



Public Health Law

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

Menu of Selected Tribal Laws Related to Infectious Disease Control

Tribes are sovereign nations that maintain a government-to-government relationship with the United States.¹ There are currently 566 federally recognized tribes throughout the contiguous United States and Alaska.² As sovereign governments, tribal authority cannot be infringed upon by states;³ however, the US Supreme Court has held that Congress has the authority to legislate on tribal issues.⁴ In addition to political sovereignty, tribes exercise cultural sovereignty in the form of traditions and religious practices unique to each tribe's history and culture.⁵ Cultural sovereignty "encompasses the spiritual, emotional, mental, and physical aspects" of Native people's lives and serves as a foundation to tribal exercise of political sovereignty.⁶

In the context of infectious disease control, tribes have inherent authority to protect the public health and welfare of their citizens using methods most relevant for their communities.⁷ Some tribes

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 Bureau of Indian Affairs, Fed. Reg. 77, 155 (Aug. 10, 2012) available at <http://www.gpo.gov/fdsys/pkg/FR-2012-08-10/pdf/2012-19588.pdf>.

³ *Williams v. Lee*, 358 U.S. 217, 271 (1959). Note Public Law 280 and other jurisdictional exceptions are applicable in certain states.

⁴ *Ex parte Crow Dog*, 109 U.S. 556, 572 (1883); *United States v. Kagama*, 118 U.S. 375, 384–5 (1886).

⁵ 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.a.1.

⁶ *Id.* at 210.

⁷ 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.



have also enacted laws regarding infectious disease control measures. This menu summarizes selected tribal code provisions related to infectious disease control.⁸

Contact Tracing and Partner Notification Laws

The code of the Sac & Fox Tribe of the Mississippi in Iowa contains several contact tracing and partner notification laws, which allow public health practitioners to reach out to individuals who have been exposed to sexually transmitted infections or other infectious diseases.⁹ First, the code requires healthcare providers to provide the tribal health director a report for each occurrence of “disease raising a potential health emergency,”¹⁰ which includes cholera, measles, meningococcal disease, smallpox, tuberculosis, and yellow fever, among others.¹¹ The report must also include “information regarding other persons identified as potentially having contracted the disease.”¹² The code then requires that “the Health Director shall notify in writing those persons who could be at risk of contracting or having contracted the disease. This may include but is not limited to:

- (i) the infected person’s school or employer as applicable;
- (ii) any health care or emergency services provider who may have been in contact with the infected person since the date or estimated date of contraction of the disease;
- (iii) any other individual, group, entity, association, organization, or other relevant body or person identified by the infected person in consultation with a Health Care Provider who could be at risk of contracting the Disease Raising a Potential Health Emergency.”¹³

The code further requires healthcare providers to provide the tribal health director a report for instances of sexually transmitted diseases that includes “the name and address of each person with whom the person having the disease has had sexual contact (or other contact through which the disease is frequently spread) from the time the person is believed to have contracted the disease through the date of the report.”¹⁴ The tribal health director must then “notify in writing, those persons whom the infected person has identified as bearing potential risk of infection with the disease through sexual contact or other contact which has been identified as frequently spreading the disease.”¹⁵

⁸ CDC’s Public Health Law Program (PHLP) collected tribal code provisions in July and August 2014 using WestlawNext, a legal research database. PHLP selected the provisions for inclusion in this document based on technical assistance requests received on these legal domains. The following tribal codes are available using this database: Absentee Shawnee Tribe of Indians; Confederated Tribes of the Colville Reservation; Confederated Tribes of Siletz Indians; Coquille Indian Tribe; Eastern Band of Cherokee Indians; Grand Traverse Band of Ottawa & Chippewa; Kalispel Tribe of Indians; Leech Lake Band of Ojibwe; Little River Band of Ottawa Indians; Little Traverse Bay Bands of Odawa; Mashantucket Pequot; Navajo Nation; Oneida Tribe of Indians of Wisconsin; Poarch Band of Creek Indians; Ponca Tribe of Nebraska; Prairie Band Potawatomi Nation; Sac & Fox Tribe of the Mississippi in Iowa; Snoqualmie Indian Tribe; Squaxin Island Tribe; Standing Rock Sioux; Swinomish Indian Tribal Community; White Earth Nation; Wind River Reservation, Eastern Shoshone & Northern Arapaho Tribes; and Yurok Tribe of California.

⁹ For a discussion of the definition and types of partner notification, including contract tracing, see Lawrence O. Gostin and James G. Hodge, Jr., *Piercing the Veil of Secrecy in HIV/AIDS and Other Sexually Transmitted Diseases: Theories of Privacy and Disclosure in Partner Notification*, 5 DUKE J. GENDER L. & PO’Y 9, 14–5 (1998).

¹⁰ SAC & FOX TRIBE IN IOWA CODE § 12–4201 (2011).

¹¹ *Id.* at § 12–4101(a).

¹² *Id.* at § 12–4201(d).

¹³ *Id.* at § 12–4303(a).

¹⁴ *Id.* at § 12–4202(d).

¹⁵ *Id.* at § 12–4304(a).

Quarantine, Isolation, and Exclusion Laws

Tribal codes also offer examples of quarantine, isolation, and exclusion laws.¹⁶ Under the Cherokee Code of the Eastern Band of the Cherokee Nation, “[w]ithin all lands held in trust for the Eastern Band of Cherokee Indians, the Deputy Health Officer is empowered to investigate, or invite appropriate Federal or North Carolina state health officials to investigate, communicable diseases and communicable conditions reported to him/her, and to exercise quarantine and isolation authority.”¹⁷ The code further states that “[a] law enforcement officer may detain an individual arrested for violation of an order limiting freedom of movement.”¹⁸

The codes of the Prairie Band of Potawatomi Nation and Kalispel Tribe each include an exclusion provision for non-members with infectious disease. Under the Prairie Band Potawatomi Nation Law and Order Code, “[e]ntering or remaining upon the Reservation or upon off-Reservation Potawatomi Indian land while afflicted by a communicable or contagious disease” is grounds for non-member exclusion and removal from Potawatomi Indian lands.¹⁹ The Kalispel Tribal Law and Order Code states, “[a]ny person, except a member of the Kalispel Tribe entitled to reside thereon, may be excluded from the Kalispel Reservation upon the following grounds . . . [c]ontagious disease.”²⁰

Involuntary Testing and Treatment Laws

In addition to criminal laws related to infectious disease, tribes have established laws that allow for involuntary testing and treatment of individuals who might be in need of testing or treatment for infectious disease or other medical or behavioral health care.²¹ For example, the Grand Traverse Band Code allows for involuntary HIV and AIDS testing of alleged perpetrators of sexual abuse or assault if requested for the victim: “A victim of sexual assault or abuse may request Grand Traverse Band Tribal Court to order HIV/AIDS testing of the person who has allegedly committed the offense of sexual assault or abuse providing the victim can demonstrate the following:

- (A) The defendant has been charged with the offense in Grand Traverse Band Tribal Court, and if the defendant has been arrested without a warrant, a probable cause determination has been made;
- (B) The test for the causing agent for acquired immune deficiency syndrome is requested by the victim after appropriate counseling; and
- (C) The test would provide information necessary for the health of the victim of the alleged offense and the court determines that the alleged conduct of the defendant created a risk of transmission, as determined by the Center for Disease Control (sic), of the causing agent for acquired immune deficiency syndrome to the victim.”²²

With regard to both examination and treatment, the Shoshone and Arapaho Law and Order Code states that “[u]pon application of any authorized medical officer of the United States, the Shoshone and Arapaho Tribal Court is authorized to issue an order requiring any person subject to the jurisdiction of

¹⁶ This section summarizes all relevant provisions found in the WestlawNext tribal code database.

¹⁷ EASTERN BAND OF CHEROKEE INDIANS CODE § 130-6(a) (2010).

¹⁸ *Id.* at § 130-13.

¹⁹ PRAIRIE BAND OF POTAWATOMI NATION LAW AND ORDER CODE § 14-1-4(P) (2012)

²⁰ KALISPEL TRIBE LAW AND ORDER CODE § 5-1.01(10) (2012).

²¹ This section summarizes all relevant provisions found in the WestlawNext tribal code database.

²² GRAND TRAVERSE BAND CODE tit. 9, § 359(a)(1) (2012).

the said court, who is thought to be suffering from a communicable disease, to undergo such examination or treatment as may be necessary to protect the community from contagion.”²³

In 2006, the Navajo Nation passed the Health Commitment Act of 2006.²⁴ The Act states that “[i]t is the policy of the Navajo Nation that any individual who, due to a physical or mental illness or disorder, is a threat to the health or safety of themselves or others, should receive appropriate treatment in the least restrictive environment.”²⁵ The Act allows for a “coordinated community response to care for members of the Navajo Nation, and others to whom the jurisdiction of the Navajo Nation extends, who are suffering from a physical or mental illness or disorder so that the individual and community can be restored to and live in harmony (hózhó).”²⁶ The Act further states that the “Navajo principle of k’é (respect, solidarity, compassion and cooperation) shall be applied at all steps of the civil commitment, evaluation, treatment process, and reintegration of the afflicted person into the community.”²⁷

The Act further states that “[a]ny adult family member, legal guardian, or employee of a governmental agency suspecting that an individual suffers from an illness or disorder, and as a result presents a reasonable likelihood of serious harm to himself or herself or the community because of an illness or disorder, may apply to the family court for an ex parte order requiring the individual to be held in the least restrictive environment and to undergo an evaluation.”²⁸ It further states that “if the traditional native healing methods are not a viable alternative, the Navajo Nation Family Court may then order an individual to undergo further medical evaluation or a course of treatment, or both.”²⁹

Criminal Laws

Several tribal codes make it a crime for individuals with certain infectious diseases to expose other people to the infection.³⁰ For example, the Absentee Shawnee Tribe makes it a crime “to infect another person with venereal disease, if one knows or has reason to believe she/he is infected with a venereal disease.”³¹ The criminal code further states that the court “upon conviction, [has] the power to order the medical examination and treatment of the convicted offender and may also order an investigation to determine to what extent others have or may have been infected by the convicted offender.”³² Finally, the code authorizes punishment in the form of “a fine not to exceed two hundred fifty dollars (\$250.00), or by a term of imprisonment in the Tribal jail not to exceed three months, or both.”³³

²³ SHOSHONE AND ARAPAHO LAW & ORDER CODE § 14-20-1 (2013).

²⁴ NAVAJO CODE tit. 13, § 2101 (2009).

²⁵ *Id.* at § 2101(A).

²⁶ *Id.* at § 2101(B).

²⁷ *Id.* at § 2101(C).

²⁸ *Id.* at § 2105.

²⁹ *Id.* at § 2106.

³⁰ This section summarizes several relevant provisions found in the WestlawNext tribal code database.

The inventory of all provisions found include: ABSENTEE SHAWNEE CRIM. CODE § 528 (2010); COLVILLE CONFEDERATED TRIBES CODE § 3-1-196 (2011); EASTERN BAND CHEROKEE INDIANS CODE §§ 14-80.5, 80.6 (2010); KALISPEL TRIBE LAW & ORDER CODE § 9-6.03 (2012); PRAIRIE BAND OF POTAWATOMI NATION LAW & ORDER CODE § 15-5-28 (2012); POARCH BAND OF CREEK INDIANS CODE § 8-6-25 (2010); SAC & FOX TRIBE IN IOWA CODE § 13-5805 (2011); SWINOMISH TRIBAL CODE § 4-03.080 (2013).

³¹ ABSENTEE SHAWNEE CRIM. CODE § 528(a) (2010).

³² *Id.* at § 528(b).

³³ *Id.* at § 528(c).

Similarly, the Cherokee Code of Eastern Band of the Cherokee Nation makes it a crime for a person with AIDS or HIV to knowingly engage in sexual intercourse without disclosing this fact to his or her partner:

“It shall be unlawful for any person knowing that he or she has Acquired Immune Deficiency Syndrome (AIDS) or is the carrier o[f] the human immunodeficiency virus (HIV) to engage in conduct reasonably likely to result in transfer of the person's own blood, bodily fluids containing visible blood, semen, or vaginal secretions into the bloodstream of another, or through the skin or other membranes of another person, except during in utero transmission of blood or bodily fluids; and

- (1) The other person did not consent to the transfer of blood, bodily fluids containing blood, semen, or vaginal secretions; or
- (2) The other person consented to the transfer but at the time of giving consent had not been informed by the person that the person transferring such blood or fluids had AIDS or was a carrier of HIV.”³⁴

The code gives the court authority to order 1) a medical examination, 2) treatment of the criminal offender, 3) an investigation to determine potential exposure to other individuals, and 4) a fine of \$5,000 and imprisonment of no more than one year.³⁵ The code also makes it a crime “to infect another person with venereal disease, if one knows or has reason to believe she/he is infected with a venereal disease.”³⁶

The Poarch Creek Indians Tribal Code includes a provision that makes it a crime to expose others to not only sexually transmitted infections but other communicable diseases as well: “It shall be unlawful for any person infected with a communicable disease including, but not limited to, syphilis, gonorrhea, tuberculosis, AIDS (acquired immune deficiency syndrome) or other communicable disease dangerous to the public health, knowingly to expose another person to infection.”³⁷ The code further allows a court to “order and compel the medical examination and treatment of any person afflicted with any such disease.”³⁸

Conclusion

Tribal public health code provisions vary from tribe to tribe based on the unique history, culture, and perspectives of each tribe. This inventory provides a sample of infectious disease control laws found in select tribal codes and can be used by jurisdictions interested in the potential depth and breadth of their own infectious disease codes.

Acknowledgements and Disclaimers

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³⁴ EASTERN BAND CHEROKEE INDIANS CODE § 14-80.6(a).

³⁵ *Id.*

³⁶ *Id.* at § 14-80.5(a).

³⁷ POARCH BAND OF CREEK INDIANS CODE § 8-6-25(a) (2010).

³⁸ *Id.* at § 8-6-25(b).

Tribal, Local and Territorial Support. 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 authors and do not necessarily represent the official views of the Centers for Disease Control and Prevention.

This menu includes tribal infectious disease control laws collected from WestlawNext in July and August 2014.

Appendix: Publically Accessible Links to Select Tribal Codes³⁹

Absentee Shawnee Tribe of Indians	ABSENTEE SHAWNEE TRIBAL CODE (2010)	www.narf.org/nill/Codes/absentee-shawnee/index.html
Confederated Tribes of the Colville Reservation	COLVILLE LAW & ORDER CODE (2014)	www.narf.org/nill/Codes/colvillecode/index.html
Confederated Tribes of Siletz Indians	CONFEDERATED TRIBES OF SILETZ INDIANS TRIBAL ORDINANCES	www.ctsi.nsn.us/warm-springs-umpqua-tillamook-siletz-government/tribal-ordinances
Coquille Indian Tribe	COQUILLE INDIAN TRIBAL CODE	www.coquilletribe.org/CoquilleTribalOrdinances.htm
Eastern Band of Cherokee Indians	THE CHEROKEE CODE (2010)	www.narf.org/nill/Codes/eastern_band_cheroke/index.html
Grand Traverse Band of Ottawa & Chippewa Indians	GRAND TRAVERSE BAND CODE (2012)	www.narf.org/nill/Codes/gtcode/index.htm
Kalispel Tribe of Indians	KALISPEL TRIBE LAW AND ORDER CODE (2013)	http://narf.org/nill/Codes/kalispelcode/index.html
Leech Lake Band of Ojibwe	LEECH LAKE BAND TRIBAL CODE (2010)	www.llojibwe.org/court/tcCodes.html
Little River Band of Ottawa Indians	LITTLE RIVER BAND OF OTTAWA INDIANS TRIBAL CODE (2012)	www.lrboi-nsn.gov/index.php/government/tribal-code
Little Traverse Bay Bands of Odawa	WAGANAKISING ODAWA TRIBAL CODE OF LAW (2013)	http://narf.org/nill/Codes/ltraverse/index.htm
Mashantucket Pequot	MASHANTUCKET PEQUOT TRIBAL LAWS (2008)	www.mptnlaw.com/Tribal%20Laws.htm
Navajo Nation	NAVAJO TRIBAL CODE	Could not locate
Oneida Tribe of Indians of Wisconsin	ONEIDA CODE OF LAWS (2014)	https://oneida-nsn.gov/Laws/
Poarch Band of Creek Indians	THE TRIBAL CODE OF THE POARCH BAND CREEK INDIANS (2013)	https://library.municode.com/HTML/15235/level1/THTRCOPOBACRIN.html
Ponca Tribe of Nebraska	PONCA TRIBE OF NEBRASKA CODE (2014)	www.poncatribes-ne.org/Court
Prairie Band Potawatomi Nation	PRAIRIE BAND POTAWATOMI NATION LAW & ORDER CODE (2013)	www.pbpindiantribe.com/law-and-order-codes.aspx
Sac & Fox Tribe of the Mississippi in Iowa	SAC & FOX TRIBE IN IOWA CONSTITUTION & CODE	www.meskwaki.org/Constitution.html

³⁹ This Appendix contains links to publically accessible tribal codes. Note that the laws included in this menu were pulled from WestlawNext, a subscription based legal research engine. The laws included in this discussion might have been from a previous or more current version of the tribal code, depending on the availability in WestlawNext and the tribal codes made available to the public.

	(2013)	
Snoqualmie Indian Tribe	SNOQUALMIE INDIAN TRIBAL CODE (2012)	www.snoqualmiation.com/files?doc=&deptm=311
Squaxin Island Tribe	SQUAXIN ISLAND TRIBAL CODE (2013)	http://squaxinland.org/government/tribal-code/
Standing Rock Sioux Tribe	STANDING ROCK SIOUX TRIBAL CODE OF JUSTICE (2009)	www.standingrock.org/government/
Swinomish Indian Tribal Community	SWINOMISH TRIBAL CODE (2013)	www.swinomish.org/government/tribal-code.aspx
White Earth Nation	WHITE EARTH NATION TRIBAL CODE (2013)	www.whiteearth.com/programs/?page_id=423&program_id=16
Wind River Reservation, Eastern Shoshone & Northern Arapaho Tribes	LAW & ORDER CODE OF THE EASTERN SHOSHONE & NORTHERN ARAPAHO TRIBES OF THE WIND RIVER INDIAN RESERVATION (2004)	www.narf.org/nill/Codes/shoshonearapaho/
Yurok Tribe of California	YUROK TRIBE ORDINANCES (2010)	www.yuroktribe.org/government/councilsupport/YurokTribeOrdinances.htm