



Kansas Legislative Research Department

Providing nonpartisan, objective research and fiscal analysis for the Kansas Legislature since 1934

68-West–Statehouse | 300 SW 10th Ave. | Topeka, Kansas 66612-1504
(785) 296-3181

kslegres@klrd.ks.gov

kslegislature.org/klrd

September 6, 2024

To: Joint Committee on State-Tribal Relations

From: Elaina Rudder, Senior Research Analyst

Re: Additional Resources

ADDITIONAL RESOURCES

This memorandum provides a list of additional resources related to State-Tribal relations in Kansas and at the federal level. It includes brief summaries of federal laws, U.S. Supreme Court decisions, and presidential directives.

Kansas Resources

State Agencies and Offices

- [Kansas State Gaming Agency](#)
- [Kansas Office of Native American Affairs](#)
- [University of Kansas School of Law Tribal Law and Government Center](#)

Compacts and Technical Standards

Iowa Tribe of Kansas and Nebraska

- [Gaming Compact](#)
- [Technical Standards](#)

Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas

- [Gaming Compact](#)

- [Technical Standards](#)

Prairie Band Potawatomi Nation in Kansas

- [Gaming Compact](#)
- [Technical Standards](#)

Sac and Fox Nation of Missouri in Kansas and Nebraska

- [Gaming Compact](#)
- [Technical Standards](#)

Federal Resources

Federal Agencies and Offices

The following is a non-exhaustive list of federal agencies and offices that provide services to Native American people and Tribal governments:

- [Department of Agriculture, Office of Tribal Relations;](#)
- [Department of Health and Human Services, Administration for Native Americans;](#)
- [Department of Health and Human Services, Indian Health Service;](#)
- [Department of Housing and Urban Development, Office of Public and Indian Housing;](#)
- [Department of Interior, Bureau of Indian Affairs;](#)
- [Department of Interior, Indian Arts and Crafts Board;](#)
- [Department of Interior, Interior Board of Indian Appeals;](#)
- [Department of Interior, Bureau of Indian Education;](#)
- [Department of Justice, Office of Tribal Justice;](#)
- [Department of Transportation, Office of Tribal Transportation;](#)
- [Department of Veterans Affairs, Center for Minority Veterans;](#)

- [Environmental Protection Agency, Office of International and Tribal Affairs;](#)
- [National Indian Gaming Commission;](#)
- [U.S. Geological Survey, Office of Tribal Relations;](#)
- [U.S. Small Business Administration, Office of Native American Affairs;](#) and
- [White House Council on Native American Affairs.](#)

Congressional Committees

- [House Committee on Natural Resources](#)
- [House Committee on Natural Resources Subcommittee on Indian and Insular Affairs](#)
- [Senate Committee on Indian Affairs](#)

Federal Laws

Numerous federal laws regulate Indian affairs. Below are brief descriptions of some of these federal laws.

[American Indian Religious Freedom Act Amendments of 1978](#)

The American Indian Religious Freedom Act of 1978 protects the rights of Native Americans to exercise their traditional religions by ensuring access to sites, use and possession of sacred objects, and the freedom to worship through ceremonies and traditional rites.

[Federally Recognized Indian Tribe List Act of 1994](#)

The Federally Recognized Indian Tribe List Act of 1994 requires the Secretary of Interior to annually publish a list of all federally recognized Indian Tribes in the [Federal Register](#) and established three ways for an Indian group to become federally recognized:

- Through the Federal Acknowledgment Process;
- By congressional act; or
- Pursuant to a U.S. court decision.

Federal acknowledgment process. The [Office of Federal Acknowledgment](#) (OFA) within the Office of the Assistant Secretary—Indian Affairs (AS-IA), Department of Interior, implements the *Procedures for Federal Acknowledgment of Indian Tribes* ([25 CFR Part 83](#)).

OFA makes recommendations to the AS-IA, and the AS-IA decides whether to acknowledge a Tribe and establish a government-to-government relationship.

Congressional act. Numerous acts of Congress recognizing Tribes have been passed and signed into law. An example is Section 2870 of the National Defense Authorization Act for FY 2020, which recognized the Little Shell Tribe of Chippewa Indians of Montana. The bill also declared that federal recognition was extended to the Tribe and directed the Secretary of the Interior to acquire land in a trust for use as a Tribal land base.

Court decisions. Although courts have the authority to grant federal recognition, most courts generally decline to do so.

List of Recognized Indian Tribes. According to a [Congressional Research Service report](#), as of January 2024, 574 Tribes in the United States were federally recognized. The report, in addition to the *Federal Register* notice, lists all 574 recognized Indian Tribes.

[Indian Child Welfare Act of 1978](#)

The Indian Child Welfare Act (ICWA) establishes minimum federal standards for the removal of Indian children from their families and for the placement of such children in foster care or adoptive homes that reflect Indian culture. ICWA also provides guidance to states regarding the handling of child abuse and neglect and adoption cases involving Indian children and sets minimum standards for handling such cases.

[Indian Citizenship Act of 1924](#)

The Indian Citizenship Act of 1924 granted citizenship to all Native Americans born in the United States.

[Indian Civil Rights Act of 1968](#)

The Indian Civil Rights Act (ICRA), commonly known as the Indian Bill of Rights, protects specified rights of Native Americans and non-Indians from being violated by the governments of federally recognized Tribes, encourages Tribal self-governance, and requires most cases be brought in Tribal courts when possible. ICRA prohibits Tribal governments from making and enforcing laws that deny anyone the following rights:

- Freedom of speech, press, and assembly;
- Freedom from unreasonable search and seizures;
- Freedom from prosecution more than once for the same offense;
- Not testifying against yourself in a criminal case;
- Not having private property taken for public use without just compensation;

- A speedy and public trial, to be informed of the charges, to confront witnesses, to subpoena witnesses, and to have a lawyer's assistance, at the defendant's own expense, in all criminal cases;
- Freedom from excessive bail, excessive fines, and cruel and unusual punishment;
- Freedom from punishment or imprisonment for more than one year and a fine of \$5,000 or both for the conviction of any one offense, unless due process requirements are met;
- Freedom from punishment of imprisonment for more than nine years for all offenses requiring sentences resulting from one criminal proceeding;
- A trial by jury of at least six persons, upon request, if accused of a criminal offense punishable by imprisonment;
- Equal protection of the laws and freedom from deprivation of liberty or property without due process of law;
- Freedom from any bill of attainder; and
- Freedom from *ex post facto* law.

[Indian Gaming Regulatory Act](#)

The Indian Gaming Regulatory Act (IGRA), enacted in 1988, regulates the conduct of gaming on Indian lands and establishes the National Indian Gaming Commission and regulatory structure for Indian gaming in the United States. IGRA allows traditional Indian gaming, bingo, pull tabs, lotto, punchboards, tip jars, and certain card games on Tribal land. IGRA also requires a Tribal-State compact for other forms of gaming, such as cards and slot machines.

[Indian Reorganization Act](#)

The purpose of the Indian Reorganization Act (IRA), also known as the Wheeler-Howard Act or the Indian New Deal, enacted in 1934, was to decrease federal control of Indian affairs and increase Indian self-government. The IRA made the following changes concerning Tribal self-governance and Tribal lands:

- Ended the allotment of Tribal land, provided ways to reduce the loss of Tribal land, and prohibited the taking of land from Tribes without their consent;
- Recognized Tribal governments and offered incentives for Tribes to adopt U.S.-style constitutions and systems of government;
- Allocated funds for Indian education;

- Established a hiring preference for Indians in the Bureau of Indian Affairs; and
- Reversed the federal policy of forced assimilation into American society.

[Indian Self-Determination and Education Assistance Act of 1975](#)

The Indian Self-Determination and Education Assistance Act (ISDEAA) gives Indian Tribes greater autonomy and the authority to contract with the federal government, specifically the Department of the Interior and Department of Health and Human Services, to administer certain programs and services with federal funding, referred to as self-determination contracts.

In 1994, the Tribal Self-Governance Act amended ISDEAA to add Title IV, which authorizes the Department of the Interior to enter into self-governance compacts with federally recognized Tribes. Self-governance compacts permits Tribes to assume the control over and funding of some federal programs, services, functions, or activities that the Department of the Interior otherwise would provide directly to Tribes. Title IV also established the Office of Self-Governance and the Office of the Assistant Secretary—Indian Affairs in the Department of the Interior.

[Tribal Law and Order Act of 2010](#)

The Tribal Law and Order Act emphasizes decreasing violence against American Indian and Alaska Native women; addresses crime in Tribal communities; encourages the hiring of more law enforcement officers for Indian lands; provides additional tools to address critical public safety needs; enhances Tribal authority to prosecute and punish criminals; expands efforts to recruit and retain Bureau of Indian Affairs and Tribal police officers; provides Bureau of Indian Affairs and Tribal police officers with greater access to criminal information sharing databases; authorizes new guidelines for handling sexual assault and domestic violence crimes; and encourages the development of more effective prevention programs to combat alcohol and drug abuse among at-risk youth.

[Native American Graves Protection and Repatriation Act](#)

The Native American Graves Protection and Repatriation Act, enacted in 1990, requires federal agencies and institutions receiving federal funds to repatriate or transfer Native American human remains and other cultural items to the appropriate parties by doing the following:

- Consulting with lineal descendants, Indian Tribes, and Native Hawaiian organizations;
- Protecting and planning for Native American remains or other cultural items that may be removed from federal or Tribal lands;
- Identifying and reporting all Native American human remains and other cultural items in inventories and summaries of holdings or collections; and

- Giving notice prior to repatriating or transferring human remains and other cultural items.

Recent U.S. Supreme Court Decisions

[Becerra v. San Carlos Apache Tribe \(2024\)](#)

The Court held that the Indian Self-Determination and Education Assistance Act requires the Indian Health Service (IHS) to pay the contract support costs that a Tribe incurs when it collects and spends program income to further services, activities, and programs transferred to it from IHS in a self-determination contract.

[Arizona v. Navajo Nation \(2023\)](#)

The Court held the 1868 treaty establishing the Navajo Reservation reserved necessary water to accomplish the purpose of the Navajo Reservation, but the treaty did not require the United States to take affirmative steps to secure water for the Tribe.

[Haaland v. Brackeen \(2023\)](#)

The Court upheld ICWA and found it is consistent with Congress's Article I authority and does not violate the anti-commandeering principles of the Tenth Amendment.

[Lac du Flambeau Band of Lake Superior Chippewa Indians v. Coughlin \(2023\)](#)

The Court held the Bankruptcy Code unequivocally abrogates the sovereign immunity of all governments, including federally recognized Indian Tribes.

[Denezpi v. United States \(2022\)](#)

The Court held the Double Jeopardy Clause of the Fifth Amendment of the *U.S. Constitution* does not bar successive prosecutions of distinct offenses arising from a single act, even if a single sovereign, such as an Indian Tribe, prosecutes them.

[Oklahoma v. Castro-Huerta \(2022\)](#)

The Court held that the federal government and the state have concurrent jurisdiction to prosecute crimes committed by non-Indians against Indians in Indian Country.

[Ysleta del Sur Pueblo v. Texas \(2022\)](#)

The Court determined the federal legislation at issue, the Ysleta del Sur and Alabama and Coushatta Indian Tribes of Texas Restoration Act, as a matter of federal law, bans on Tribal lands only those gaming activities also banned in Texas.

[United States v. Cooley \(2021\)](#)

The Court found that a Tribal police officer has authority to detain temporarily and to search a non-Indian person traveling on a public right-of-way within a reservation for potential violations of state and federal law.

[Yellen v. Confederated Tribes of the Chehalis Reservation \(2021\)](#)

The Court determined that Alaska Native Corporations are “Indian tribes” under the Indian Self-Determination and Education Assistance Act and are therefore eligible for funding available to “Tribal governments” under Title V of the Coronavirus Aid, Relief, and Economic Security Act.

[McGirt v. Oklahoma \(2020\)](#)

The Court determined, for the purposes of the Major Crimes Act, land in Eastern Oklahoma reserved for the Creek Nation since the 19th Century remains a Native American territory.

[Herrera v. Wyoming \(2019\)](#)

The Court held Wyoming’s statehood did not abrogate the Crow Tribe’s 1868 federal treaty right to hunt on the “unoccupied lands of the United States.” The Court further held the lands of the Bighorn National Forest did not become categorically “occupied” when the forest was created.

[Washington State Department of Licensing v. Cougar Den, Inc. \(2019\)](#)

The Court affirmed the Supreme Court of Washington’s judgment that the “right to travel” provision of the 1855 Treaty Between the United States and the Yakama Nation of Indians preempts the state’s fuel tax as applied to Cougar Den’s importation of fuel by public highway for sale within the reservation.

Recent Executive Orders and Presidential Memoranda

[EO 14112: Reforming Federal Funding and Support for Tribal Nations to Better Embrace Our Trust Responsibilities and Promote the Next Era of Tribal Self-Determination \(2023\)](#)

Executive Order (EO) 14112 requires federal agencies to reform federal funding and support programs to be more accessible, flexible, and equitable; creates a one-stop-shop for federal funding available to Tribes ([Tribal Access to Capital Clearinghouse](#)); and creates a process for the federal government to assess unmet federal funding needs consistent with trust responsibilities to Tribal Nations.

[EO 14053: Improving Public Safety and Criminal Justice for Native Americans and Addressing the Crisis of Missing or Murdered Indigenous People \(2021\)](#)

EO 14053 directs the Attorney General, the Secretary of the Interior, and the heads of other executive departments and agencies to assess and build on existing efforts to develop a coordinated and comprehensive federal law enforcement strategy to prevent and respond to violence against Native Americans; develop guidance, identify leading practices, and provide training and technical assistance to non-federal law enforcement agencies; and sustain efforts to improve data collection and information-sharing practices, conduct outreach and training, and promote accurate and timely access to information services.

EO 14053 also directs the Secretary of Health and Human Services, in consultation with the Secretary of the Interior, Tribal Nations, and other agencies, researchers, and community-based organizations, to develop a comprehensive plan to support prevention efforts that reduce risk factors of victimization of Native Americans and increase protective facts.

[EO 14049: White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Native Americans and Strengthening Tribal Colleges and Universities \(2021\)](#)

EO 14049 establishes the White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Native Americans and Strengthening Tribal Colleges and Universities (Initiative) in the Department of Education. The Initiative is required to consult and collaborate with Tribal Nations; Alaska Native Entities; Tribal colleges and universities; and State, Tribal, and local educational departments and agencies to advance educational equity, excellence, and economic opportunity for Native Americans.

[Presidential Memorandum: Tribal Consultation and Strengthening Nation-to-Nation Relationships \(2021\)](#)

This Presidential Memorandum directs the head of each agency to submit to the Director of the Office of Management and Budget (OMB) a detailed plan of actions the agency will take to implement the policies of [EO 13175](#) after consultation with Tribal Nations and Tribal officials; designate an appropriate agency official to coordinate implementation of the plan and preparation of progress reports required by the memorandum; and submit reports to the Assistant to the President for Domestic Policy (APDP) and the Director of OMB, who will review the plans and reports for consistency with EO 13175. The Director of OMB and APDP are required to report to the President detailing the implementation of EO 13175 across the executive branch based on the review of agency plans and reports and making any recommendations to improve such plans and Tribal consultation.