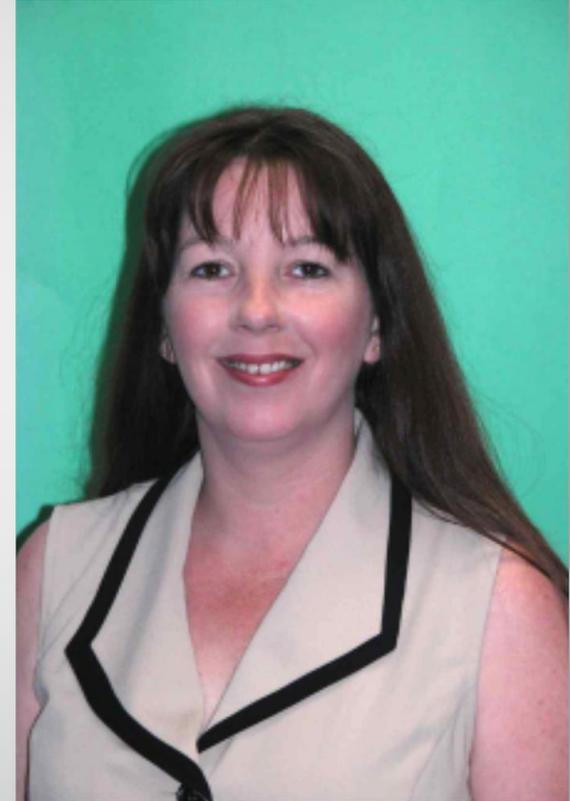
- C. Steven Hager is the Director of Litigation. He began working at OILS in 1990 as a staff attorney. As the Director of Litigation, he is responsible for oversight of all case activities and attorney work. He is the author of the *The Indian Child Welfare Act: Case and Analysis*, currently in its 18th edition. He graduated from the University of Oklahoma College of Law in 1987.
- Mr. Hager is also a contributing author to the *Child Fatality Review: Evaluation of Accidental and Inflicted Child Death: A Clinical Guide*. He is also a contributing author for the Encyclopedia of American Issues Today, published in 2013.
- Mr. Hager has twice served as the chair of the Indian Law Section of the Oklahoma Bar Association. He has won second place for the past two years for the Hargrave Prize, a writing competition at the Sovereignty Symposium. Hager was honored as the 2008 Attorney of the Year by the Pawnee Court Appointed Special Advocate (CASA) program.
- Mr. Hager is an adjunct professor at the University of Oklahoma College of Law. He is the Chief Judge for the Kickapoo Tribe in Kansas, and a Justice on the Supreme Court of the Kaw Nation of Oklahoma. He can be contacted at hager@oilsonline.org.



ABOUT THE SPEAKERS

Niki Lindsey

- Niki Lindsey has been the managing attorney at the OILS Ada Office since 2002. She graduated Magna Cum Laude from Oklahoma City University School of Law in 2001.
- Ms. Lindsey is Oklahoma Indian Legal Services' lead attorney on the issue of expungement. She also has spoken frequently on the issues of Domestic Violence and its effects on children and families. Ms. Lindsey represents Indian clients in southeastern Oklahoma, including the Chickasaw and Choctaw tribal areas. Her email address is lindsey@oilsonline.org.



Resources

Bureau of Justice Assistance

Bureau of Justice Assistance Resources

- Coordinated Tribal Assistance Solicitation (CTAS) – only Indian tribes are eligible to apply with some exceptions
- Second Chance Act Reentry Resources
- Tribal Criminal and Civil Legal Assistance Solicitation
- BJA Resources for TLOA Implementation

Coordinated Tribal Assistance Solicitation (CTAS)

- The Department of Justice launched CTAS in Fiscal Year 2010 in direct response to concerns raised by Tribal leaders about the Department's grant process that did not provide the flexibility tribes needed to address their criminal justice and public safety needs. Through CTAS, federally-recognized Tribes and Tribal consortia submit a single application for most of the Justice Department's Tribal grant programs. The Department of Justice designed this comprehensive approach to save time and resources and allow tribes and the Department to gain a better understanding of the Tribes' overall public safety needs.
- For more information on CTAS – see www.justice.gov/tribal and www.justice.gov/tribal/open-solicitation
- Anticipated Application Due Date: **February 24, 2015**

CTAS: Application Timeline

Solicitation:

- Opened - November 20, 2014
- Application Due Date – February 24, 2015
- DOJ expects to award grants on or before September 30, 2015.

CTAS: Goals and Objectives

Justice Systems and Alcohol and Substance Abuse (BJA)

- To develop, enhance, and continue tribal justice systems including: law enforcement, pretrial services, risk and needs assessment development and implementation, diversion programming, tribal court services, detention programming, community corrections, reentry planning and programming, justice system infrastructure enhancement, justice system information sharing, etc.
- To respond to and prevent alcohol- and substance abuse-related crimes including alcohol and substance abuse prevention, healing to wellness courts, intervention, or treatment.
- To **implement enhanced authorities** and provisions under the Tribal Law and Order Act and the Violence Against Women Reauthorization Act of 2013.
- To develop, implement, and enhance substance abuse prevention and treatment programs including those that prevent and address the needs of drug-endangered children.
- To engage in comprehensive strategic planning to improve tribal justice and community safety as it relates to Tribal courts and alcohol and substance abuse.

The Second Chance Act BJA Reentry Funding Opportunities

The Second Chance Act of 2007 (Public Law 110-199) provides a comprehensive response to the increasing number of incarcerated adults and juveniles who are released from prison, jail, and juvenile residential facilities and returning to communities. There are currently more than 2.3 million individuals serving time in our federal and state prisons, and millions of people are cycling through local jails every year. Ninety-five percent of all offenders incarcerated today will eventually be released and return to communities. The Second Chance Act will help ensure that the transition individuals make from prison, jail, or juvenile residential facilities to the community is successful and promotes public safety.

BJA expects to provide funding opportunities under the following Second Chance Act programs:

- Career Technology Training (Section 115);
- Adult Planning & Demonstration Projects (Section 101);
- Adult Reentry Program for Offenders with Co-Occurring Substance Abuse and Mental Health Disorders (Section 201);
- Adult Mentoring Grants (Section 211); and
- Other opportunities.

For more information, visit BJA's Second Chance Act web page:

https://www.bja.gov/ProgramDetails.aspx?Program_ID=90. Access to the open solicitation can be found at: <https://www.bja.gov/funding.aspx>

Tribal Civil and Criminal Legal Assistance Program

- Tribal Criminal and Civil Legal Assistance Program (TCCLA)
https://www.bja.gov/ProgramDetails.aspx?Program_ID=102
- Technical Assistance for TCCLA grantees, visit the National Tribal Justice Resource Center of National American Indian Court Judges Association at <http://www.naicja.org>
- Interested Public Defenders in loan repayment program, learn more about the John R. Justice Student Loan Repayment Program
https://www.bja.gov/ProgramDetails.aspx?Program_ID=102

BJA Training & Technical Assistance

Intergovernmental Collaboration

- Tribal-State Collaboration Training and Technical Assistance Request Form, Walking on Common Ground Website (<http://www.walkingoncommonground.org/>)
- Training and Technical Assistance at the National Criminal Justice Association (<http://www.ncja.org/>)
- Regional Collaboration to Embrace, Engage and Sustaining Tribal Community Policy Partnerships, Western Community Policing Institute (<http://westerncpi.com/training/tribal/>)
- Training & Technical Assistance Webpage, DOJ Tribal Justice and Safety Website (<http://www.justice.gov/tribal/>)

TLOA Enhanced Sentencing Authority

- BJA Tribal Law and Order Act Webpage (https://www.bja.gov/ProgramDetails.aspx?Program_ID=88)
- BJA Training Assistance Application for Tribal Law and Order Act related activities: 1) Enhanced Sentencing Authority; 2) indigent defense. Please complete the technical assistance application http://www.appa-net.org/eweb/DynamicPage.aspx?WebCode=VH_TribalRepository or training needs assessment at <https://www.surveymonkey.com/s/R83TBBJ>
- BJA's National Training and Technical Assistance Center (NTTAC) (<https://bjatraining.org/>)
- Training and Technical Assistance Webpage, DOJ Tribal Justice Safety website (<http://www.justice.gov/tribal/training-and-technical-assistance/>)
- NCAI Tribal Law and Order Resource Center (<http://tloa.ncai.org/>)

BJA & Other Resources

BJA Resources

- *Enhanced Sentencing in Tribal Courts: Lessons Learned From Tribes*
(<http://www.justice.gov/tribal/publications>)
- *Improving the Administration of Justice in Tribal Communities through Information and Resource Sharing*
(https://www.bja.gov/publications/appa_tribalinfore_sourcesharing.pdf)
- *Information Sharing in Criminal Justice – Mental Health Collaborations: Working with HIPAA and Other Privacy Laws*
(https://www.bja.gov/publications/csg_cjmh_info_sharing.pdf)
- *An Overview of BJA's Tribal Civil and Criminal Legal Assistance Program and Resources*
(https://www.bja.gov/Publications/TCCLA_Overview.pdf)
- *National Reentry Resource Center (NRRC)*
(<http://csgjusticecenter.org/nrrc>)
- *Strategies for Creating Offender Reentry Programs in Indian Country*
(http://www.aidainc.net/Publications/Full_Prisoner_Reentry.pdf)

Federal & Other Resources

- Bureau of Justice Assistance Website
(<https://www.bja.gov/Default.aspx>)
- BJA's National Training and Technical Assistance Center (NTTAC) (<http://bjatraining.org/>)
- DOJ Tribal Justice and Safety Website
(www.justice.gov/tribal/)
- Training and Technical Assistance Webpage, DOJ Tribal Justice Safety website
(<http://www.justice.gov/tribal/training-and-technical-assistance/>)
- Office of Justice Services, Bureau of Indian Affairs, U.S. Department of Interior
(<http://www.bia.gov/WhoWeAre/BIA/OJS/>)

Tribal Civil and Criminal Legal Assistance Program

- Tribal Criminal and Civil Legal Assistance Program (TCCLA)
https://www.bja.gov/ProgramDetails.aspx?Program_ID=102
- Technical Assistance for TCCLA grantees, visit the National Tribal Justice Resource Center of National American Indian Court Judges Association at <http://www.naicja.org>
- Interested Public Defenders in loan repayment program, learn more about the John R. Justice Student Loan Repayment Program
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Thank You!



National American Indian
Court Judges Association
3300 Arapahoe Ave, Suite 206
Boulder, CO 80303
Tel. (303) 449-4112
Fax (303) 449-4038
www.naicja.org



American Indian
Law Center Inc.
P.O. Box 4456
Albuquerque, NM 87196
Tel. (505) 277-5462
Fax (505) 277-1035
www.aile-inc.org