

Kansas
Office of Native
American Affairs



KNAA Office

The Kansas Office of Native American Affairs (KNAA) is responsible for maintaining, strengthening and enhancing the State's government to government relationship with the four Tribal Nations of Kansas.

The KNAA office works to strengthen State-Tribal relations by providing state agencies with education on laws and regulations that affect state issues to ensure Tribal voices are recognized in state policy making decisions and that those decisions that do not infringe on Tribal sovereignty.

KNAA Office

- Assists state agencies in implementing Tribal consultation and outreach activities to ensure access to state services.
- Coordinates intergovernmental communications to enhance and strengthen the relationship with the State, the Tribes, and federal and state agencies.
- Provide counsel to the Governor and state agency leaders on laws and policies related to or impacting Tribal Nations.
- Leads consultations, engages in collaborations and provides coordination, support and education for state agencies to assist with relationship building with the Tribal leaders in areas of mutual interest.

Tribal Liaison

The KNAA office recognizes the inherent sovereignty of the Kansas Tribes and works only with the constitutionally elected Tribal officials.

The KNAA office assists with issues on Tribal lands only at the request of the Tribally elected officials.

Identifies and streamlines processes while developing opportunities for forums to address policies, program challenges and services that support the needs of Tribal Nations.

Assists Tribal governments and organizations to access programs and services throughout state agencies.

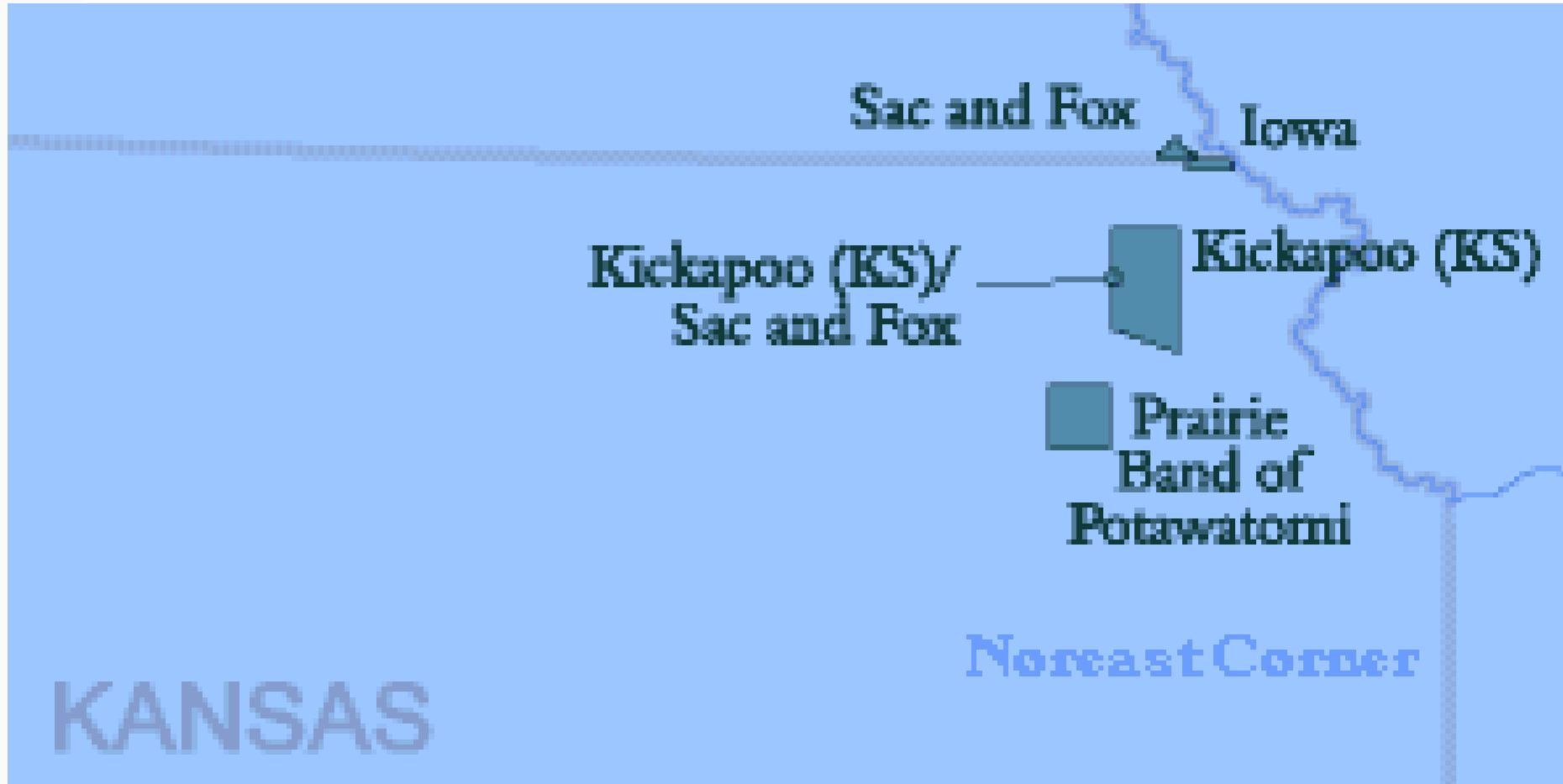
KNAA 2025 Initiatives

Reinstitute the Native American Law Symposium

Assume the responsibilities of the Native American Legislative Day at the capital event



How many federally recognized Tribes reside in Kansas?



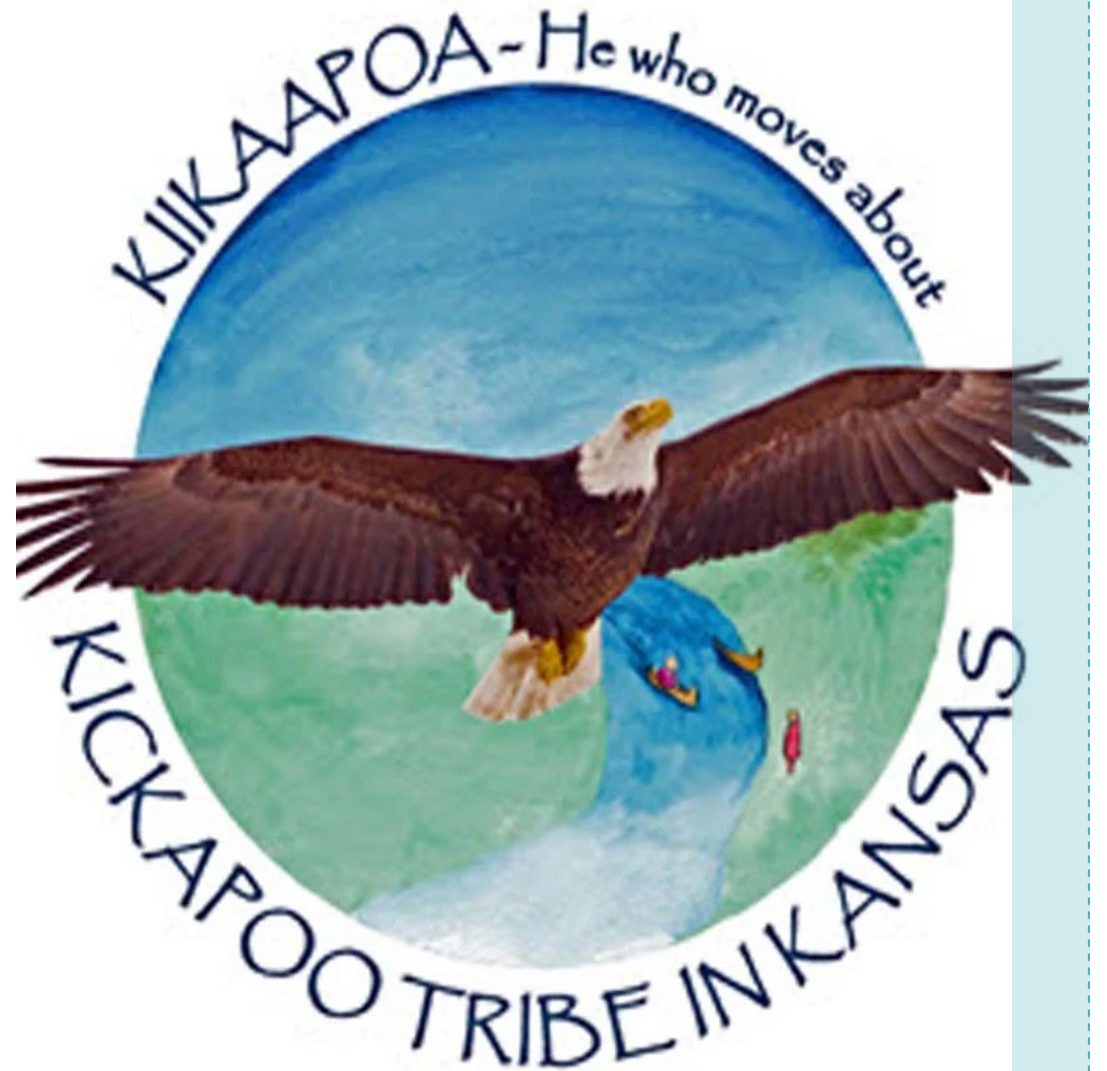


Treaty of 1832 established their original 30 x 30 mile reservation.

Today they reside on a 11 x 11 mile reservation in Jackson County.

Treaty of 1832
established their
original reservation.

1854 Treaty provided
terms of the
reservation they
currently reside on in
Brown County, KS.





Treaty of 1837 removed them from Iowa to Kansas.

1861 Treaty established their original reservation.

Today they reside on a reservation in Brown and Doniphan County.

The Treaty of 1836 established their original KS reservation.

Treaties in 1854 and 1861 reduced their reservation lands, the later provided lands that established the Sac and Fox reservation.

The 1861 Treaty reduced lands to 12,038 acre as the reservation they current reside on in Brown County, KS and Richardson County, NE.



What is a treaty?

A treaty is a contract between nations.

In the context of Tribal Nations, treaties are contracts between tribal governments and the federal government.

Before treaties come into effect, they must be ratified by the U.S. Senate.

There were 370 treaties with Tribes ratified by the U.S. Senate from 1776 to 1871.

45 Treaties were negotiated but never ratified.

Treaties

In 1871, the United States ceased treaty-making with Tribes.

Treaties are significant in defining the relationship between the Tribes and the U.S. government.

Treaties serve as the basis for Tribal rights to territory, water, jurisdiction, religious freedom, hunting grounds, and numerous other rights.

Ratified treaties affirm an agreement made by the United States with a sovereign nation.

Treaties signify the fact that the U.S. legally recognizes Tribal nations as sovereign political entities and that there remains an on-going obligation to recognize and uphold terms of the agreement.

Treaties remain the supreme law of the land.

What is federal recognition of a Tribe?

Federal recognition is the “legal acknowledgement” of the sovereign and separate political status of Tribes by the federal government.

It establishes a political and legal relationship between a Tribe and the U.S., which carries rights and responsibilities for both parties.

Federal recognition permits Tribes to access certain federal resources that trigger the operation of an entire body of Federal law – Title 25 of the Code of Federal Regulations (CFR).

How do Tribes become federally recognized?

- ♦ Most Tribes have gained their federal recognition based on treaties.

There are three other ways a Tribe can gain federal recognition.

An act of Congress

Presidential Executive Orders

The Federal Acknowledgement Process found in Title 25 Code of Federal Regulations Part 183 (1978)

Federal Acknowledgement Process

Title 25 CFR - Part 183 governs the U.S. Department of the Interior's (DOI) administrative process for determining which groups are "Indian tribes" within the meaning of Federal law.

Administered by the Office of Federal Acknowledgment (OFA), current procedures require petitioning Tribes to meet seven mandatory criteria to become federally recognized.

To qualify for federal acknowledgement, groups must establish a substantially continuous Tribal existence and have functioned as autonomous entities throughout history until the present.

The DOI does not "grant" a sovereign status or powers to a Tribe, nor does it create a Tribe made up of Indian descendants.

As of 1.8. 2024 there are currently 574 federally recognized Tribes in the U.S.

What is Tribal sovereignty?

Tribal Sovereignty is the inherent authority of Tribes to govern themselves.

Tribal sovereignty existed *prior* to colonization.

The U.S. Supreme Court has acknowledged that Tribal governments are the oldest sovereigns on the continent.

Tribal sovereignty predates the sovereignty of the United States.

U.S. law recognizes that each federally recognized Tribe's sovereignty is inherent.

Meaning Tribal sovereignty is not derived from an outside legal source, such as the U.S. government or earlier colonial government.

Tribal Sovereignty includes the right to:

- ♦ Assert independent nationhood and govern itself
- ♦ Establish its own form of government
- ♦ Determine its own citizenship/ membership

Enact laws and legislation

Establish a judicial system including law enforcement and a Tribal courts

Preserve its unique culture

Control its own economy

The federal government recognizes and affirms the political status of Tribes as a unique sovereign government.

Recognizing Tribal sovereignty, both federal and state executive agencies deal exclusively with elected Tribal leadership.

All four Tribes in Kansas are federally recognized sovereign nations.

How do Kansas Tribes operate?

In the era of federal policy known as Reorganization, Tribes were required to reorganize their governments using a boiler plate model similar to the U.S. Constitution.

Each Tribe in Kansas operates according to a unique Tribal constitution that is approved by the U.S. Secretary of the Interior.

The four Tribal councils in Kansas serves as both the executive and legislative bodies of the Tribe.

Each Tribe in Kansas has a separate judicial branch of government.

Tribal membership

Every federally recognized Tribe has the sovereign right to determine its own membership.

A 1978 Supreme Court case affirmed Tribes retain full control of this right.

Tribes have a membership section in their constitutions that provides its unique membership requirements.

Merely having an ancestor who is Tribal or American Indian is not sufficient to make someone a member or citizen of a Tribe.

Triplex of Citizenship

Being a member of a federally recognized Tribe provides a unique membership status within a sovereign nation.

Individual Tribal members carry a unique triplex of citizenship

1. First of the federally recognized Tribe they are enrolled in
2. Since 1924 are citizens of the United States
3. Today are citizens of the state in which they are domiciled

Are Tribes considered a racial minority?

Tribal peoples in the U.S. are frequently misclassified as a racial minority, however “Native American” or “American Indians” are not strictly racial categories.

Tribal membership differs from racial minority groups because it requires membership, and that membership is unique and recognized by law as a distinct legal, historical and political relationship with the federal government.

Two Supreme Court cases affirm Tribal membership is a political designation, not a racial one.

What is Tribal Self Determination?

Self Determination is the ability of a Tribe to assert control over its own affairs.

Self-determination includes a Tribes' right to freely determine their political status.

The right to freely pursue their distinct economic, social and cultural development.

Self-Determination is a federal governmental policy codified in federal law.

The Indian Self-Determination and Education Assistance Act of 1975 allows tribes to contract with the Bureau of Indian Affairs and the Indian Health Service to operate programs including health care, law enforcement, education, and social services programs.

The Indian Child Welfare Act of 1978 gives Indian tribes and Indian families substantial protections against the removal of Indian children from their homes by state agencies and state courts.

The Indian Gaming Regulatory Act of 1988 confirms the authority of Indian tribes to engage in gaming to raise revenue and promote economic development.

The Indian Arts and Crafts Act of 1990 prohibits goods from being labeled as “authentic Indian made” unless they are made by enrolled members of federally recognized Tribes , and permits a recover mechanism for damages.

Also in 1990, Congress passed the Native American Graves Protection and Repatriation Act (NAGPRA), which creates a mechanism for Tribes to recover religious and cultural items stored in museums and protects any human remains or artifacts found in the future on federal or Tribal land.

In 2013 and again in 2022, Congress amended the Violence Against Women Act (VAWA) and restored to Indian Tribes the authority to arrest and prosecute non-Indians who commit certain crimes of violence against Native American women and children on Indian reservations.

For decades now, Congress has promoted greater Tribal autonomy within the framework of a ‘government-to-government’ relationship.

President Clinton issued an Executive Order 13175, still in effect, that requires all federal agencies to relate to Indian tribes on a “government-to-government” basis, respectful of Tribal sovereignty.

In 2000, Clinton further ordered federal agencies to work to protect “Tribal trust resources, and Indian Tribal treaty and other rights.”

President Obama notably issued a Memorandum on Uniform Standards for Tribal Consultation requiring federal agencies, from the outset of deliberations, to engage in meaningful consultation with Tribal governments.

President Biden issued a Presidential Memorandum: Tribal Consultation and Strengthening Nation-to-Nation Relationships with Tribal Nations on January 26, 2021.

Executive Order 14112: Reforming Federal Funding and Support for Tribal Nations to Better Embrace Our Trust Responsibilities and Promote the Next Era of Tribal Self-Determination on December 6, 2023.

Strengthening State- Tribal Relations in Kansas

Just as this committee is established here in the state of Kansas, both the U.S. House and Senate have established specific legislation committees that work on Tribal issues.

In the U.S. Senate, is the Indian Affairs Committee.

In the U.S. House, is the Subcommittee on Native American and Insular Affairs of the House Resources Committee.

Jurisdiction in Kansas

Tribes are quasi-sovereign entities that enjoy all the sovereign powers that are not divested by Congress.

Tribes in Kansas continue to exercise inherent sovereignty on their lands and reservations which includes a fundamental right to uphold Tribal laws within their jurisdiction.

On reservations the type of crime and what type of land the violation occurs on determines who has jurisdiction over the crime.

Civil Regulatory Jurisdiction

Courts have reaffirmed numerous times Tribes have civil regulatory jurisdiction on their lands within their reservation boundaries.

Tribal Jurisdiction over Tribal members

Each tribe is said to retain its original or inherent jurisdiction except if the jurisdiction has been

1. relinquished or ceded by the Tribe itself through a treaty or other agreement.
2. expressly abrogated or taken away by Congress.
3. deemed by the judiciary to have been implicitly lost by virtue of the Tribe's historical circumstances and contemporary status.

Tribal Jurisdiction over Non -Indians

Under the framework found in the 1980 Supreme Court case *Montana v. United States*

There is said to be, absent express authorization by federal statute or treaty, a presumption against tribal civil jurisdiction over non-members.

This presumption applies to regulation, taxation, or adjudication of non-member conduct, regardless of whether that conduct took place on tribal, Indian-owned or non-Indian owned land within a reservation.

Tribal Jurisdiction over Non -Indians

A Tribe will have jurisdiction over the non-member conduct only if it shown that either

1. the conduct arises out of a consensual relationship with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements.
2. the conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.

Criminal Jurisdiction

In 1885 Congress passed the Major Crimes Act which gives the federal government exclusive jurisdiction to prosecute crimes that occur within Indian country by or against Indians for seven major crimes.

- Murder
- Manslaughter
- Rape
- Assault with intent to kill
- Arson
- Burglary
- Larceny

The Kansas Act of 1940

An act passed by the US Congress, exercising its power under the Indian Commerce Clause.

Jurisdiction is conferred on the State of Kansas over offenses committed by or against Indians on Indian reservations, including trust or restricted allotments, within the State of Kansas, to the same extent as its courts have jurisdiction over offenses committed elsewhere within the State in accordance with the laws of the State.

The Kansas Act was initially passed to address the jurisdictional gap caused by a lack of Tribal law enforcement and judicial systems.

Circumstances have changed and all four Tribes have addressed the jurisdictional gap that once existed.

The double jeopardy clause in the fifth amendment of the U.S. Constitution guarantees no citizen can be tried for the same crime twice.

Tribal members are subjected to 3 layers of jurisdiction and can be prosecuted for the same crime 3 times by Federal, State and Tribal authorities.

Changes in Kansas Tribal Judicial systems

Tribal Law and Order Codes

Tribal court systems

Tribal law enforcement

In Kansas as of 2007 – Tribal law enforcement officers employed by a Tribe can now exercise the same authority as state officers within the external boundaries of a reservation.

Tribal Law Enforcement in Kansas

All four Tribes have trained and certified Tribal law enforcement officers.

All Tribal officers attend State and Federal law enforcement academies.

- ♦ When training is completed, Tribal officers become certified deputized law enforcement officers like other law enforcement officers across the country.

Thank You

www.knaa.ks.gov

knaa@ks.gov

