

Public Health Law



Office for State, Tribal, Local and Territorial Support
Centers for Disease Control and Prevention

Tribal Public Health and the Law: Selected Resources

American Indian and Alaska Native tribes are sovereign nations that maintain a government-to-government relationship with the United States.¹ There are currently 567 federally recognized tribes throughout the contiguous United States and Alaska.² In addition to exercising political sovereignty, tribes exercise cultural sovereignty through traditions and religious practices unique to each tribe’s history and culture.³ Cultural sovereignty “encompasses the spiritual, emotional, mental, and physical aspects” of Native people’s lives and is a foundation to tribal exercise of political sovereignty.⁴

In the context of public health, tribes have inherent authority as sovereign nations to protect and promote the health and welfare of their citizens, using methods most relevant for their communities.⁵ Tribal inherent authority is a “plenary and exclusive power over their members and their territory, subject only to limitations imposed by federal law,” and includes the power to determine the form of tribal government and the power to legislate and tax, among others.⁶

The following resources describe and discuss topics related to tribal public health law.⁷ The resources include general ones related to Indian health policy and tribal public health law, as well as substantive legal discussions of public health topics that relate to tribes or American Indian and Alaska Native communities.

Contents

Tribal Public Health Governance and Codes.....	2
Indian Health Policy	2
Public Health Data and Surveillance	3
Birth Defects and Developmental Disabilities	4
Chronic Disease Prevention	4
Emergency Preparedness	5
Environmental Health	5
Infectious Disease	6
Injury Prevention and Control	6
Occupational Health and Safety	7



Tribal Public Health Law Research Support	7
Acknowledgments and Disclaimers	8

Tribal Public Health Governance and Codes

These resources provide sample and model language on tribal public health codes and information on public health governance.

- [Tribal Public Health Law Database](#)
NAT'L CONG. OF AM. INDIANS POLICY RESEARCH CTR.
Provides a searchable database of select tribal public health codes and policies.
- [A Profile of Tribal Health Departments](#)
Alana Knudson et. al., NORC WALSH CTR. FOR RURAL HEALTH ANALYSIS (Jun. 2012).
- [Public Health Legal Preparedness in Indian Country](#)
Ralph T. Bryan et. al, AM. J. OF PUB. HEALTH, Vol. 99, No. 4 (Apr. 2009).
Summarizes the results of a study on tribal public health laws and discusses the importance of law in promoting public health.
- [Model Tribal Health and Safety Code](#)
INTER TRIBAL COUNCIL OF ARIZONA (Draft Jan. 2005).
Outlines features of a health and safety code that can be adapted by tribes for use in their own codes.

Indian Health Policy

These resources address federal Indian health policy, including topics such as the Indian Health Care Improvement Act and the Patient Protection and Affordable Care Act.

- [Medicaid and American Indians and Alaska Natives](#)
Samantha Artiga & Anthony Damico, THE KAISER COMM'N ON MEDICAID AND THE UNINSURED (Mar. 2016).
Discusses the role of Medicaid on American Indians and Alaska Natives.
- [The History, Status, and Future of Tribal Self-Governance Under the Indian Self-Determination and Education Assistance Act](#)
Geoffrey D. Strommer & Stephen D. Osborne, 39 AM. INDIAN L. REV. 1 (2015).
Reviews the history of tribal self-governance programs under the Indian Self-Determination and Education Assistance Act, and discusses the potential future directions self-governance programs could take.
- [The Affordable Care Act and American Indian and Alaska Native Communities: Selected Resources](#)
Aila Hoss, CTRS. FOR DISEASE CONTROL AND PREVENTION PUB. HEALTH LAW PROGRAM (Jan. 15, 2015).
Lists readings and resources that describe the Affordable Care Act and the Indian Health Care Improvement Act's effects on American Indian and Alaska Native communities.
- [American Indian Health Policy: Historical Trends and Contemporary Issues](#)
Donald Warne & Linda Bane Frizzell, AM. J. OF PUB. HEALTH, Vol. 104, No. S3: S263–S267 (Jun. 2014).
Summarizes the history of Indian health policy and discusses the Patient Protection and Affordable Care Act and the Indian Health Care Improvement Act.

- [Indigenous Peoples and Epistemic Injustice: Science, Ethics, and Human Rights](#)
Rebecca Tsosie, 87 WASH. L. REV. 1133 (Dec. 2012).
Explores the use of science as a public policy tool, and examines how such policies affect indigenous peoples in various areas, including public health.
- [Policy Issues in American Indian Health Governance](#)
Donald Warne, 39 THE J. OF LAW, MED. & ETHICS 42 (Spring 2011).
Gives background information about tribal health services and offers recommendations to improve Indian health policy.
- [American Indian Health Disparities: By the Sufferance of Congress?](#)
Margaret P. Moss, 32 MITCHELL HAMLIN J. OF PUB. LAW AND POLICY 59 (Fall 2010) [available by subscription only].
Discusses the potential role of the political status of American Indians under federal law as an impact on the population's health status.

Public Health Data and Surveillance

These resources discuss legal issues related to public health data and surveillance, including data-sharing agreements.

- [Tribal Epidemiology Toolkit—Data Sharing](#)
COUNCIL OF STATE AND TERRITORIAL EPIDEMIOLOGISTS (last accessed Apr. 11, 2016).
Provides resources related to tribal data collection, linkages, and sharing.
- [Tribal Public Health Data and Surveillance: The Role of Law](#)
CTRS. FOR DISEASE CONTROL AND PREVENTION, THE NETWORK FOR PUB. HEALTH LAW (Nov. 5, 2015) (webinar).
Reviews legal considerations related to health data; gives background information about on American Indian and Alaska Native public health data and surveillance issues; and discusses the role of law in the access to this data.
- [Tribal Epidemiology Centers Designated as Public Health Authorities Under the Health Insurance Portability and Accountability Act](#)
Aila Hoss, CTRS. FOR DISEASE CONTROL AND PREVENTION PUB. HEALTH LAW PROGRAM (Apr. 16, 2015).
Discusses Tribal Epidemiology Centers and the recent amendment to the Indian Health Care Improvement Act, which designated these centers as public health authorities under the Health Insurance Portability and Accountability Act.
- [Exploring Pathways to Trust: A Tribal Perspective on Data Sharing](#)
Rosalina James et. al., GENETICS IN MED., Vol. 16, No. 11 (Nov. 2014).
Reports on tribal perspectives related to data sharing, based on themes that emerged at a 2012 meeting on data sharing and control in university-tribal research partnerships.
- [Addressing Disparities in the Health of American Indian and Alaska Native People: The Importance of Improved Public Health Data](#)
Ursula E. Bauer & Marcus Plescia, AM. J. OF PUB. HEALTH, Supp. 3, Vol. 104, No. S3 (2014).
Examines issues related to racial misclassification of American Indian and Alaska Native people in health data, and briefly discusses the Patient Protection and Affordable Care Act.
- [Best Practices in American Indian & Alaska Native Public Health: A Report from the Tribal Epidemiology Centers 2013](#)
TRIBAL EPIDEMIOLOGY CTRS. (2013).
Discusses the achievements of Tribal Epidemiology Centers in promoting health for American Indians and Alaska Native populations and the challenges in accessing to quality data.

- [Legal Issues Concerning Identifiable Health Data Sharing Between State/Local Public Health Authorities and Tribal Epidemiology Centers in Selected U.S. Jurisdictions](#)
James G. Hodge, Jr., Torrey Kaufman & Craig Jaques, COUNCIL OF STATE AND TERRITORIAL EPIDEMIOLOGISTS (originally released Mar. 30, 2009, updated Nov. 8, 2011).
Outlines privacy issues related to public health data sharing, relevant privacy laws, and potential solutions for data sharing issues between Tribal Epidemiology Centers and state health departments.

Birth Defects and Developmental Disabilities

These resources examine legal issues that can prevent birth defects and developmental disabilities.

- [Tribal Healing to Wellness Courts](#)
TRIBAL LAW AND POLICY INST. (last accessed Apr. 11, 2016).
Gives background information about Tribal Healing to Wellness Courts, a form of drug court, adapted to fit the unique culture, history, and community needs of tribal nations. Also offers various resources on Tribal Healing to Wellness Courts, including a policies and procedures guide, judicial bench book, and program development guides.
- [Tribal Public Health Law: Alcohol, Tobacco, and Other Drugs Code Memo](#) [select link at bottom of web page]
NAT'L CONG. OF AM. INDIANS (Oct. 2014).
Lists select tribal laws related to alcohol, tobacco, and drug control.
- [Fetal Alcohol Syndrome: The Legal and Social Responses to its Impact on Native Americans](#)
Claire E. Dineen, 70 N.D. L. REV. 1 (1994) [available by subscription only].
Reviews legal and policy approaches to prevent fetal alcohol syndrome among American Indian populations and offers a potential community-based approach to address the issue.

Chronic Disease Prevention

These resources address issues related to chronic disease prevention.

- [Casinos](#)
PUB. HEALTH LAW CTR. (last accessed Apr. 11, 2016).
Discusses legal issues related to smoking in casinos, including tribal-operated casinos.
- [Tribal Tobacco Control and the Law \(webinar\)](#)
CTRS. FOR DISEASE CONTROL AND PREVENTION, THE NETWORK FOR PUB. HEALTH LAW (Oct. 7, 2015) (webinar).
Highlights the difference between traditional and commercial tobacco use, and outlines the public health impact of commercial tobacco use on American Indian and Alaska Native populations. Also discusses the legal framework for tobacco taxing and control, and gives an overview of effective commercial tobacco control laws.
- [Drafting Tribal Public Health Laws and Policies to Reduce and Prevent Chronic Disease](#)
PUB. HEALTH LAW CTR. (Jul. 2015).
Provides a guide to drafting laws related to chronic disease control and prevention.
- [Putting Food Policy to Work in the Navajo Nation](#)
HARVARD FOOD LAW AND POLICY CLINIC (May 2015).
Describes food sovereignty laws and policies impacting the Navajo food system and highlights innovations by other tribes.

- [Tribal Public Health Law: Alcohol, Tobacco, and Other Drugs Code Memo](#) [select link at bottom of web page]
NAT'L CONG. OF AM. INDIANS (Oct. 2014).
Provides an inventory of select tribal laws related to alcohol, tobacco, and drug control.
- [Tribal Public Health Law: Agriculture and Food Safety Code Memo](#) [select link at bottom of web page]
NAT'L CONG. OF AM. INDIANS (October 2014).
Provides an inventory of select tribal laws related to agriculture.
- [Spirit Food and Sovereignty: Pathways for Protecting Indigenous Peoples' Subsistence Rights](#)
Allison M. Dussias, 58 CLEV. ST. L. REV. 273 (2010).
Examines three approaches used by tribes and Native communities to protect their traditional means of subsistence, with an emphasis on the legal principles upon which these approaches relied.

Emergency Preparedness

These resources discuss legal preparedness during an emergency, as it relates to tribes and Indian country.

- [Emergency Declarations and Tribes: Mechanisms Under Tribal and Federal Law](#)
Gregory Sunshine & Aila Hoss, 24 MICH. ST. INT'L L. REV. 33 (Dec. 18, 2015).
Outlines several types of emergency declarations, including tribal declarations, Stafford Act declarations, and federal public health emergency declarations, and their implications for tribes.
- [Tribal Emergency Preparedness: Law and Practice \(webinar\)](#)
CTRS. FOR DISEASE CONTROL AND PREVENTION, THE NETWORK FOR PUB. HEALTH LAW (Sept. 24, 2015) (webinar).
Describes how law can affect tribal emergency preparedness practice, and discusses legal mechanisms for emergency declarations.
- [Responding to Public Health Emergencies on Tribal Lands: Jurisdictional Challenges and Practical Solutions](#)
Justin B. Barnard, 15 YALE J. HEALTH POL'Y, L. & ETHICS 251 (Summer 2015).
Identifies jurisdictional issues relating to public health emergency response on tribal lands, and examines how intergovernmental agreements can be a promising tool for addressing jurisdictional uncertainty.

Environmental Health

These resources examine issues related to environmental health.

- [Tribal Legal Project: Environmental Review Codes](#)
TRIBAL LAW AND POLICY INST. (last accessed Apr. 11, 2016).
Provides an inventory of select tribal environmental laws.
- [Model Tribal Air Quality Ordinance](#)
NAT'L INDIAN JUSTICE CTR. (last accessed Apr. 11, 2016).
Outlines features of an air quality code that can be adapted by tribes for use in their own codes.
- [Model Tribal Drinking Water Ordinance](#)
NAT'L INDIAN JUSTICE CTR. (last accessed Apr. 11, 2016).
Outlines features of a drinking water code that can be adapted by tribes for use in their own codes.

- [Model Tribal Solid Waste Disposal Ordinance](#)
NAT'L INDIAN JUSTICE CTR. (last accessed Apr. 11, 2016).
Outlines features of a solid waste disposal code that can be adapted by tribes for use in their own codes.
- [Model Tribal Water Quality Ordinance](#)
NAT'L INDIAN JUSTICE CTR. (last accessed Apr. 11, 2016).
Outlines features of a water quality code that can be adapted by tribes for use in their own codes.
- [Tribal Public Health Law: Environmental Health Code Memo](#) [select link at bottom of web page]
NAT'L CONG. OF AM. INDIANS (Oct. 2014).
Provides an inventory of select tribal laws related to environmental health.
- [Tribal Public Health Law: Agriculture and Food Safety Code Memo](#) [select link at bottom of web page]
NAT'L CONG. OF AM. INDIANS (Oct. 2014).
Provides an inventory of select tribal laws related to agriculture.
- [Examining Tribal Environmental Law](#)
Elizabeth Ann Kronk Warner, 39 COLUM. J. ENVTL. L. 42 (2014).
Provides examples of tribal environmental laws and offers a roadmap to guide the development of such laws.

Infectious Disease

These resources discuss legal methods for preventing and controlling infectious disease in tribal and American Indian/Alaska Native communities.

- [Menu of Selected Tribal Laws Related to Infectious Disease Control](#)
Aila Hoss, CTRS. FOR DISEASE CONTROL AND PREVENTION (Nov. 2014).
Provides an inventory of select tribal laws related to infectious disease control.
- [Infectious Disease Reporting and American Indian and Alaska Native Populations: Law and Practice](#)
CTRS. FOR DISEASE CONTROL AND PREVENTION, AM. BAR ASS'N (Mar. 28, 2015) (webinar).
Offers a discussion on how law can impact infectious disease reporting. Includes a discussion of tribal, federal, and state laws.

Injury Prevention and Control

These resources discuss issues related to injury prevention and control, including motor vehicle safety and violence prevention.

- [Violence Against Native Women Publications](#)
TRIBAL LAW AND POLICY INST. (last accessed Apr. 11, 2016).
Provides resources relating to prevention of violence against Native women, including a tribal code drafting guide.
- [Sexual Assault Publications](#)
TRIBAL LAW AND POLICY INST. (last accessed Apr. 11, 2016).
Provides resources relating to the prevention of sexual assault, including a tribal code drafting guide and judicial bench book.

- [Tribal Healing to Wellness Courts](#)
TRIBAL LAW AND POLICY INST. (last accessed Apr. 11, 2016).
Gives background information on Tribal healing to Wellness Courts, a form of drug court adapted to fit the unique culture, history, and community needs of tribal nations. Also offers resources on Tribal Healing to Wellness Courts, including a policies and procedures guide, judicial bench book, and program development guides.
- [Elder Abuse Codes](#)
NAT'L INDIGENOUS ELDER JUSTICE INITIATIVE (last accessed Apr. 11, 2016).
Provides an inventory of select tribal laws related to elder abuse prevention and control.
- [The Beginning and End of Rape: Confronting Sexual Violence in Native America](#)
Sarah Deer, UNIV. OF MINNESOTA PRESS (Nov. 2015) [book, no publically accessible link available].
Offers a historical overview of rape and sex trafficking in tribal communities and a discussion on recent legal reforms that seek to address it.
- [Menu of Selected Tribal Laws Related to Motor Vehicle Safety](#)
Aila Hoss, CTRS. FOR DISEASE CONTROL AND PREVENTION PUB. HEALTH LAW PROGRAM (Sept. 17, 2015).
Provides an inventory of select tribal laws related to motor vehicle safety.
- [Tribal Public Health Law: Injury and Violence Prevention Code Memo](#) [select link at bottom of web page]
NAT'L CONG. OF AM. INDIANS (Oct. 2014).
Provides an inventory of select tribal laws related to injury and violence prevention.
- [Tribal Public Health Law: Alcohol, Tobacco, and Other Drugs Code Memo](#) [select link at bottom of web page]
NAT'L CONG. OF AM. INDIANS (Oct. 2014).
Provides an inventory of select tribal laws related to alcohol, tobacco, and drug control.

Occupational Health and Safety

These resources address issues related to occupational health and safety.

- [Tribal Labor Sovereignty Act](#)
CONGRESS.GOV (last accessed Apr. 11, 2016).
Provides the status of H.R.511, the Tribal Labor Sovereignty Act of 2015, which amends the National Labor Relations Act (NLRA) to exempt tribal enterprises from coverage by the NLRA.
- [Casinos](#)
PUB. HEALTH LAW CTR. (last accessed Apr. 11, 2016).
Discusses legal issues related to smoking in casinos, including a discussion of tribal-owned gaming enterprises.
- [Gaming Sovereignty? A Plea for Protecting Worker's Rights While Preserving Tribal Sovereignty](#)
Jonathan Guss, 102 CAL. L. REV. 1623 (Dec. 2014).
Discusses the role of federal and state laws on tribal-owned gaming enterprises and proposes that tribal courts could offer an appropriate venue to adjudicate worker right conflicts.

Tribal Public Health Law Research Support

The following resources identify organizations that can provide technical assistance on tribal public health law topics.

- [Tribal Public Health Law Resource Table](#)
THE NETWORK FOR PUB. HEALTH LAW (July 12, 2012).
Lists organizations with experience in tribal public health law, including epidemiology centers, academic institutions, and legal research services.

- [Indian Law Clinics](#)
TRIBAL LAW AND POLICY INST. (last accessed Apr. 11, 2016).
Lists Indian law clinics housed in various law schools.
- [CDC's Public Health Law Program](#)
- [ChangeLab Solutions](#)
- [Mitchell Hamline School of Law Public Health Law Center](#)
- [National Indian Health Board](#)
- [National Indian Justice Center](#)
- [National Indian Law Library](#)
- [Network for Public Health Law](#)
- [Tribal Law and Policy Institute](#)

Acknowledgments and Disclaimers

This document was developed by Aila Hoss, JD, Carter Consulting, Inc. contractor with the Public Health Law Program (PHLP) within the Office for State, Tribal, Local and Territorial Support (OSTLTS) at the Centers for Disease Control and Prevention (CDC). The author would like to thank PHLP Director Matthew Penn, JD, MLIS, for his editorial assistance.

For further technical assistance with this inventory, please contact phlawprogram@cdc.gov. PHLP provides technical assistance and public health law resources to advance the use of law as a public health tool. PHLP cannot provide legal advice on any issue and cannot represent any individual or entity in any matter. PHLP recommends seeking the advice of an attorney or other qualified professional with questions regarding the application of law to a specific circumstance. The findings and conclusions in this summary are those of the author and do not necessarily represent the official views of CDC.

Published May 31, 2016.

¹ COHEN'S HANDBOOK OF FEDERAL INDIAN LAW, § 4.01[1][a] (Nell Jessup Newton et al. eds., 2012).

² [Indian Entities Recognized and Eligible to Receive Services From the United States Bureau of Indian Affairs](#), Fed. Reg. 81, 86 (May 4, 2016).

³ Wallace Coffey and Rebecca Tsosie, *Rethinking the Tribal Sovereignty Doctrine: Cultural Sovereignty and the Collective Future of Indian Nations*, 12 STAN. L. & POL'Y REV. 191, 196 (2001) (arguing that the concept of "cultural sovereignty" needs to be defined by Native communities and outside the construct of political sovereignty: "[W]e hope to open a dialogue about sovereignty and our collective future that is generated from *within* our tribal communities." *Id.* at 192.). Wallace Coffey is the chairman of the Comanche Nation Business Committee. Rebecca Tsosie is a law professor at the Indian Legal Program at Arizona State University. At the time of publication of this article, Chairman Coffey and Professor Tsosie both served on the board of the directors of the Native American Rights Fund, which they credited as providing the "impetus for this dialogue on cultural sovereignty." *Id.* at n.a1.
⁴ *Id.* at 210.

⁵ Tribes maintain "inherent powers of limited sovereignty which has never been extinguished." *United States v. Wheeler*, 435 U.S. 313, 322–3 (1978) (quoting F. Cohen, HANDBOOK OF FEDERAL INDIAN LAW 122 (1945)). *Wheeler* further explains that "Indian tribes still possess those aspects of sovereignty not withdrawn by treaty or statute, or by implication as a necessary result of their dependent status." *Wheeler*, 435 U.S. at 323. *See also*, Lawrence O. Gostin, PUBLIC HEALTH LAW: POWER, DUTY, RESTRAINT 5, 8–9 (2nd ed. 2008), which describes governments as not only having the power to promote the health and welfare of its citizens but also the duty and obligation to do so.

⁶ COHEN'S HANDBOOK OF FEDERAL INDIAN LAW, § 4.01[1][b]; § 4.01[2] (Nell Jessup Newton et al. eds., 2012), citing Santa Clara Pueblo v. Martinez, 436 U.S. 49, 62–63 (1978). *See also Williams v. Lee*, 358 U.S. 217, 271 (1959), which states that tribes have the "right ... to make their own laws and be ruled by them."

⁷ PHLP utilized WestlawNext, a subscription-only legal research database, to conduct searches for legal publications and Google for additional resources.