



Public Health Law

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

Marijuana Legalization in Indian Country: 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

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

Under US law, however, Congress has the authority to legislate on tribal issues.⁷ Thus, in the context of marijuana legalization efforts in Indian Country,⁸ federal laws may affect legalization implementation.⁹ Laws regulating marijuana are changing rapidly throughout the country.¹⁰ Under federal law, marijuana is still illegal and is classified as a Schedule I drug.¹¹ However, a series of Department of Justice memos under President Obama's Administration indicated that federal resources would not be used at that time to prosecute individuals for marijuana-related crimes in states that have legalized marijuana use¹² as long as eight priority enforcement areas are met.¹³

President Obama's Administration outlined its stance on marijuana-related crimes specific to tribal lands in a 2014 Department of Justice memo.¹⁴ It stated that federal law enforcement in Indian Country related to marijuana would align with eight priorities outlined in the earlier memos described above.¹⁵ The 2014 memo also recognized that "effective federal law enforcement in Indian Country, including marijuana enforcement, requires consultation with our tribal partners."¹⁶

In recent years, some tribes have pursued marijuana cultivation programs on tribal lands.¹⁷ Some tribes have implemented lucrative marijuana programs,¹⁸ whereas others are facing strong resistance from state and federal drug enforcement agencies.¹⁹

Visit the CDC's [Marijuana and Public Health](#) webpage for information on the effects of marijuana on health.



The following resources discuss topics related to marijuana legalization in Indian Country,²⁰ including tribal law and governance related to marijuana and federal and state laws that might affect marijuana legalization in Indian Country. Resources related to the tribal industrial hemp industry, which is often used as a framework for discussion of potential tribal marijuana industries, are also provided.

Tribal Marijuana Laws and Initiatives

These resources discuss the status of tribal laws and initiatives related to marijuana legalization.

- [Flandreau Sioux Put Marijuana Resort On Hold](#)
Mark Walker and Katie Nelson, USA TODAY, Nov. 8, 2015.
Describes one tribe's attempts to navigate the complex and conflicting state and federal marijuana regulations.
- [Why American Indian Tribes Are Getting Into The Marijuana Business](#)
Eliza Gray, TIME, Sept. 4, 2015.
Outlines the potential monetary and public health benefits legalization could provide in Indian Country.
- [Proceed With Caution: A Warning to Tribes Wanting to Grow Medical Marijuana](#)
Alysa Landry, INDIAN COUNTRY TODAY MEDIA NETWORK, Feb. 16, 2015.
Describes the vast investments being made in tribal marijuana projects, but also cautions that the existing regulatory scheme does not guarantee success for those projects.
- [Marijuana Policy in the United States: Information for Tribal Leaders](#)
NAT'L CONG. OF AM. INDIANS (2015).
Describes the legal status of marijuana as of January 20, 2015, and discusses research concerning marijuana use.

Federal and State Marijuana Law: Impact on Tribes

These resources discuss the effects of federal and state laws on marijuana legalization in Indian Country.

- [Is the Grass Always Greener?](#)
Rhylee Marchand, THE ADVOCATE: OFFICIAL PUBLICATION OF THE IDAHO STATE BAR (Oct. 2016).
Describes state legalization of marijuana, the federal government's response, and the effects on tribal legalization.
- [Cannabis on Tribal Lands: An Alternative to Michigan Regulation of Marijuana?](#)
Lance Boldrey, MICHIGAN BAR J. (Aug. 2016).
Discusses marijuana initiatives nationally and with respect to Michigan tribes specifically.
- [Native Americans and the Legalization of Marijuana: Can the Tribes Turn Another Addition into Affluence?](#)
Melinda Smith, 39 AM. INDIAN L. REV. 507 (2016).
Discusses the history of state efforts to regulate tribal industries such as gaming, tobacco sales, and hemp production, and predicts potential implications of those historical trends on marijuana cultivation and sale.

- [Where There's Smoke, There's Fire: The State-Tribal Quandary of Tribal Marijuana](#)
 Kyle Montour, 4 AM. INDIAN L. J. 222 (2016).
 Analyzes the jurisdictional issues surrounding the development of tribal marijuana and potential responses to those issues.
- [Federal Raids Cool Tribal Excitement Over Potential Marijuana Profits](#)
 Cary Spivak, MILWAUKEE WIS. J. SENTINEL (Dec. 12, 2015).
 Describes how federal raids on some tribes are causing other tribes with complex state sovereignty issues to rethink investing in marijuana projects.
- [Native American Tribes Approve Plan to Grow and Sell Marijuana in Oregon](#)
 Associated Press, N.Y. TIMES, Dec. 9, 2015.
 Highlights the potential conflicts between state and federal enforcement of tribal marijuana projects, particularly tribes looking to sell marijuana on nontribal lands.
- [43.06.490 Marijuana Agreements—Federally Recognized Indian Tribes—Tribal Marijuana Tax—Tax Exemption](#)
 WASH. STATE LEGISLATURE (2015).
 Gives an example of one state's marijuana tax policy with regard to Indian tribes.
- [Indian Youth Hurt By Colorado's Marijuana Experiment](#)
 Troy A. Eid, DENVER POST, July 25, 2014.
 Argues that Colorado's marijuana legalization has hurt tribal youth in surrounding states, and cites the lack of uniform federal enforcement as the root of the marijuana diversion problem facing tribal territories.
- [Industrial Hemp: The Crop for the Seventh Generation, 27 American Indian Law Review 313](#)
 Robin Lash, 27 AM. INDIAN LAW REV. 313 (2002).
Access to this link requires paid subscription
 Offers an in-depth look at the different historical uses and regulatory schemes applied to hemp cannabis compared with marijuana cannabis. Section II discusses the sovereignty questions presented by tribes' attempts to grow hemp on tribal lands.

Industrial Hemp in Indian Country

These resources discuss the legal framework supporting the manufacturing of industrial hemp in Indian Country.

- [Native Americans and the Legalization of Marijuana: Can the Tribes Turn Another Addiction into Affluence?](#)
 Melinda Smith, 39 AM. INDIAN L. REV. 507 (2016).
 Discusses the history of states' attempts to regulate tribal industries such as gaming, tobacco sales, and hemp production, and predicts potential implications of those historical trends on marijuana cultivation and sale.
- [DEA Raid on Tribe's Cannabis Crop Infuriates and Confuses Reformers](#)
 Steven Nelson, US NEWS & WORLD REPORT, Oct. 25, 2015.

Highlights discrepancies between regulation of the hemp industry on tribal lands and regulation of marijuana in states with partial or full legalization.

- [Cannabis and Indian Country: Basics 101](#)
Shannon Keller O’Loughlin, Lewis Brisbois Bisgaard & Smith LLP, Law360, Apr. 6, 2015.
Access to this link requires paid subscription
Argues that federal regulation of tribal cannabis operations should differentiate between the two forms of cannabis: marijuana (used medically and recreationally) and hemp (used to make paper, clothing, and other functional products).
- [What Does Marijuana Memo Mean for Hemp Production and Traditional Uses?](#)
Alysa Landry, INDIAN COUNTRY TODAY MEDIA NETWORK (Dec. 18, 2014).
Discusses the potential impact of hemp production on economically depressed tribal territories, and outlines the history of the hemp movement on tribal lands.
- [Industrial Hemp: The Crop for the Seventh Generation](#)
Robin Lash, 27 AM. INDIAN LAW REV. 313 (2002).
Offers an in-depth look at the different historical uses and regulatory schemes applied to hemp cannabis compared with marijuana cannabis. Section IC6 pertains specifically to attempts by tribes to revive hemp production in the United States.

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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.

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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 their citizens but also the duty 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 *Ex parte Crow Dog*, 109 U.S. 556, 572 (1883); *United States v. Kagama*, 118 U.S. 375, 384–5 (1886).

⁸ Federal law defines “Indian Country” as “(a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.” 18 U.S.C. § 1151. See also, COHEN’S HANDBOOK OF FEDERAL INDIAN LAW, § 3.04.

⁹ See, e.g., [Tribal Marijuana Sovereignty Act of 2016, 114 H.R. 5014](#) (This bill was introduced to the house on April 20, 2016, and sought to “protect the legal production, purchase, and possession of marijuana by Indian tribes, and for other purposes.” The bill did not pass).

¹⁰ See, e.g., NATIONAL CONFERENCE OF STATE LEGISLATURES, [Marijuana Overview](#) (Nov. 10, 2016); NATIONAL CONFERENCE OF STATE LEGISLATURES, [State Medical Marijuana Laws](#) (Nov. 9, 2016).

¹¹ Alexander W. Campbell, *The Medical Marijuana Catch 22: How the Federal Monopoly on Marijuana Research Unfairly Handicaps the Rescheduling Movement*, 41 AM. J.L. & MED. 190, 191 (2015) (Describes the system used to classify drugs by their degree of harmfulness; this system is called scheduling)

¹² See, e.g., [Department of Justice \(DOJ\) Memorandum from James M. Cole, Deputy Att’y Gen. to U.S. Attorneys \(Guidance Regarding Marijuana Enforcement\)](#) (Aug. 29, 2013); [Department of Justice \(DOJ\) Memorandum from David W. Ogden, Deputy Att’y Gen. to U.S. Attorneys \(Investigations and Prosecutions in States Authorizing the Medical Use of Marijuana\)](#). (Oct. 19, 2009).

¹³ [Department of Justice \(DOJ\) Memorandum from James M. Cole, Deputy Att’y Gen. to U.S. Attorneys \(Guidance Regarding Marijuana Enforcement\)](#) (Aug. 29, 2013) (The eight enforcement priorities are 1) preventing the distribution of marijuana to minors; 2) preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels; 3) preventing the diversion of marijuana from states where it is legal under state law in some form to other states; 4) preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity; 5) preventing violence and the use of firearms in the cultivation and distribution of marijuana; 6) preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use; 7) preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and 8) preventing marijuana possession or use on federal property). Please note, future administrations may take a different approach to this issue.

¹⁴ [Department of Justice \(DOJ\) Memorandum from Monty Wilkinson, Director, to U.S. Attorneys \(Policy Statement Regarding Marijuana Issues in Indian Country\)](#) (Oct. 28, 2014) (This memo was intended to provide clarification on the Ogden Memo’s pertinence to tribes; it spurred many tribes to pursue marijuana cultivation on tribal lands). Please note, future administrations may take a different approach to this issue.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ See, e.g., Cary Spivak, *DEA Raids Cool Tribal Excitement over Potential Marijuana Profit*, MILWAUKEE WISCONSIN JOURNAL SENTINEL, Dec. 12, 2015; Cary Spivak, *Menominee Tribal Members Approve On-Reservation Marijuana Use*, MILWAUKEE WISCONSIN JOURNAL SENTINEL, Aug. 21, 2015; Little Traverse Bay Bands of Odawa Waganakising Odawa Tribal Code 9.1204 (2011) (legalizing medical marijuana on tribal lands); Oglala Sioux Tribal Penal Code tit. 9,

§ 106.00 (2002) (legalizing industrial hemp agriculture); Washington State Liquor and Cannabis Board, “Liquor and Cannabis Board and Suquamish Tribe Sign Marijuana Compact” (2013) (detailing the nation’s first state-tribal marijuana compact to allow the Suquamish Tribe to produce, process, purchase, and sell marijuana on the tribal land).

¹⁸ See, e.g., Associated Press News, *Seneca Nation Lays Groundwork for Medical Marijuana Business*, ASSOCIATED PRESS, Nov. 4, 2015; Walker Orenstein, *Puyallup Tribe Pursuing Medical Marijuana Grow after Signing Deal with State*, THE NEWS TRIBUNE, Aug. 3, 2016; First Alert 48 WAFF, *Las Vegas Paiute Tribe Breaks Ground for Medical Cannabis Dispensary in Downtown Las Vegas*, FIRST ALERT 48 WAFF, Feb. 29, 2016.

¹⁹ See, e.g., Regina Garcia Cano and James Nord, *South Dakota Charges 2 Men Trying to Help Launch Pot Resort*, ASSOCIATED PRESS, Aug. 3, 2016; Amber Cortes, *Cannabis on Tribal Land a ‘50/50 Gamble’ for Native Americans in Washington*, THE GUARDIAN, May 29, 2016; Jenny Espino, *Federal Agents Raid Marijuana Farm on Pit River Tribal Land*, RECORD SEARCHLIGHT, July 9, 2015.

²⁰ PHLP collected resources for this document during June–November 2016. PHLP used public search engines such as Google Scholar and subscription-based legal databases such as WestlawNext and Lexis Advance.