

INDIANA’S INDIAN LAWS: INDIGENOUS ERASURE AND RACISM IN THE LAND OF THE INDIANS

By: Aila Hoss*

I. INTRODUCTION

In response to a request for funding on Tribal and Indian law research, a director level position from Indiana University who reviewed a draft of the proposal stated that the author needed to “clear why a team from the middle of Indiana is positioned to conduct this research” and that it is her job “to point out the obvious.”¹ In the author’s teaching evaluations for her first year property law class, students indicated that they wished the author spent less time on Indian law.² These statements are just two examples of the active disdain for the research and study of Indian law within a major university in Indiana, the “Land of Indians.”³ But it is also a symptom of a larger disinterest and hostility to the inclusion of Tribal and Indigenous issues, pervasive across communities and institutions in the state.⁴ Only one of the state’s four law

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¹ May 23, 2018 email to Aila Hoss. On file with author.

² On file with author. This class included only a handful of Indian law-related cases, part of the standard property law curriculum. The author included the following cases: *Johnson v. McIntosh*, *Tee-Hit-Ton*, *Charrier v. Bell*, and *Navajo Nation v. Urban Outfitters*. The author also asked students to listen to Episode 1 of This Land Podcast. See JOSEPH WILLIAM SINGER, BETHANY R. BERGER, NESTOR M. DAVIDSON & EDUARDO PENALVER, PROPERTY LAW: RULES, POLICIES AND PRACTICES (7th ed. 2017) and JESSE DUKEMINIER, JAMES E. KRIER, GREGORY ALEXANDER, MICHAEL SCHILL & LIOR JACOB STRAHILEVITZ, PROPERTY (9th ed. 2018) for examples of property casebooks that also include Indian law content.

³ ELIZABETH GLENN & STEWART RAFERT, THE NATIVE AMERICAN 5, 7 (2009).

⁴ *Native American Group: Indianapolis Indians’ Name Offensive*, SOUTH BEND TRIB. (July 20, 2020), https://www.southbendtribune.com/news/local/native-american-group-indianapolis-indian-s-name-offensive/article_54c6fabe-cace-11ea-8a8a-9732728da8b1.html [https://perma.cc/L8TJ-3QCB]; *Meeting Minutes*, IND. NATIVE AM. INDIAN AFFS. COMM’N (Feb. 20, 2019), <https://www.in.gov/inaiac/files/feb20-2019-minutes.pdf> [https://perma.cc/Q48X-FQRK]; *Meeting Minutes*, IND. NATIVE AM. INDIAN AFF. COMM’N (June 12, 2019), <https://www.in.gov/inaiac/>

schools offers an Indian law course.⁵ Neither of the two largest state bar associations, the Indiana State Bar Association and the Indianapolis Bar Association, have Indian law sections.⁶ The state even joined the federal case to overturn the Indian Child Welfare Act,⁷ an indispensable law to prevent the displacement of Indian children from their communities.⁸

Academics could label this disdain as institutional racism, which is

[t]he collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture, or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people.⁹

Or, it could be referred to as structural violence, the “invisible, embedded in ubiquitous social structures, normalized by stable institutions and regular experience,” and “occurs whenever people are disadvantaged by political, legal, economic, or cultural traditions.”¹⁰ Regardless of the label, this is the grave reality for American Indians and Alaska Natives. In states like Indiana, with only a handful of Tribes¹¹ and relatively low American Indian and Alaska Native populations,¹² the narrative of the extinct Indian is all too real.¹³

In the context of law, Indian law is rarely included in the legal curriculum

files/june-12-2019-minutes.pdf [https://perma.cc/5A87-KF9Z].

⁵ NAT'L NATIVE AM. BAR ASS'N, THE STATE OF INDIAN LAW AT ABA-ACCREDITED LAW SCHOOLS (2019), <https://www.nativeamericanbar.org/wp-content/uploads/2019/07/Final-Draft-State-of-Indian-Law-at-ABA-Accredited-Schools.-May-2019.pdf> [https://perma.cc/8VK9-VYX4].

⁶ See *ISBA Sections*, IND. STATE BAR ASS'N, <https://www.inbar.org/page/sections> (last visited Feb. 5, 2021); see also *Interest Groups*, INDY BAR ASS'N, <https://www.indybar.org/index.cfm?pg=InterestGroupHomePage> [https://perma.cc/HG89-KDLU].

⁷ *Brackeen v. Bernhardt*, 937 F.3d 406, 416 (5th Cir. 2019).

⁸ *About ICWA*, NAT'L INDIAN CHILD WELFARE ASS'N, <https://www.nicwa.org/about-icwa/> [https://perma.cc/W6ZV-RTZY].

⁹ WILLIAM MACPHERSON, THE STEPHEN LAWRENCE INQUIRY: REPORT OF AN INQUIRY ¶ 6.34 (1999); see also STOKELY CARMICHAEL & CHARLES V. HAMILTON, BLACK POWER: THE POLITICS OF LIBERATION 4 (1967) (coining the term “institutional racism”).

¹⁰ DEBORAH DUNANN WINTER & DANA C. LEIGHTON, *Introduction to Section II: Structural Violence* of DANIEL J. CHRISTIE, RICHARD V. WAGNER & DEBORAH DUNANN WINTER, PEACE, CONFLICT, AND VIOLENCE: PEACE PSYCHOLOGY IN THE 21ST CENTURY (D. J. Christie, R. V. Wagner, & D. D. Winter eds., 2001).

¹¹ *Are There Any Native American Tribes in Indiana*, STATE OF IND., <https://faqs.in.gov/hc/en-us/articles/360033547051> [https://perma.cc/47F6-YKQZ].

¹² TINA NORRIS, PAULA L. VINES & ELIZABETH M. HOEFFEL, THE AMERICAN INDIAN AND ALASKA NATIVE POPULATION: 2010, U.S. CENSUS BUREAU (Jan. 2012), <https://www.census.gov/prod/cen2010/briefs/c2010br-10.pdf> [https://perma.cc/5UMS-9RXX].

¹³ Crystal Echo Hawk, *The False Narratives, Invisibility, and the Erasure of Native Peoples Must End*, INDIAN COUNTRY TODAY (Aug. 7, 2018), https://indiancountrytoday.com/opinion/the-false-narratives-invisibility-and-the-erasure-of-native-peoples-must-end-LTIMfzcJzUeeO_ELS7c4nQ [https://perma.cc/Y7PT-4DX4].

in Indiana.¹⁴ While this too is an example of institutional racism or structural violence, it also leads to the very practical issue that attorneys in the state are woefully unprepared to address the many Indian law issues that are implicated in their practice. This is not harmless. When attorneys and their clients violate federal laws to protect Indian children from disenfranchisement from their Tribes¹⁵ or undermine the few state laws that acknowledge the uniqueness of Tribal governments and Native communities,¹⁶ this infringes on Tribal sovereignty.¹⁷

This article seeks to fill the immense gap in literature related to Indian law in Indiana. It can be a tool for educators, students, and practitioners seeking to learn more about this area of law. First, this article describes the American Indian and Alaska Native communities in Indiana. Next, it describes Indiana's Indian laws both from a state statutory and regulatory perspective as well as the implications of federal laws in Indiana. This article ends with suggestions to address Indigenous erasure and racism within Indiana's legal community and legal systems. These include the incorporation of Indian law in law school and continuing education curricula as well as strengthening Indiana law in the areas of Indian child welfare and Tribal consultation.

This article refers to the Indigenous people of what is now the United States using various terms including American Indian and Alaska Native, Native, Indian and Indigenous. Each of these terms are used regularly in practice and, depending on the context, can be appropriate.¹⁸ Some primary sources will use other terms such as "Native American." If quoting or describing these primary sources, this article will also utilize the language used by the source. This article capitalizes these terms, as well as Tribe and Tribal.

¹⁴ See *Official Course Descriptions*, IND. UNIV. ROBERT H. MCKINNEY SCHOOL OF LAW, <https://mckinneylaw.iu.edu/courses/official-descriptions/index.html> [https://perma.cc/HHH3-E6FS] (excluding Indian law from course catalog); see also *Courses*, IND. UNIV. MAURER SCHOOL OF LAW, <https://www.law.indiana.edu/academics/courses/> [https://perma.cc/8ECJ-GXJ8] (does not have Indian law in course catalog); *Course Catalog*, NOTRE DAME LAW SCHOOL, <https://law.nd.edu/academics/course-catalog/> [https://perma.cc/XP4T-MBG9] (offers federal Indian law but no additional courses); Marilyn Odendahl, *Indiana Law Schools Post Changing Fortunes in First-Time Bar Passage Rates*, INDIANA LAWYER (Feb. 24, 2020), <https://www.theindianlawyer.com/articles/indiana-law-schools-post-changing-fortunes-in-first-time-bar-passage-rates> [https://perma.cc/F9Z3-LEZT] (relatively few Notre Dame graduates take the Indiana bar).

¹⁵ Indian Child Welfare Act of 1978, 25 U.S.C.A. §§ 1901–63 (West).

¹⁶ See, e.g., IND. CODE ANN. § 5-33.5-1-1 (West 2020); IND. CODE ANN. § 34-26-5-3 (West 2020); IND. CODE ANN. § 4-15-12-1 (West 2020).

¹⁷ See *Williams v. Lee*, 358 U.S. 217, 220 (1959).

¹⁸ See *Native American v. Indian*, INDIAN COUNTRY TODAY (Sept. 13, 2018), https://indiancountrytoday.com/archive/native-american-vs-indian-_IIUK00r1EionG_T5_LgRA [https://perma.cc/4BHC-7FTJ].

II. TRIBES AND AMERICAN INDIAN AND ALASKA NATIVES IN INDIANA

Since time immemorial, Tribes have been distinct sovereign nations operating their own governments and serving their communities.¹⁹ As sovereigns, Tribes exercise the authorities and responsibilities of all nation-states.²⁰ European colonization, genocide, and the founding of the United States diminished the Indigenous populations.²¹ Federal policies sought to assimilate and displace, often violently, American Indians from their communities and their lands.²² Yet, Tribes and American Indian communities persisted. Today, the United States recognizes the sovereign status of 574 Tribes,²³ although some Indigenous communities, like Native Hawaiians, have yet to have their sovereignty recognized by the federal government.²⁴ Regardless of federal recognition status, some Tribes have received recognition from states; thus, establishing a government-to-government relationship.²⁵ Some Tribes do not have federal or state recognition, either seeking recognition or choosing not to pursue it.²⁶ These Tribes often maintain nonprofit status.²⁷ Recognition, at both the federal and state level, is tied to certain rights, like consultation,²⁸ and access to services and programming such as health care and education.²⁹

With Tribal, state, and federal governments operating within the family of U.S. governments, there are legal complexities on the scope of authorities across these governments.³⁰ Federal Indian law is the legal framework that governs the legal relationships between Tribes, the federal government, and the states.³¹ Federal Indian law recognizes the sovereign authority of Tribes to

¹⁹ STEPHEN L. PEVAR, *THE RIGHTS OF INDIANS AND TRIBES* 3 (2012).

²⁰ PEVAR, *supra* note 19, at 81.

²¹ ROXANNE DUNBAR-ORTIZ, *AN INDIGENOUS PEOPLES' HISTORY OF THE UNITED STATES* 39–42 (2014).

²² PEVAR, *supra* note 19, at 8–10.

²³ *Indian Entities Recognized by and Eligible to Receive Services From the United States Bureau of Indian Affairs*, 85 Fed. Reg. 5,462 (Jan. 30, 2020).

²⁴ DAVID H. GETCHES, CHARLES F. WILKINSON, ROBERT A. WILLIAMS JR. & MATTHEW L.M. FLETCHER, *CASES AND MATERIALS ON FEDERAL INDIAN LAW* 946–948 (6th ed. 2011).

²⁵ *Federal and State Recognized Tribes*, NAT'L CONF. OF STATE LEGISLATURES, <http://www.ncsl.org/research/state-tribal-institute/list-of-federal-and-state-recognized-tribes.aspx> [<https://perma.cc/X3LR-RSPG>].

²⁶ The federal recognition process has been used as a political tool and includes an arduous administrative process today. Because of this process, some Tribes have had their federal recognition terminated or have been unable or unwilling to secure federal recognition. PEVAR, *supra* note 19, at 271–274.

²⁷ *Id.*

²⁸ *See, e.g.*, Memorandum on Government-to-Government Relations with Native American Tribal Governments, 59 Fed. Reg. 22,951 (Apr. 29, 1994).

²⁹ *About IHS*, INDIAN HEALTH SERV., <https://www.ihs.gov/aboutihs/> [<https://perma.cc/3MCS-EA49>]; *Bureau of Indian Education*, BUREAU OF INDIAN AFFS., <https://www.bia.gov/bie> [<https://perma.cc/ZEP6-HWJ4>].

³⁰ MATTHEW L.M. FLETCHER, *FEDERAL INDIAN LAW* 3 (2016).

³¹ *Id.*

“make their own laws and be ruled by them.”³² This authority extends to Tribal members and lands³³ and is exercised through the operation and establishment of Tribal governments, agencies, and laws that reflect each Tribe’s unique histories and cultures.³⁴ The exercise of this political sovereignty ensures that Tribes can protect their citizens, cultures, and environments.³⁵

While the impact of colonization had similarities across Indigenous communities in what is now the United States,³⁶ each community’s experience was unique.³⁷ Likewise, modern Tribal governments and Native communities vary substantially Tribe-to-Tribe and community-to-community.³⁸ This section briefly describes the colonization of Indigenous lands and people in what is now Indiana. It then highlights the resiliency of the Indigenous communities in Indiana today.

A. *Colonization of Indigenous Land in What is Now Known as Indiana*

Prior to European colonization, the lands now known as Indiana were the homes, hunting and gathering grounds, and temporary villages for numerous Indigenous people including the Miami, Potawatomi, Piankeshaw, Wea, Kickapoo, and Shawnee peoples.³⁹ Following European contact, relationships between Tribes and Europeans, particularly the French, was largely marked by trade,⁴⁰ although political relationships also developed.⁴¹

The founding of the United States disrupted these relationships. As Elizabeth Glenn and Stewart Rafert chronicled, “[T]he Indians [were] . . . an integral part of the fur trade . . . and . . . necessary allies in the contest for continent. The ultimate American objective was quite different: acquire the land itself for colonization and development by its own citizens, without

³² *Williams v. Lee*, 358 U.S. 217, 220 (1959).

³³ NELL JESSUP NEWTON, FELIX COHEN & ROBERT ANDERSON, COHEN’S HANDBOOK OF FEDERAL INDIAN LAW § 4.01(1)(b) & § 4.01(2) (2012); *see also* FLETCHER, *supra* note 30, at 5–6; *United States v. Wheeler*, 435 U.S. 313, 322–23 (1978) (quoting F. COHEN, HANDBOOK OF FEDERAL INDIAN LAW 122 (1945)).

³⁴ NEWTON ET AL., *supra* note 33, § 4.01(1)(b), § 4.01(2); *see also*, FLETCHER, *supra* note 30, at 5–6; *United States v. Wheeler*, 435 U.S. 313, 322–23 (1978) (quoting F. COHEN, HANDBOOK OF FEDERAL INDIAN LAW 122 (1945)).

³⁵ Wallace Coffey & Rebecca Tsoie, *Rethinking the Tribal Sovereignty Doctrine: Cultural Sovereignty and the Collective Future of Indian Nations*, 12 STAN. L. & POL’Y REV. 191, 196 (2001).

³⁶ WALTER R. ECHO-HAWK, IN THE COURTS OF THE CONQUEROR: THE 10 WORST INDIAN LAW CASES EVER DECIDED 15–22 (2010).

³⁷ *See, e.g.*, PEVAR, *supra* note 19, at 253–74 (outlining the unique status of certain Indigenous people and Tribes).

³⁸ TRIBAL NATIONS AND THE UNITED STATES: AN INTRODUCTION, NAT’L CONG. AM. INDIANS 23–24 (Feb. 2020), https://www.ncai.org/tribalnations/introduction/Indian_Country_101_Updated_February_2019.pdf [<https://perma.cc/SVN6-ZWS4>].

³⁹ GLENN & RAFERT, *supra* note 3, 14.

⁴⁰ *See id.* at 19–33.

⁴¹ *Id.* at 21.

Indians.”⁴² Displacement of Tribes from the Eastern United States meant that some Tribal communities migrated to what is now Indiana, including the Delaware and Nanticoke.⁴³

Indiana became a state in late 1816.⁴⁴ Soon after, the Tribes located within its boundaries were forced into ceding much of their lands, due largely to federal policies to inflate Tribal debt⁴⁵ and the bribing of Tribal leaders that were of mixed Indian-European descent.⁴⁶ The federal government began implementing policies to assimilate Indians using a variety of programs including boarding schools to pluck Indian children from their families, Tribes, and culture.⁴⁷ These children were prevented from speaking their language, practicing their traditions and were even given new names.⁴⁸ Indian boarding schools were also physically dangerous to these children, who were regularly victims of illness, abuse, and murder.⁴⁹

Other strategies were also used to eliminate Indigenous peoples in the state. American settlers burned Indian crops and villages, leading to malnutrition and starvation.⁵⁰ This was further exacerbated by President Andrew Jackson’s removal policy, affirmed by Congress,⁵¹ which used forced removal to relocate Native communities across the country.⁵² Coupled with tragic deaths from epidemic⁵³ and violent clashes with the military,⁵⁴ the Native population and governments were devastated. The majority of the remaining Wea peoples, for example, moved westward,⁵⁵ with some members being integrated politically with other Tribes by treaty.⁵⁶ Their descendants are the members of the Wea Indian Tribe of Indiana.⁵⁷

The Potawatomi’s removal from Indiana in the late 1830s was based on a series of fraudulent treaties orchestrated by federal agents.⁵⁸ Removal of some

⁴² *Id.* at 35.

⁴³ *Id.* at 38.

⁴⁴ *Indiana Statehood – Timeline*, STATE OF IND., <https://www.in.gov/history/2477.htm> [<https://perma.cc/JL4N-QLVH>].

⁴⁵ GLENN & RAFERT, *supra* note 3, at 51.

⁴⁶ *Id.* at 52.

⁴⁷ *Id.* at 58.

⁴⁸ GLENN & RAFERT, *supra* note 3, at 58; Mary Annette Pember, *Death by Civilization*, THE ATLANTIC (Mar. 8, 2019), <https://www.theatlantic.com/education/archive/2019/03/traumatic-legacy-indian-boarding-schools/584293/> [<https://perma.cc/A3ZU-PDYT>].

⁴⁹ *Id.*

⁵⁰ GLENN & RAFERT, *supra* note 3, at 43.

⁵¹ Indian Removal Act of 1830, Pub. L. 21-148 (repealed 1980).

⁵² GLENN & RAFERT, *supra* note 3, at 61.

⁵³ *Id.* at 43.

⁵⁴ *Id.* at 39–42.

⁵⁵ *Id.* at 59.

⁵⁶ Charles Callender, *Miami*, in BRUCE G. TRIGGER, 15 HANDBOOK OF NORTH AMERICAN INDIANS 681, 681 (1978).

⁵⁷ *Wea Indian Tribe of Indiana*, WEA INDIAN TRIBE, <http://www.weaindiantribe.com/page2.html> [<https://perma.cc/H CJ7-3WNR>].

⁵⁸ GLENN & RAFERT, *supra* note 3, at 62.

of its members required military intervention.⁵⁹ Many of the Potawatomi whose homes were located in what is now Michigan, were also subject to removal by treaties.⁶⁰ One band, the Pokagan, were permitted to stay.⁶¹ Their descendants are members of the Pokagan Band of Potawatomi.

According to Glenn and Rafert, by 1840, only the Miami Nation maintained a stronghold in land and government in what is now Indiana.⁶² Despite the forced relocation of some Miami Tribal members to what is now Kansas (and subsequently what is now Oklahoma),⁶³ some Tribal members were permitted to stay in Indiana.⁶⁴ Their descendants are the members of today's Miami Nation of Indians of the State of Indiana.⁶⁵

B. Resiliency of Indiana's Tribes and Native Communities

As a non-Tribal member and non-Native, the author cannot fully appreciate the vibrancy of the Native community in Indiana. This section attempts only to offer a glimpse at the Tribes and institutions that support this community and the mechanisms in which they do so. Despite the erasure of Native people in the state,⁶⁶ the Tribes and communities are resilient and enrich the entire state through education and cultural activities.

In the 2010 census, approximately 50,000 people in Indiana identified as American Indian and Alaska Native, alone or in combination with another race or races.⁶⁷ 20,000 identified as American Indian and Alaska Native alone.⁶⁸ This data is underreported.⁶⁹ A 2013 report from Indiana University offered further insights on Indiana's Native population.⁷⁰ Marion County, where Indiana's largest city is located, has the highest American Indian and Alaska

⁵⁹ *Id.*

⁶⁰ *History*, POKAGAN BAND OF POTAWATOMI, <http://www.pokagonband-nsn.gov/our-culture/history> [https://perma.cc/Y3HZ-HU5W].

⁶¹ *Id.*

⁶² GLENN & RAFERT, *supra* note 3, at 59.

⁶³ *About Us*, MIAMI NATION OF INDIANS OF IND., <http://www.miamiindians.org/new-page-2> [https://perma.cc/2DB7-PWP5].

⁶⁴ GLENN & RAFERT, *supra* note 3, at 65.

⁶⁵ MIAMI NATION OF INDIANS OF IND., *supra* note 63.

⁶⁶ Crystal Echo Hawk, *supra* note 13.

⁶⁷ NORRIS ET AL., *supra* note 12.

⁶⁸ *Id.*

⁶⁹ BEST PRACTICES IN AMERICAN INDIAN & ALASKA NATIVE PUBLIC HEALTH, TRIBAL EPIDEMIOLOGY CTNS. 131 (2013), http://itcaonline.com/wp-content/uploads/2014/03/TEC_Best_Practices_Book_2013.pdf [https://perma.cc/8KSY-ZV7V]; *see also* FY2016 REPORT, IND. NATIVE AM. INDIAN AFFS. COMM'N 1 (2016), <https://www.in.gov/inaiac/files/inaiac-2016-annual-report.pdf> [https://perma.cc/G4WH-RFGW].

⁷⁰ Rachel Strange, *Exploring Hoosier Minority Groups: Indiana's Native American Population, IN CONTEXT* (2013), <http://www.incontext.indiana.edu/2013/nov-dec/article4.asp#:~:text=Indiana%20has%20a%20large%20Miami,American%20also%20specified%20a%20tribe.&text=Since%202000%2C%20Indiana's%20Native%20American,an%20increase%20of%202%2C647%20people> [https://perma.cc/HJ2F-NY7N].

Native population in the state with 2,901 residents.⁷¹ Table 1, reprinted from this report, outlines the Tribal affiliation identified by each individual.⁷²

Table 1: Top 10 Tribes Specified for Indiana's Native American and Multiracial Population, 2020

Tribe	Native American Alone	Tribe	Multiracial Population Reporting Race as Native American in Combination with Another Race
Cherokee	3,036	Cherokee	12,583
Mexican American Indian	938	Blackfeet	2,065
Chippewa	618	Mexican American Indian	1,441
Sioux	508	Sioux	1,340
Blackfeet	375	Chippewa	1,208
Potawatomi	368	Choctaw	852
Choctaw	323	Apache	824
Apache	277	Potawatomi	724
Iroquois	255	Iroquois	640
Navajo	230	Navajo	547

There are several Tribes located within the boundaries of what is now Indiana, each with its own unique history, culture, and government. The Pokagon Band of Potawatomi Indians, for example, is a federally recognized Tribe.⁷³ As discussed above, its ancestral lands run across what is now Wisconsin, Michigan, Indiana, and Illinois.⁷⁴ Today, the Tribe has trust lands across Michigan and Indiana⁷⁵ and maintains government operations in Dowagiac, Michigan.⁷⁶ It has a population of 5,800 citizens.⁷⁷ The Tribe's social media accounts offer a snapshot of the government and community operations of the Tribe from unveiling a new justice center to celebrating at their Autumn Harvest Pow Wow.⁷⁸ The Tribe even hosts its own podcast,

⁷¹ *Id.*

⁷² *Id.* Note that Tribal affiliation in the Census is based on self-identification and not Tribal citizenship. Affiliation listed may not necessarily specify a federally-recognized Tribe.

⁷³ POKAGON BAND OF POTAWATOMI, *supra* note 60.

⁷⁴ *Id.*

⁷⁵ *Federal Trust/Fee Map*, POKAGON BAND OF POTAWATOMI, <https://www.pokagonband-nsn.gov/sites/default/files/assets/Trust.Fee%20-%20All%20Lands.pdf> [<https://perma.cc/ZNY4-55KC>]; *Indiana Land Restoration*, POKAGON BAND OF POTAWATOMI, <http://www.pokagonband-nsn.gov/government/indiana-land-restoration> [<https://perma.cc/7YY2-W9EZ>].

⁷⁶ *History of the Pokagon Band of Potawatomi*, POKAGON FUND, <https://pokagonfund.org/who-we-are/history-of-the-pokagons> [<https://perma.cc/ZC5F-SL2R>].

⁷⁷ The Pokagon Band's Twitter profile lists population in its biography. Pokagon Potawatomi (@Pokegnek), TWITTER, <https://twitter.com/Pokegnek> [<https://perma.cc/NFQ7-E47D>].

⁷⁸ *Id.*; Pokagon Band of Potawatomi (@pokegnek), INSTAGRAM, <https://www.instagram.com/pokagnek/> [<https://perma.cc/G349-BPRH>].

“Tajmownen,” that offers insight into the Tribe’s culture and traditions.⁷⁹

The Miami Nation of Indians of the State of Indiana’s federal recognition was stripped by the U.S. in 1899.⁸⁰ Its subsequent attempts to secure federal recognition have been unsuccessful.⁸¹ The state of Indiana’s position is that it does not provide state recognition to any Tribe,⁸² but the state acknowledges that the Tribe has lands in the state.⁸³ It operates as a nonprofit corporation.⁸⁴ The Tribal population includes 6,000 people, particularly in Miami, Huntington, Allen, Wabash, Marion, and Parke counties in Indiana.⁸⁵ It operates a Tribal council⁸⁶ and continues to seek federal recognition.⁸⁷

The Wea Indian Tribe of Indiana, descendants of the Wea Indians discussed above, does not have federal recognition. It maintains nonprofit status.⁸⁸ The Tribe has been working on reestablishing their traditions and language as well as protecting ancestral sites and graves.⁸⁹ It has also worked to support the broader Native community in Indiana by promoting education and supporting the establishment of the state’s Indian affairs commission.⁹⁰

⁷⁹ *Yajmownen*, POKAGAN BAND OF POTAWATOMI, <http://www.pokagonband-nsn.gov/our-culture/yajmownen> [https://perma.cc/C6PK-AYB7].

⁸⁰ MIAMI NATION OF INDIANS OF IND., *supra* note 63.

⁸¹ *Id.*

⁸² *Does the State of Indiana Have a State Recognized Tribe?*, STATE OF IND., <https://faqs.in.gov/hc/en-us/articles/360033186392-Does-the-State-of-Indiana-have-a-State-recognized-tribe-> [https://perma.cc/5M7A-3TXM].

⁸³ STATE OF IND., *supra* note 11.

⁸⁴ *Miami Nation of Indians of the State of Indiana*, GUIDESTAR, <https://www.guidestar.org/profile/31-1041187> [https://perma.cc/XQ7T-KMQR].

⁸⁵ MIAMI NATION OF INDIANS OF IND., *supra* note 63.

⁸⁶ *Id.*

⁸⁷ MIAMI NATION OF INDIANS OF IND., *supra* note 63; *see also* S. 3324, 116th Cong. (2020).

⁸⁸ *Wea Indian Tribe of Indiana*, WEA INDIAN TRIBE (2018), <http://www.weaindiantribe.com> [https://perma.cc/FA49-VS37]. Note that nonprofits related to the Wea Indians have been incorporated. *See, e.g., Wea Indian Tribe Incorporated*, GUIDESTAR, <https://www.guidestar.org/profile/35-2117119> [https://perma.cc/Y3H7-MJJ5].

⁸⁹ WEA INDIAN TRIBE, *supra* note 88.

⁹⁰ *Id.*

Table 2: Tribes in Indiana

<u>Tribe</u>	<u>Recognition Status</u>	<u>Location</u>	<u>Website</u>
Miami Nation of Indians of the State of Indiana	No recognition Acknowledged as having Tribal lands by the state	Peru, Indiana	http://www.miaindians.org/
Pokagon Band of Potawatomi Indians	Federally recognized Tribe	Trust Lands: across Michigan and Indiana Government Headquarters: Dowagiac, Michigan	http://www.pokagonband-nsn.gov/
Wea Indian Tribe of Indiana	No recognition	Nonprofit Incorporated: Indiana State Historical Marker: Terre Haute, Indiana	http://www.weaindiantribe.com/

Indiana's Native American Indian Affairs Commission, discussed in more detail in Section II, is a state commission with members appointed by the governor⁹¹ that provides recommendations on policies impacting American Indians and Alaska Natives.⁹² The commission was established in 2003⁹³ and reorganized in 2012.⁹⁴ Recent activities of the commission include the provision of student scholarship, educator grants, and hosting a veterans appreciation ceremony.⁹⁵

Nonprofits like the American Indian Center of Indiana (AICI)⁹⁶ take on a central role of building community amongst the Native population in the state and providing services to them. AICI provides scholarships to Native

⁹¹ IND. CODE ANN. § 4-23-32-4 (West 2020).

⁹² IND. CODE ANN. § 4-23-32-7 (West 2020); *Indiana Native American Indian Affairs Commission*, STATE OF IND., <https://www.in.gov/inaiac/> [<https://perma.cc/6MW8-ZRGX>].

⁹³ Ind. Pub. L. No. 283-2003.

⁹⁴ Ind. Pub. L. No. 133-2012, Sec. 30.

⁹⁵ IND. NATIVE AM. INDIAN AFFS. COMM'N, 2018 ANNUAL REPORT, <https://www.in.gov/inaiac/files/2018-annual-report.pdf> [<https://perma.cc/C7AP-PLQU>]; *Commission Activities*, IN.GOV, <http://ai.org/inaiac/2419.htm> [<https://perma.cc/L2QB-3HNT>].

⁹⁶ *Services*, AM. INDIAN CTR. OF IND. [hereinafter *Services*], <http://www.americanindiancenter.org/info.php?pnum=3> [<https://perma.cc/AG94-UMGK>].

students,⁹⁷ programming to promote job stability,⁹⁸ and offers resources for food and other needs.⁹⁹ It regularly participates in pow wows across the state, provides educational opportunities, and organizes community get togethers.¹⁰⁰ While only one of the law schools in Indiana has a course in federal Indian law and a Native American Law Student Association,¹⁰¹ other schools across the state have more robust Indigenous studies curricula and active Native community.¹⁰² For example, Indiana University Bloomington's Department of American Studies includes curricula and faculty in Native American studies,¹⁰³ a First Nations Educational and Cultural Center,¹⁰⁴ and two Native student organizations.¹⁰⁵

III. INDIAN LAW IN INDIANA

Indiana's statutory and regulatory codes include provisions related to Tribes and American Indians and Alaska Natives.¹⁰⁶ Many federal laws related to Tribes and American Indians are also applicable within the state.¹⁰⁷

⁹⁷ *Native Circles*, AM. INDIAN CTR. OF IND. 1, 10 (2008) [hereinafter *Circles*], http://www.americanindiancenter.org/editor_upload/File/2018%20Newsletters/Spring_2018_AICI_newsletter%20w%20compressed%20photos.pdf [https://perma.cc/A7WC-CR82].

⁹⁸ *Services*, *supra* note 96.

⁹⁹ *Circles*, *supra* note 97, at 11. The author previously served on the board of AICI and supported the organization with the provision of Thanksgiving baskets.

¹⁰⁰ *Education & Culture*, AM. INDIAN CTR. OF IND., <http://www.americanindiancenter.org/info.php?pnum=8> [https://perma.cc/6DQT-4EA5].

¹⁰¹ NAT'L NATIVE AM. BAR ASS'N, *supra* note 5.

¹⁰² *See, e.g., Native American and Indigenous Studies Committee*, IND. UNIV. BLOOMINGTON [hereinafter *Indigenous Studies*], <https://americanstudies.indiana.edu/about/native-american-and-indigenous-studies-committee/index.html> [https://perma.cc/NGS9-3CZ9]; *First Nations Educational and Cultural Center*, IND. UNIV. BLOOMINGTON [hereinafter *First Nations*], <https://firstnations.indiana.edu/> [https://perma.cc/UMB7-WK5G]; *American Indian Programs*, IND. UNIV.-PURDUE UNIV. INDIANAPOLIS, <https://liberalarts.iupui.edu/aip/> [https://perma.cc/TL88-2FET]; *Native American Student Alliance*, IND. UNIV.-PURDUE UNIV. INDIANAPOLIS, <https://theden.iupui.edu/organization/nasa> [https://perma.cc/6L9C-YU2G]; *Native American Educational and Cultural Center*, PURDUE UNIV., <https://www.purdue.edu/naecc/> [https://perma.cc/RPZ2-N6TE]; *Native American and Indigenous Studies Minor*, PURDUE UNIV., <https://cla.purdue.edu/students/academics/minors/namim.html> [https://perma.cc/3HVD-Q4E3]; *Native Courses at ND*, NOTRE DAME UNIV., <https://nai.nd.edu/native-courses-at-nd/> [https://perma.cc/H4X2-WWC8]; *Native American Studies*, BALL STATE UNIV., <https://catalog.bs.u.edu/en/2020-2021/Undergraduate-Catalog/Interdepartmental-Programs/Native-American-Studies> [https://perma.cc/ALS4-QNB8].

¹⁰³ *Indigenous Studies*, *supra* note 102.

¹⁰⁴ *First Nations*, *supra* note 102.

¹⁰⁵ *Student Services and Resources*, *First Nations Educational and Cultural Center*, IND. UNIV. BLOOMINGTON, <https://firstnations.indiana.edu/services-resources/index.html> [https://perma.cc/8GP6-XRAL].

¹⁰⁶ *See infra* Appendix "Indiana Statutes and Regulations Related to Tribes and American Indians and Alaska Natives."

¹⁰⁷ *See, e.g., Indian Child Welfare Act of 1978*, 25 U.S.C.A. § 1901–63 (West); *Indian Gaming Regulatory Act of 1988*, 25 U.S.C.A. § 2701 (West); *Native American Graves Protection and Repatriation Act of 1990*, 25 U.S.C.A. § 3001 (West).

Similarly, Indiana courts have adjudicated cases related to these laws or that implicate Tribal or American Indian and Alaska Native rights.¹⁰⁸ This section describes a selection of these laws starting with a discussion of Indian law in the state's statutory and regulatory codes followed by a summary of federal laws highly relevant in the state.

A. *Indiana Statutory and Administrative Codes*

A 2019 review of Indiana's statutory and administrative codes revealed that 148 provisions, 90 statutes and 58 regulations, reference Tribes or American Indian and Alaska Natives.¹⁰⁹ See Table 3 below for more information on the topics covered by Indiana statutes and regulations and this article's Appendix for a summary of Indiana statutes and regulations. These laws span a variety of topics including intergovernmental agreements, gaming, and health (Table 4). Some of these provisions are discussed here.

Table 3: Number of statutory and regulatory provisions

	<u>All Search Results</u>	<u>Relevant Results</u>
Total	294	148
Statutes	163	90
Regulations	131	58

Table 4: Number of provisions across topic areas

<u>Topic</u>	<u>Number of Provisions</u>
affirmative action	1
agreements with Tribes	11
agriculture	6
air pollution	3
athletics	11
burial grounds	3
business	4
children and family law	14

¹⁰⁸ See, e.g., *D.C. v. J.C.*, 928 N.E.2d 602 (Ind. Ct. App. 2010); *In re Adoption of S.W.F. v. M.C.T.*, 60 N.E.3d 1145 (Ind. Ct. App. 2016) (unpublished table decision).

¹⁰⁹ The author conducted a search on WestlawNext on July 16, 2019 using the following search string: adv: SD(tribe or tribal or native! or "Indians" or "indian" or indigenous or "first nation!" or "first people!"). The search generated 163 statutes and 131 regulations. Of these, 90 statutes and 58 regulations were related to Indians or Tribes. Laws that were not relevant were related to native species of plants and animals, native language, among others.

civil law and procedure	11
civil rights	1
criminal law	5
education	5
food safety	1
gaming	14
health	12
housing	1
labor	2
language	3
lead paint	7
license plates	6
local government	2
mining	3
Native American Indian Affairs Commission	8
notaries	2
probate	1
property	1
public safety	2
social services	1
tax	1
waste management	2
water	1
wildlife	3

Indiana's Native American Indian Affairs Commission was originally established by statute in 2003¹¹⁰ and moved to a different section of the code in 2012.¹¹¹ The purpose of the commission is to "study problems common to Native American Indian residents of Indiana in the areas of employment, education, civil rights, health, and housing."¹¹² It can provide recommendations to state, federal, and local governments on the following topics:

¹¹⁰ Ind. Pub. L. No. 283-2003.

¹¹¹ Ind. Pub. L. No. 133-2012, Sec. 30.

¹¹² IND. CODE ANN. § 4-23-32-7 (West 2020).

- (1) Health issues affecting Native American Indian communities, including data collection, equal access to public assistance programs, and informing health officials of cultural traditions relevant to health care.
- (2) Cooperation and understanding between the Native American Indian communities and other communities throughout Indiana.
- (3) Cultural barriers to the educational system, including barriers to higher education and opportunities for financial aid and minority scholarships.
- (4) Inaccurate information and stereotypes concerning Native American Indians, including the accuracy of educational curriculum.
- (5) Measures to stimulate job skill training and related workforce development, including initiatives to assist employers to overcome communication and cultural differences.
- (6) Programs to encourage the growth and support of Native American Indian owned businesses.
- (7) Public awareness of issues affecting the Native American Indian communities.
- (8) Issues concerning preservation and excavation of Native American Indian historical and archeology sites, including reburial of Native American Indians.
- (9) Measures that could facilitate easier access to state and local government services by Native American Indians.¹¹³

The commission is prohibited by statute to “study or make recommendations” on issues related to gaming on Tribal land or negotiations between a Tribe and state or federal government on sovereignty.¹¹⁴

For the purposes of the commission, “Native American Indian” is defined to include an Alaska Native, Native Hawaiian, and an Indian who is a member of a federally recognized Tribe.¹¹⁵ The commission consists of 17 members, 15 voting and 2 nonvoting.¹¹⁶ Per statute, the voting members of the commission are designated by the governor¹¹⁷ and must include:

¹¹³ *Id.*

¹¹⁴ IND. CODE ANN. § 4-23-32-8 (West 2020).

¹¹⁵ IND. CODE ANN. § 4-23-32-2 (West 2020) (25 U.S.C.S. § 5304 is incorporated by reference) (Indian is defined as a member of a federally recognized Tribe under 25 U.S.C.S. § 5304(d)(e) (West)).

¹¹⁶ IND. CODE ANN. § 4-23-32-4(a) (West 2020).

¹¹⁷ IND. CODE ANN. § 4-23-32-4(c) (West 2020).

- Six Native American Indians, each from a different region of Indiana;
- Two Native American Indians with “knowledge in Native American traditions and spiritual issues”;
- Representative from the Department of Correction;
- Representative from the Commission for Higher Education;
- Representative from the State Department of Health;
- Representative from the Family and Social Services Administration;
- Representative from the Department of Natural Resources;
- The State Superintendent of Public Instruction or their designee; and
- Representative from the Department of Workforce Development.¹¹⁸

The nonvoting members must include a member of Indiana’s House of Representatives and a member of Indiana’s Senate.¹¹⁹ Administrative support for the commission is housed in the state’s Civil Rights Commission.¹²⁰

Indiana’s statutory code allows the state or its agencies to enter into agreements with federally recognized Tribes.¹²¹ It requires that such agreements be in writing and specify the length, purpose, administration, and methods of termination.¹²² It also establishes a process in which the state can negotiate and execute a Tribal-state compact for Class III gaming at Tribal enterprises.¹²³

Indiana’s regulatory code offers specific benefits to American Indian and Alaska Natives. For example, American Indians and Alaska Natives are exempt from copayments for emergency room visits under the state’s Medicaid program.¹²⁴ Medicaid managed care organizations and providers are also prohibited from requiring cost sharing, copayments, or coinsurance for any covered service provided to American Indians and Alaska Natives.¹²⁵

State law also offers protections for American Indian historic and sacred lands. The regulatory code requires that surface mining permit applications include measures to prevent adverse impacts to such lands.¹²⁶ The Native American Indian Affairs Commission must also be notified following the discovery of Indian burial grounds, which will make recommendations regarding the final disposition of the remains.¹²⁷

¹¹⁸ IND. CODE ANN. § 4-23-32-4(a)(1) to -4(a)(9) (West 2020).

¹¹⁹ IND. CODE ANN. § 4-23-32-4(b) (West 2020).

¹²⁰ IND. CODE ANN. § 4-23-32-6(a) (West 2020).

¹²¹ IND. CODE ANN. § 5-33.5-3-1 (West 2020).

¹²² IND. CODE ANN. § 5-33.5-3-2 (West 2020).

¹²³ IND. CODE ANN. §§ 4-29-1-1 to -3-8 (West 2020).

¹²⁴ 405 IND. ADMIN. CODE § 10-7-9(b)(2) (West 2021).

¹²⁵ 405 IND. ADMIN. CODE § 10-8-1(a) (West 2021).

¹²⁶ 312 IND. ADMIN. CODE § 25-1-65 (West 2021); 312 IND. ADMIN. CODE § 25-4-52 (West 2021).

¹²⁷ IND. CODE ANN. § 14-21-1-25.5 (West 2020).

B. Selected Federal Laws

Various federal laws including the Indian Child Welfare Act (ICWA) and the Native American Graves Protection and Repatriation Act (NAGPRA), apply in states regardless of the number of Tribes or American Indians and Alaska Natives within the boundaries of the state.¹²⁸ ICWA, for example, was passed in 1978¹²⁹ to end the practice of state and local child welfare agencies removing American Indian children from their families and Tribes and placing them in the custody of non-Indian families.¹³⁰ Among other important measures, ICWA provides Tribes with exclusive jurisdiction over any state child custody proceeding involving an Indian child within the boundaries of the Tribe's reservations.¹³¹ It also requires that Tribes are notified of proceedings related to the foster care placement and termination of parental rights, and allows the Tribe to intervene and make recommendations regarding the placement of the child.¹³² When determining adoptive and foster care placements of Indian children under state law, preference must be given to members of the child's extended family, other members of the child's Tribe, and other Indian families.¹³³

Indian child welfare advocates have found ICWA to offer essential protections that remain important today because Native children are subject to more out-of-home placements.¹³⁴ Family law cases involving Indian children or potentially implicating ICWA regularly take place in Indiana.¹³⁵ Failing to provide Tribal notice of cases involving Indian children is a violation of federal law even if the parties are ignorant of ICWA.¹³⁶ Indiana courts also

¹²⁸ See, e.g., 25 U.S.C.A. § 1901–96 (West 2020) (establishing requirements regarding Indian child welfare in all states); 25 U.S.C.A. § 3001 (West 2020) (establishing requirements for the protection of Native American cultural items in the possession of certain institutions receiving federal funding).

¹²⁹ Indian Child Welfare Act of 1978, Pub. L. No. 95–608, 92 Stat. 3069.

¹³⁰ *Legislative History of the Indian Child Welfare Act of 1978*, NAT'L INDIAN L. LIBR., <https://narl.org/nill/documents/icwa/federal/lh.html> [<https://perma.cc/7FL6-6QXC>].

¹³¹ 25 U.S.C.A. § 1911(a) (West 2020).

¹³² 25 U.S.C.A. § 1912 (West 2020).

¹³³ 25 U.S.C.A. § 1915 (West 2020).

¹³⁴ NAT'L INDIAN CHILD WELFARE ASS'N, *supra* note 8.

¹³⁵ See, e.g., *In re S.K.*, 138 N.E.3d 329 (Ind. Ct. App. 2019); *In re S.L.H.S.*, 885 N.E.2d 603 (Ind. Ct. App. 2008); *In re Adoption of T.R.M.*, 525 N.E.2d 298 (Ind. 1988); *In re D.S.*, 577 N.E.2d 572 (Ind. 1991); *In re Adoption of D.C.*, 928 N.E.2d 602 (Ind. Ct. App. 2010); *Adoption of T.R.M. v. D.R.L.*, 489 N.E.2d 156 (Ind. Ct. App. 1986), *vacated*, 525 N.E.2d 298 (Ind. 1988); *In re Adoption of S.W.F.*, 60 N.E.3d 1145 (Ind. Ct. App. 2016); *In re S.L.*, 107 N.E.3d 1118 (Ind. Ct. App. 2018); *In re S.L.H.S.*, 883 N.E.2d 1213 (Ind. Ct. App. 2008); *In re A.T.*, 48 N.E.3d 392 (Ind. Ct. App. 2016); *In re U.F.*, 86 N.E.3d 229 (Ind. Ct. App. 2017); *In re L.B.*, 134 N.E.3d 86 (Ind. Ct. App. 2019), *transfer denied*, 143 N.E.3d 949 (Ind. 2020); *Smith v. Tisdal*, 484 N.E.2d 42 (Ind. Ct. App. 1985). In an August 27, 2020 search using WestlawNext, 13 Indiana cases were found. The following search was used: adv: "Indian Child Welfare Act."

¹³⁶ *Setting the Record Straight: The Indian Child Welfare Act Fact Sheet*, NAT'L INDIAN CHILD WELFARE ASS'N (Sept. 2015), <https://www.nicwa.org/wp-content/uploads/2017/04/Setting-the-Record-Straight-ICWA-Fact-Sheet.pdf> [<https://perma.cc/QUG7-ZTYT>].

have a history of applying the “existing Indian home” exception to ICWA.¹³⁷ This exception finds that ICWA doesn’t apply to Indian children who have never lived in an Indian home.¹³⁸ This exception is judicially-created and undermines the goals of the statute.¹³⁹

NAGPRA was passed in 1990 to require the return of culturally significant items to Tribes and Native Hawaiian organizations.¹⁴⁰ Such items include human remains, funerary objects, sacred objects, or objects of cultural patrimony.¹⁴¹ NAGPRA applies to items that are in the possession or control of any institution, state, or local government receiving federal funds; or excavated or discovered on federal or Tribal lands.¹⁴² Both the state and likely all or nearly all of the local governments in Indiana receive federal funds. In 2017, the Hamilton County Parks Department was fined by the Department of the Interior for allowing archeologists from Indiana University-Purdue University Fort Wayne to excavate Native American sites for ten years between 2001 and 2011.¹⁴³ The archeologists pulled hundreds of thousands of items from the sites including human remains.¹⁴⁴

Voting rights can matter to Indiana and implicate American Indians and Alaska Natives. State election laws can run afoul of the Voting Rights Act, which prohibits state voting requirements to establish prerequisites to voting that results in the “denial or abridgement of the right of any citizen of the United States to vote on account of race or color.”¹⁴⁵ Tribes and individual American Indian and Alaska Native voters have challenged state voting requirements, such as identification laws and polling locations, under the Voting Rights Act.¹⁴⁶ Indiana requires identification to vote¹⁴⁷ but only allows IDs issued by the state or the federal government,¹⁴⁸ raising issues regarding the ability of American Indian and Alaska Native voters using Tribal

¹³⁷ *In re Adoption of D.C.*, 928 N.E.2d 602 (Ind. Ct. App. 2010); *In re Adoption of S.W.F.*, 60 N.E.3d 1145 (Ind. Ct. App. 2016).

¹³⁸ *ICWA Guide Online: Topic 1 Application*, NATIVE AM. RTS. FUND, <https://narf.org/nill/documents/icwa/faq/application.html#3> [<https://perma.cc/LL2A-G37D>].

¹³⁹ *Id.*

¹⁴⁰ Native American Graves Protection and Repatriation Act of 1990, 25 U.S.C.A. § 3001 (West 2020).

¹⁴¹ 25 U.S.C.A. § 3001(3) (West 2020).

¹⁴² Native American Graves Protection and Repatriation Regulations, 43 C.F.R. § 10.1(b) (West 2021).

¹⁴³ Chris Sikich, *Hamilton County Parks Fined for Archaeological Digs into Native American Graves*, INDY STAR (Nov. 13, 2017, 3:40 PM), <https://www.indystar.com/story/news/local/hamilton-county/2017/11/13/hamilton-county-parks-fined-archaeological-digs-into-native-american-graves/850253001/> [<https://perma.cc/A9YT-DR6H>].

¹⁴⁴ *Id.*

¹⁴⁵ 52 U.S.C.A. § 10301(a) (West 2020).

¹⁴⁶ *See, e.g., Brakebill v. Jaeger*, 932 F.3d 671 (8th Cir. 2019); *Spirit Lake Tribe v. Jaeger*, No. 1:18-cv-222, 2020 U.S. Dist. LEXIS 22162 (D.N.D. 2020); *Nation v. Reagan*, No. CV-18-08329-PCT-DWL, 2020 U.S. Dist. LEXIS 143020 (D. Ariz. 2019).

¹⁴⁷ IND. CODE ANN. § 3-11-8-25.1 (West 2020).

¹⁴⁸ IND. CODE ANN. § 3-5-2-40.5 (West 2020).

identification.

IV. ADDRESSING INDIGENOUS ERASURE AND RACISM IN INDIANA LEGAL EDUCATION AND INDIANA LAW

The root causes of erasure and racism and the mechanisms to address them are complex.¹⁴⁹ This article does not purport to minimize this truth. Instead, this section offers small, but hopefully meaningful steps, in which to address Indigenous erasure¹⁵⁰ and racism in the context of the areas discussed in this article. Namely, legal education and law in Indiana.

A. *Indiana Legal Education*

Education is one tool to “deconstruct racial narratives” that perpetuate racism.¹⁵¹ Attorneys in Indiana should be better educated about Indian law. As outlined above, Indian law is part of the state’s statutes, regulations, and case law. Federal Indian laws also apply in the state and are essential to protecting Tribal and American Indian and Alaska Native interests. Law schools in Indiana should incorporate some Indian law into their curriculum. How many law students graduate without knowing about Tribal governments or if they do, don’t know about their rights as sovereign nations? Indian law can be readily incorporated into courses in legal writing, constitutional law, property law, family law, environmental law, corporations, among countless others. And while Indian law on the bar exam is outside the scope of this paper,¹⁵² the

¹⁴⁹ See, e.g., *Race and Ethnicity in America: Turning a Blind Eye to Injustice*, AM. C.L. UNION (Dec. 2007), <https://www.aclu.org/other/race-ethnicity-america-turning-blind-eye-injustice> [<https://perma.cc/W4LK-UXWS>]; Bethany R. Berger, *Red: Racism and the American Indian*, 56 UCLA L. REV. 591 (2009); IBRAM X. KENDI, *STAMPED FROM THE BEGINNING: THE DEFINITIVE HISTORY OF RACIST IDEAS IN AMERICAN* (2016); ROXANNE DUNBAR-ORTIZ & DINA GILIO-WHITAKER, *ALL THE REAL INDIANS DIED OFF* (2016); ROBERT WILLIAMS, *LIKE A LOADED WEAPON: THE REHNQUIST COURT, INDIAN RIGHTS, AND THE LEGAL HISTORY OF RACISM IN AMERICA* (2005).

¹⁵⁰ Indigenous erasure can be defined as the “discount[ing] and eliminat[ion] [of] the presence of American Indian peoples, cultures, and polities. This erasure is part of a larger colonial imperative to diminish the existence of American Indians.” Raymond Orr, Katelyn Sharratt & Muhammad Iqbal, *American Indian Erasure and the Logic of Elimination: An Experimental Study of Depiction and Support for Resources and Rights for Tribes*, J. ETHNIC & MIGRATION STUDIES (2018); *Education is Key to Deconstruct Racial Narratives*, UNESCO (Mar. 23, 2018), <https://en.unesco.org/news/education-key-deconstruct-racial-narratives> [<https://perma.cc/R6RS-WQA7>].

¹⁵¹ UNESCO, *supra* note 150.

¹⁵² Indian law has been required on some state bar exams and some argue (the author included) it needs to be on more. See, e.g., Paul Spruhan, *Indian Law on State Bar Exams In the Age of the Uniform Bar Examination*, FEDERAL LAWYER (Mar. 2015); Gabriel Galanda, *Keeping Indian Law on State Bar Exams*, GALANDA BROADMAN AN INDIGENOUS RIGHTS LAW FIRM (Nov. 8, 2014), <https://www.galandabroadman.com/blog/2014/11/keeping-indian-law-on-state-bar-exams> [<https://perma.cc/DX94-8F44>]; *State Bar Exams and Indian Law Materials*, TURTLE TALK, <https://turtletalk.blog/resources/state-bar-exams-and-indian-law-materials/> [<https://perma.cc/M3BL-KXU7>].

author would be remiss not to highlight that the July 2019 MBE included a question on the application of double jeopardy to Tribes.¹⁵³

Legal education requires more than simply Native faculty representation and Indian law curricula but also an inclusive student body and profession. The National Native American Bar Association works to promote inclusion of Native attorneys in the legal profession.¹⁵⁴ In a 2015 report, it outlined specific strategies to support this mission, including the recruitment and retention of Native law students.¹⁵⁵ These strategies, which include informational programming for prospective Native students and consistent dialogue between leadership and Native students, would elevate the quality and legal education experience for all. Law schools are not the only forum for legal education. Indiana requires continuing legal education (CLE) for their attorneys as a condition of licensure.¹⁵⁶ A recent Indiana CLE on domestic violence included speakers from the Pokagon Band of Potawatomi Indians.¹⁵⁷ More CLE programming could incorporate Indian law alongside other topics like family law, criminal law, gaming, and land use. Government attorneys are uniquely situated to review and even draft policies that may impact Tribes or Native people. CLEs or other trainings tailored to agency or legislative attorneys could also be fruitful.

B. Indiana Law

In addition to changes in Indiana legal education, Indiana law could better protect Tribal interests. For example, Indiana could abandon the use of the “existing Indian family” exception to ICWA, described above in Section III.B. Some states have done this by judicial decision but some others have opted to pass legislation.¹⁵⁸ The Iowa Indian Child Welfare Act states that: “The federal Indian Child Welfare Act and this chapter are applicable without exception in any child custody proceeding involving an Indian child.”¹⁵⁹ It continues by prohibiting state courts from applying the exception: “A state court does not

¹⁵³ *July 2019 MBE: A Tribal Question....Seriously? If the powers that be wonder why Bar pass rates are so down- maybe check out the exam drafting. Testing the law makes sense, playing hide the egg based on arguable nuance doesn't make sense*, REDDIT (2019), https://www.reddit.com/r/barexam/comments/ckh2rx/july_2019_mbe_a_tribal_questionseriously_if_the/ [https://perma.cc/JPV3-QM38].

¹⁵⁴ *The Pursuit of Inclusion: An In-Depth Exploration of Experiences and Perspectives of Native American Attorneys in the Legal Profession*, NAT'L NATIVE AM. BAR ASS'N, 6 (2015), https://www.nativeamericanbar.org/wp-content/uploads/2014/01/2015-02-11-final-NNABA_report_pp6.pdf [https://perma.cc/VQ39-KJ6W].

¹⁵⁵ *Id.* at 45–48.

¹⁵⁶ IND. RULES OF COURT, RULES FOR ADMISSION TO THE BAR AND THE DISCIPLINE OF ATT'YS r. 29 (2019).

¹⁵⁷ *Free Attorney Training and CLE Opportunity*, U.S. DIST. COURT FOR THE N. DIST. OF IND. (Aug. 17, 2020), <https://www.innd.uscourts.gov/news/free-attorney-training-and-cle-opportunity> [https://perma.cc/A2SV-PYE2].

¹⁵⁸ NATIVE AM. RTS. FUND, *supra* note 138.

¹⁵⁹ IOWA CODE ANN. § 232B.5(2) (West 2020).

have discretion to determine the applicability of the federal Indian Child Welfare Act or this chapter to a child custody proceeding based upon whether an Indian child is part of an existing Indian family.”¹⁶⁰ Indiana, too, could establish state Indian child welfare requirements to ensure the state was applying best practice to family law cases involving Indian children.

Government-to-government consultation is essential to ensure that Tribal interests are considered prior to governments taking action that impacts Tribes and their communities.¹⁶¹ Consultation is a tool to prevent infringement of Tribal rights and interests by other governments. At the federal level, consultation must be meaningful, in good faith, and entered between governments.¹⁶² Despite the establishment of the Native American Indian Affairs Commission, Indiana has the opportunity to establish a more rigorous consultation requirement under state law.¹⁶³ Other states provide informative examples. Washington state entered into intergovernmental agreements, the Centennial Accord¹⁶⁴ and Millennium Agreement,¹⁶⁵ to support the government-to-government relationship between the state and Tribes located within the boundaries of the state through communication and consultation. Oregon law requires state employees that regularly engage with Tribes to receive annual training on Tribal rights¹⁶⁶ and establishes requirements for state agency consultation with Tribes.¹⁶⁷ Should Indiana pass similar legislation, it would ensure that state agencies regularly consult with the Tribes in the state. Currently, state law requires consultation with the Commission, but that should not be a proxy for consulting directly with Tribes. Indiana could also consider establishing a state recognition process, formalizing the existing relationship it has with the Miami Nation of Indians of Indiana on a government-to-government basis.

V. CONCLUSION

American Indians and Alaska Natives are an essential part of the community in Indiana. Laws related to their rights, and the rights of Tribes, are part of the legal practice in the state. This article describes Indiana’s Indian

¹⁶⁰ *Id.*

¹⁶¹ PEVAR, *supra* note 19, at 40–41.

¹⁶² *Tribal Consultation*, U.S. GEN. SERVS. ADMIN., <https://www.gsa.gov/node/79654> [<https://perma.cc/G2WU-S5E8>].

¹⁶³ See Gabriel S. Galanda, *Advancing State-Tribal Consultation Mandates*, INDIAN COUNTRY TODAY (Oct. 17, 2012), <https://indiancountrytoday.com/uncategorized/advancing-the-state-tribal-consultation-mandate> [<https://perma.cc/S3YS-N8YB>], for a discussion on state consultation mandates.

¹⁶⁴ *Centennial Accord*, GOVERNOR’S OFF. OF INDIAN AFFS., <https://goia.wa.gov/relations/centennial-accord> [<https://perma.cc/9SDM-CTN2>].

¹⁶⁵ *Institutionalizing the Government-to-Government Relationship in Preparation for the New Millennium*, GOVERNOR’S OFF. OF INDIAN AFFS., <https://goia.wa.gov/relations/millennium-agreement/agreement> [<https://perma.cc/5P4S-X8NN>].

¹⁶⁶ OR. REV. STAT. ANN. § 182.166 (West 2020).

¹⁶⁷ OR. REV. STAT. ANN. § 182.164 (West 2020).

laws to demonstrate the multitude of areas that implicate these communities. It argues that understanding both these laws should be part of law school curricula and legal practice in the state. This article challenges the willingness of people to remain ignorant and disengaged to the injustice that they contribute to, even inadvertently. The article also highlights areas in which Indiana's Indian laws could be more robust. Namely, a more comprehensive Tribal consultation process. This would both ensure Tribal and Indian rights are better understood and respected, minimizing institutional racism and structural violence perpetuated by individuals and institutions in the state.

APPENDIX

Indiana Statutes and Regulations Related to Tribes and American Indians and Alaska Natives

<u>Citation</u>	<u>Provision Title</u>	<u>Statute or Regulation</u>	<u>Topic</u>	<u>Summary</u>
IND. CODE ANN. § 4-15-12-1 (West 2020)	Definitions	statute	affirmative action	Native Americans included in definition of minorities under state employment affirmative action program
IND. CODE ANN. § 5-33.5-2-2 (West 2020)	"State"	statute	agreements with Tribes	for the purposes of agreements with federally recognized Tribes, "state" is defined as the "state of Indiana" and "does not include" political subdivisions
IND. CODE ANN. § 5-33.5-2-3 (West 2020)	"State agency"	statute	agreements with Tribes	for the purposes of agreements with federally recognized Tribes, "state agency" means an authority, a board, a commission, a committee, a

				department, a division, or other instrumentality of state government. However, the term does not include a state educational institution”
IND. CODE ANN. § 5-33.5-1-1 (West 2020)	Application	statute	agreements with Tribes	the chapter on agreements with Tribes “applies only to an agreement between the state or a state agency and a federally recognized Indian tribe”
IND. CODE ANN. § 5-33.5-3-3 (West 2020)	Provision of services or facilities	statute	agreements with Tribes	“if a cooperative agreement entered into under this chapter concerns the provision of services or facilities that a state officer or state agency has power to control, the agreement must be submitted to that officer or agency for approval before it takes effect.”
IND. CODE ANN. § 5-33.5-3-5 (2020)	Waiver of sovereign immunity	statute	agreements with Tribes	“a cooperative agreement entered into under this chapter may provide” amongst another thing, “sovereign immunity from the federally recognized Indian tribe” or

				“the state”
IND. CODE ANN. § 5-33.5-3-2 (2020)	Written agreement; contents	statute	agreements with Tribes	requires certain provisions in cooperative agreements with Tribes
IND. CODE ANN. § 5-33.5-3-7 (2020)	State waiver of immunity from federal suit; prerequisites; applicable actions	statute	agreements with Tribes	for the purposes of agreements with Tribes, “the state may waive its immunity from suit in federal court under the Eleventh Amendment to the Constitution of the United States” if certain conditions are met
IND. CODE ANN. § 5-33.5-3-4 (2020)	Filing for audit purposes	statute	agreements with Tribes	a cooperative agreement “must be filed with the state board of accounts for audit purposes not later than sixty (60) days after the agreement takes effect”
IND. CODE ANN. § 5-33.5-3-1 (2020)	Cooperative agreements with federally recognized Indian tribes approved	statute	agreements with Tribes	allows the state or state agencies to enter into agreements with federally recognized Tribes
IND. CODE ANN. § 5-33.5-3-6 (West 2020)	Waiver of state sovereign immunity; attorney general review and approval required	statute	agreements with Tribes	requires the review of “[a] provision of a cooperative agreement with a federally recognized Indian tribe waiving the sovereign immunity” by

				the attorney general
IND. CODE ANN. § 5-33.5-2-1 (West 2020)	“Federally recognized Indian tribe”	statute	agreements with Tribes	defines federally recognized Tribe as “recognized by the United States Secretary of the Interior”
345 IND. ADMIN. CODE 2-8-7.5 (West 2021)	“Official eartag shield” defined	regulation	agriculture	defines “official eartag shield” as “the shield-shaped graphic of the U.S. Route Shield with ‘U.S.’ or the state postal abbreviation or Tribal alpha code imprinted within the shield”
345 IND. ADMIN. CODE 5-2-33.5 (West 2021)	“Official eartag shield” defined	regulation	agriculture	defines “official eartag shield” as “the shield-shaped graphic of the U.S. Route Shield with ‘U.S.’ or the state postal abbreviation or Tribal alpha code imprinted within the shield”
345 IND. ADMIN. CODE 2.5-1-31.5 (West 2021)	“Official eartag shield” defined	regulation	agriculture	defines “official eartag shield” as “the shield-shaped graphic of the U.S. Route Shield with ‘U.S.’ or the state postal abbreviation or Tribal alpha code imprinted within the shield”
345 IND. ADMIN. CODE 1-3-1.5 (West 2021); 345 IND. ADMIN. CODE 2-6-1 (West 2021);	Definitions	regulation	agriculture	defines “official eartag shield” as “the shield-shaped graphic of the U.S. Route Shield with ‘U.S.’ or the

345 IND. ADMIN. CODE 1-2.6-1 (West 2021)				state postal abbreviation or Tribal alpha code imprinted within the shield”
326 IND. ADMIN. CODE 2-2-13 (West 2021)	Area designation and redesignation	regulation	air pollution	allows Tribes to request air pollution redesignation and requires notice provided to impacted Tribes
326 IND. ADMIN. CODE 2-2-1 (West 2021)	Definitions	regulation	air pollution	defines Indian government and Indian reservation for the purposes for air pollution permit rules
326 IND. ADMIN. CODE 2-2-15 (West 2021)	Public participation	regulation	air pollution	requires notices for public comment for construction to be sent to any impacted Tribes
68 IND. ADMIN. CODE 24-1-1 (West 2021); 68 IND. ADMIN. CODE 24-1-3 (West 2021)	“Amateur boxer” defined	regulation	athletics	defines “amateur boxer” as an individual that “does not hold a license as a professional boxer or professional mixed martial artist issued by a state, country, or tribal nation”
68 IND. ADMIN. CODE 24-1-7 (West 2021)	“Association of Boxing Commissions” defined	regulation	athletics	defines “Association of Boxing Commissions” as “the association of state and tribal athletic commissions with a mission to standardize the regulation of combative sports”

68 IND. ADMIN. CODE 24-1-30 (West 2021)	“Professional boxer” defined	regulation	athletics	defines “professional boxer” to include those with a license issued by a Tribe
68 IND. ADMIN. CODE 24-3-4 (West 2021)	Fighter's license	regulation	athletics	application for boxer or mixed martial artists must include a photo ID, which can include Tribal IDs, and should list previous licenses
68 IND. ADMIN. CODE 24-3-8 (West 2021)	Matchmaker’s license	regulation	athletics	prohibits individuals “licensed as a matchmaker in a state, country, or tribal nation . . . from obtaining a license as an official”
68 IND. ADMIN. CODE 24-1-33 (West 2021)	“Professional mixed martial artist” defined	regulation	athletics	defines “professional mixed martial artist” to include individuals that “hold a license as a professional mixed martial artist or professional boxer issued by a state, country, or tribal nation”
68 IND. ADMIN. CODE 24-3-13 (West 2021)	Promoter’s license	regulation	athletics	Prohibits individuals licensed as a promoter in a state, country, or tribal nation “from obtaining a license as an official”
68 IND. ADMIN. CODE 24-6-3 (West 2021)	Promoter’s license	regulation	athletics	prohibits individuals licensed as a promoter in a state, country, or

				tribal nation from obtaining a license as an amateur mixed martial arts bout
68 IND. ADMIN. CODE 24-6-4 (West 2021)	Sanctioning body license	regulation	athletics	“[a] promoter licensed in any state, country, or tribal nation” is “prohibited from obtaining a license as a sanctioning body”
68 IND. ADMIN. CODE 24-6-5 (West 2021)	Sanctioning body rule requirements	regulation	athletics	Requires “that an amateur mixed martial artist competing in an event has obtained a mixed martial arts national identification card from a state, country, or tribal nation recognized by the Association of Boxing Commissions”
312 IND. ADMIN. CODE 22.5-1-2 (West 2021)	“Cemetery” defined	regulation	burial grounds	defines “cemetery” to include Native American cemeteries and burial grounds
312 IND. ADMIN. CODE 22-3-9 (West 2021)	Treatment and disposition of human remains	regulation	burial grounds	“reinterment conditions should replicate those prescribed by cultural, religious, or traditional values and where the reinterment context is the same as disinterment. For example, reinterment may take place on

				Native American reservation land in Indiana dedicated as a burial ground”
IND. CODE ANN. § 14-21-1-25.5 (West 2020)	Discovery of Native American Indian burial grounds; notice to commission; recommendations as to final disposition of remains	statute	burial grounds	establishes the process for notice to Tribes when Indian burial grounds have been discovered
25 IND. ADMIN. CODE 5-3-4 (West 2021)	Ownership determinations	regulation	business	“an enterprise that is owned by an Indian tribe, Alaska native corporation, or native Hawaiian organization as an entity, rather than by Indians, Alaska natives, or native Hawaiians as individuals, may be eligible for certification” as a Minority and Women Business Enterprise
IND. CODE ANN. § 4-13-16.5-1 (West 2020)	Definitions	statute	business	for the purposes of the Governor’s Commission on Minority and Women’s Business Enterprises, “minority group” is defined to include “Native Americans”
IND. CODE ANN. § 5-28-20-5 (2020)	“Minority group” defined	statute	business	for the purposes of the Small and Minority Business Financial Assistance

				Program, "minority group" is defined to include "American Indians"
25 IND. ADMIN. CODE 5-2-1 (West 2021)	Definitions	regulation	business	defines "minority group" to include "American Indians" for the purposes of Minority and Women's Business Enterprises program
IND. CODE Ann. § 31-18.5-1-2 (West 2020)	Definitions	statute	children and family law	Term "state" is defined to include "Indian Tribe" for the purposes of interstate child support
Monroe County Family Law App. F	APPENDIX F. INCOME WITHHOLDING FOR SUPPORT	local rule/form	children and family law	income withholding form lists Tribal income withholdings
Lake County Guardianship Form A	FORM A. GUARDIAN'S INFORMATION SHEET	local rule/form	children and family law	guardianship form lists Indian as race
IND. CODE ANN. § 29-3.5-1-2 (West 2020)	Definitions	statute	children and family law	"state" defined to include federally recognized Tribes for the purposes of guardianship proceedings
IND. CODE ANN. § 31-9-2-130.5 (West 2020)	Tribe	statute	children and family law	definition of Tribe under the Uniform Child Custody Jurisdiction Act
IND. CODE ANN. § 31-21-1-2 (West 2020)	Application to Indian tribes	statute	children and family law	"[a] child custody proceeding pertaining to an Indian child, as defined in the Indian Child

				Welfare Act (25 U.S.C. 1901 et seq.), is not subject to this article to the extent that it is governed by the Indian Child Welfare Act”
IND. CODE ANN. § 31-21-2-20 (West 2020)	“Tribe”	statute	children and family law	defines “Indian Tribe” for the purposes of the Uniform Child Custody Jurisdiction Act
IND. CODE ANN. § 31-25-2-8 (West 2020)	Administration of federal grants and programs	statute	children and family law	“the department shall negotiate in good faith with any Indian tribe, tribal organization, or tribal consortium in the state that requests to develop an agreement with the state to administer all or part of Title IV-E of the federal Social Security Act under 42 U.S.C. 670 et seq., on behalf of Indian children who are under the authority of the tribe, tribal organization, or tribal consortium”
IND. CODE ANN. § 31-28-6-1 (West 2020)	Enactment and contents	statute	children and family law	defines Indian Tribe and establishes parameters for interstate jurisdiction for the placement of children
465 IND. ADMIN. CODE	“Reasonable costs” defined	regulation	children and family law	for the purposes of rate setting for

2-17-15 (West 2021)				child placement agencies, "reasonable costs" is defined as consistent with the "OMB Circular A-87 Cost Principles for State, Local, and Indian Tribal Governments"
465 IND. ADMIN. CODE 2-16-12 (West 2021)	"Reasonable costs" defined	regulation	children and family law	for the purposes of rate setting for residential treatment facilities, "reasonable costs" is defined as consistent with the "OMB Circular A-87 Cost Principles for State, Local, and Indian Tribal Governments"
470 IND. ADMIN. CODE 3.1-6-2 (West 2021)	Child find	regulation	children and family law	"the child find system shall be coordinated with all other major efforts conducted by other state agencies, tribes, and tribal organizations"
465 IND. ADMIN. CODE 2-16-29 (West 2021); 465 IND. ADMIN. CODE 2-17-32 (West 2021)	Documents incorporated by reference	regulation	children and family law	for the purposes of rate setting for residential treatment facilities, "reasonable costs" is defined as consistent with the "OMB Circular A-87 Cost Principles for State, Local, and Indian Tribal Governments"
IND. CODE ANN. § 34-6-2-121.6	"Protection order"	statute	civil law and procedure	Protection order is defined to include orders of

(West 2020)				Tribes but does not “include a support or child custody order issued under the dissolution and child custody laws of a state or Indian tribe, except to the extent that the order qualifies as a protection order under subsection (a) and is entitled to full faith and credit under a federal law other than 18 U.S.C. 2265”
IND. CODE ANN. § 34-6-2-71.7 (West 2020)	“Issuing state or Indian tribe”	statute	civil law and procedure	““Issuing state or Indian tribe,’ for purposes of IC 34-26-5-17, means the state or Indian tribe whose tribunal issues a protection order”
IND. CODE ANN. § 34-26-5-17 (West 2020)	Foreign protection orders	statute	civil law and procedure	lists the requirements for the recognition of foreign protection orders, including those issued by Tribes
IND. CODE ANN. § 34-6-2-66.7 (West 2020)	“Indian tribe”	statute	civil law and procedure	defines Indian Tribe for the purposes of foreign protection orders
IND. CODE ANN. § 34-59-1-1 (West 2020)	Applicability	statute	civil law and procedure	chapter on unsworn foreign declarations “does not apply to a declaration by a declarant who is physically located on

				property that is within the boundaries of the United States and subject to the jurisdiction of another country or a federally recognized Indian tribe”
IND. CODE ANN. § 34-6-2-66.7 (West 2020)	“Indian tribe”	statute	civil law and procedure	foreign protection orders include those issued by the Tribal governments
IND. CODE ANN. § 34-6-2-48.5 (West 2020)	“Foreign protection order”	statute	civil law and procedure	foreign protection orders are defined to include orders issued by Tribes
IND. CODE ANN. § 34-26-5-3 (West 2020)	Duties of office of judicial administration and clerk of circuit court; statements on orders; verification and issuance of order	statute	civil law and procedure	Tribal order of protection is given full faith and credit
IND. CODE ANN. § 25-15-2-24 (West 2020)	“Protection order”	statute	civil law and procedure	for the purposes of determining final disposition and interment of human remains, “protection order” is defined to include orders issued by Tribes
IND. CODE ANN. § 34-44.5-1-4 (West 2020); IND. CODE ANN. § 34-59-1-6 (West 2020)	“State” defined	statute	civil law and procedure	for the purposes of the Uniform Interstate Depositions and Discovery Act, “state” is defined to include federally recognized Tribes

IND. CODE ANN. § 22-9-5-10 (West 2020)	“Employer” defined	statute	civil rights	for the purposes of employment discrimination against individuals with disabilities, “employer” does not include the federal government or Tribes
IND. CODE ANN. § 35-42-4-4 (West 2020)	Child exploitation; possession of child pornography; violation classification; exemption; definitions; defenses	statute	criminal law	outlines instances in which defense to a prosecution for child pornography does not apply including if the image violates a Tribal protection order
IND. CODE ANN. § 35-46-1-15.1 (West 2020)	Invasion of privacy	statute	criminal law	defines the crime of invasion of privacy to include violating a Tribal protective or no contact orders
IND. CODE ANN. § 35-45-10-5 (West 2020)	Criminal stalking	statute	criminal law	defines the crime of stalking to include violating a Tribal protective or no contact orders
IND. CODE ANN. § 35-49-3-4 (West 2020)	Defense to prosecution for dissemination of matter or conducting performance harmful to minors	statute	criminal law	prohibits the defense of prosecution of pornography if the image violates an order of a Tribe
IND. CODE ANN. § 35-46-1-15.3 (West 2020)	Violation of no contact order; classification of offense	statute	criminal law	violation of protective orders involving juvenile delinquency proceedings, including Tribal protective orders,

				commits a level 6 felony
IND. CODE ANN. § 5-10.4-4-4 (West 2020)	Out-of-state service	statute	education	“out-of-state service” under the State Teachers’ Retirement Fund is defined to include educational facilities “operated or supervised by the Bureau of Indian Affairs”
IND. CODE ANN. § 20-30-14.5-1 (West 2020)	Foreign language	statute	education	includes Native American languages as part of the definition of foreign language
IND. CODE ANN. § 20-51-4-1 (West 2020)	Autonomy and duties of eligible schools; reading, posting, and maintenance of, certain writings, documents, or records; content based censorship; teaching violent overthrow of United States government; mandatory curriculum	statute	education	Mandatory curriculum includes “Chief Seattle’s letter to the United States government in 1852 in response to the United States government’s inquiry regarding the purchase of tribal lands”
511 IND. ADMIN. CODE 6.2-7-6 (West 2021)	Groups of students; minimum group size	regulation	education	school annual yearly progress reports to include number of students that are American Indians
IND. CODE ANN. § 20-30-5-3 (West 2020)	Protected writings, documents, and records of American history or heritage	statute	education	part of a mandatory educational curriculum: “Chief Seattle’s letter to the United States government in

				1852 in response to the United States government's inquiry regarding the purchase of tribal lands"
410 IND. ADMIN. CODE 7-24-87 (West 2021)	"Shellfish control authority" defined	regulation	food safety	defines "shellfish control authority" to include Tribal governments
IND. CODE ANN. § 4-29-1-1 (West 2020)	Applicability	statute	gaming	excludes certain gaming facilities from Tribal gaming chapter
IND. CODE ANN. § 4-29-2-2 (West 2020)	Class III gaming	statute	gaming	definition of class III gaming in Tribal gaming chapter
IND. CODE ANN. § 4-29-2-1 (West 2020)	Applicability	statute	gaming	explains that the "definitions in this chapter apply throughout" the Tribal gaming article
IND. CODE ANN. § 4-29-3-5 (West 2020)	Copy of compact to be sent for ratification; requirements for ratification	statute	gaming	explains the ratification of Tribal-state gaming compact
IND. CODE ANN. § 4-29-3-7 (West 2020)	Federal review and approval; copy sent to U.S. Secretary of the Interior	statute	gaming	"the secretary of state shall forward a copy of the executed tribal-state compact and the act of ratification to the United States Secretary of the Interior for federal review and approval"
IND. CODE ANN. § 4-29-3-2 (West 2020)	Void compact; lack of ratification	statute	gaming	"tribal-state compact entered into, amended, or modified without the ratification of the general assembly is

				void”
IND. CODE ANN. § 4-29-3-8 (West 2020)	Amendment or modification; submission to general assembly	statute	gaming	procedure for amendments to Tribal-state gaming compact
IND. CODE ANN. § 4-29-3-1 (West 2020)	Ratification	statute	gaming	procedure for ratification of Tribal-state gaming compact
IND. CODE ANN. § 4-29-3-6 (West 2020)	Deposit of ratified compact with secretary of state	statute	gaming	depositing of ratified Tribal- state gaming compact
IND. CODE ANN. § 4-29-2-3 (West 2020)	“Indian lands”	statute	gaming	defines “Indian lands” using the definition in 25 U.S.C. 2703(4)
IND. CODE ANN. § 4-29-2-4 (West 2020)	“Indian tribe”	statute	gaming	defines “Indian Tribe” as the definition listed under 25 U.S.C. 2703(5)
IND. CODE ANN. § 4-29-3-4 (West 2020)	Compact contents	statute	gaming	terms required in a Tribal-state gaming compact
IND. CODE ANN. § 4-29-2-5 (West 2020)	“Tribal-state compact”	statute	gaming	defines Tribal- state gaming compacts
IND. CODE ANN. § 4-29-3-3 (West 2020)	Negotiating and executing tribal-state compacts authorizing Class III gaming; governor responsibility	statute	gaming	“[t]he governor is responsible for negotiating and executing a Tribal-state [gaming] compact”
IND. CODE ANN. § 12-16.5-1- 4(b)(3) (West 2020)	Health care	statute	health	excludes health care to Native Americans under health care compact
760 IND. ADMIN. CODE 3-2-4.6(a)(6) (West 2021)	“Creditable coverage” defined	regulation	health	defines “creditable coverage” to include a medical care program of the Indian Health

				Service or of a tribal organization
405 IND. ADMIN. CODE 10-4-7 (West 2021)	American Indian/Alaskan Native	regulation	health	defines the eligibility requirements for American Indian and Alaska Natives under the Healthy Indiana Plan
405 IND. ADMIN. CODE 10-2-1(3) (West 2021)	Definitions	regulation	health	defines American Indian and Alaska Native for the purposes of the Healthy Indiana Plan
405 IND. ADMIN. CODE 10-7-9(b)(2) (West 2021)	Emergency room visits; copayments	regulation	health	American Indians and Alaska Natives are exempt from copayments under the Healthy Indiana Plan
405 IND. ADMIN. CODE 10-3-3(h) (West 2021)	Fast track enrollment	regulation	health	“eligible American Indian/Alaskan Native shall begin HIP Plus or HIP State Plan Plus benefits, as applicable, effective the first day of the month of the eligible individual's date of application”
405 IND. ADMIN. CODE 10-10-3(d)(1) (West 2021)	POWER account contributions; copayments	regulation	health	American Indians and Alaska Natives are not subject to cost sharing under the Healthy Indiana Plan
405 IND. ADMIN. CODE 10-12-4(a)(15)	Qualifying activities	regulation	health	Medicaid work requirements can be satisfied by various activities

(West 2021)				including “members of the Pokagon Band of Potawatomi who participate in the tribe’s comprehensive Pathways program”
405 IND. ADMIN. CODE 10-3-2(f) (West 2021)	Standard enrollment	regulation	health	certain eligibility requirements for Health Indiana Plan membership does not apply to American Indians and Alaska Natives
405 IND. ADMIN. CODE 10-8-1 (West 2021)	Unauthorized cost sharing	regulation	health	“[m]anaged care organizations and providers shall not charge, collect, or impose cost sharing, including premiums, copayments, or coinsurance,” for any covered service to certain members including American Indians and Alaska Natives
IND. CODE ANN. § 16-19-14-2 (West 2020)	“Minority”	statute	health	for the purposes of the Office of Minority Health, minority is defined to include American Indians, Alaska Natives, and Native Hawaiians
IND. CODE ANN. § 16-46-6-2 (West 2020)	Minority	statute	health	for the purposes of the Interagency State Council on Black and Minority

				Health, minority is defined to include American Indians, Alaska Natives, and Native Hawaiians
910 IND. ADMIN. CODE 2-8-4 (West 2021)	Use of words, phrases, symbols, and visual aids	regulation	housing	discriminatory housing advertisements includes “[w]ords indicative of race, color, religion, sex, handicap, familial status, or national origin, including” American Indians
IND. CODE ANN. § 22-1-6-1(1) (West 2020)	Exemption from chapter	statute	labor	chapter on marketplace contractors does not apply to “[s]ervice performed in the employ of the state, a political subdivision, an Indian tribe, or an instrumentality of the state, a political subdivision, or an Indian tribe if the service is excluded from employment as defined in the Federal Unemployment Tax Act”
IND. CODE ANN. § 22-4-8-3.6 (West 2020)	“Drive away”; “employment”	statute	labor	for the purposes of the unemployment compensation fund, “‘employment’

				includes service performed by a driver who provides drive away operations when the services are being performed by an individual who is in the employ of a state or local government entity or federally recognized Indian tribe”
511 IND. ADMIN. CODE 7-32-59(3)(b)(i) (West 2021)	“Limited English proficient” defined	regulation	language	defines “Limited English Proficient” as including a “Native American or Alaska native, or a native resident of the outlying areas”
511 IND. ADMIN. CODE 6.2-10-1(28)(D) (West 2021)	Definitions	regulation	language	defines “Limited English Proficient” as including a Native American or Alaska native, or a native resident of the outlying areas
511 IND. ADMIN. CODE 20-1-2(8)(D) (West 2021)	Definitions	regulation	language	defines “world language” to include Native American languages
410 IND. ADMIN. CODE 32-1-5 (West 2021)	“Approved training course provider” defined	regulation	lead paint	Defines “approved training course provider” as a “training course provider who has been approved by the department, U.S. EPA, or a U.S.

				EPA state or tribe authorized lead-based paint program”
410 IND. ADMIN. CODE 32-1-79(a) (West 2021)	“Third-party examination” defined	regulation	lead paint	for the purposes of lead-based paint program, “third-party examination” is defined to include “a U.S. EPA developed examination administered by” a Tribe
410 IND. ADMIN. CODE 32-1-4 (West 2021)	“Approved initial training course and approved refresher training course” defined	regulation	lead paint	for the purposes of lead-based paint program, an “approved initial training course and approved refresher training course” means a course approved by the Indiana Department of Health, U.S. EPA, or a U.S. EPA state or tribe authorized lead-based paint program
410 IND. ADMIN. CODE 32-3-2 (West 2021)	Initial and refresher training course and lead-based paint two (2) hour rules awareness course application for approval	regulation	lead paint	requirements for lead based paint program if the “training course provider’s training course materials are not based on U.S. EPA-recommended model training materials or training materials approved by an EPA-approved state or Indian tribe”

410 IND. ADMIN. CODE 32-2-7 (West 2021)	Lead-based paint license reciprocity	regulation	lead paint	requirements for lead based paint program license for those that already have licenses including other jurisdictions, including Tribes
410 IND. ADMIN. CODE 32-3-4 (West 2021)	Refresher training course requirements; course work	regulation	lead paint	requirements for refresher training courses to be approved by other jurisdictions including Tribes
410 IND. ADMIN. CODE 32-3-8 (West 2021)	Training manager and instructor qualifications	regulation	lead paint	a qualified principal instructor for lead paint program must have successfully completed at least sixteen (16) hours of any U.S. EPA-accredited or U.S. EPA- authorized state or tribal- accredited lead- specific training
IND. CODE ANN. 9-18.5-2-1 (West 2020)	Personalized license plate designs	statute	license plates	Indiana Native American trust license plates are considered personalized license plates under state law
IND. CODE ANN. 9-13-2-170(1) (West 2020)	Special group	statute	license plates	“special group” under Indiana’s special group recognition license plate program includes any groups that “have made significant contributions to the United States, Indiana, or the group’s

				community or are descendants of native or pioneer residents of Indiana”
IND. CODE ANN. 9-18.5-22-3 (West 2020)	Fees for Indiana Native American trust license plate	statute	license plates	fees for Native American license plate
IND. CODE ANN. 9-18.5-22-2 (West 2020)	Eligibility for Indiana Native American trust license plate	statute	license plates	eligibility for Native American license plate
IND. CODE ANN. 9-18.5-22-1 (West 2020)	Design and issue Indiana Native American trust license plate	statute	license plates	authorizes the bureau to design and issue Native American trust license plates “with the advice of the Native American Indian Affairs Commission”
IND. CODE ANN. 9-18.5-22-4 (West 2020)	Indiana Native American trust fund established; interest, expenses and distribution	statute	license plates	establishes the Native American trust fund from funds received from license plates and authorizes the distribution of the funds to the Native American Affairs Commission
IND. CODE ANN. 36-1-7-1 (West 2020)	Application of chapter	statute	local government	authorization to engage in interlocal agreements, which defines interlocal to include Tribes is authorized by Tribal law
IND. CODE ANN. 36-1-2-5.5 (West 2020)	“Federally recognized Indian tribe” defined	statute	local government	for the purposes of the chapter on interlocal cooperation, a “federally recognized Indian tribe” is

				considered one recognized by the US Secretary of Interior
IND. CODE ANN. 14-34-3-4 (West 2020)	Applications; confidentiality of information pertaining to coal seams, test borings, core samplings, or soil samples	statute	mining	information only pertaining “to the analysis of the chemical and physical properties of the coal, except information concerning a mineral or elemental content that is potentially toxic in the environment and the nature and location of archeological resources on public land and Indian land as required under the federal Archeological Resources Protection Act of 1979 (16 U.S.C. 470aa et seq.), is confidential”
312 IND. ADMIN. CODE 25-1-65 (West 2021)	“Historic lands” defined	regulation	mining	defines “historic lands” to include “[s]ites having religious or cultural significance to native Americans”
312 IND. ADMIN. CODE 25-4-113 (West 2021)	Review, public participation, and approval or disapproval of permit applications; permit terms and conditions; public availability	regulation	mining	coal mining permitting requires inclusion of “Information on the nature and location of archaeological resources on public and Indian

				land”
IND. CODE ANN. 4-23-32-6 (West 2020)	Staffing and administrative support; expenses; designation of chairperson	statute	Native American Indian Affairs Commission	staffing and administrative support; expenses; designation of chairperson for the Native American Indian Affairs Commission
IND. CODE ANN. 4-23-32-5 (West 2020)	Official action; conditions to take action	statute	Native American Indian Affairs Commission	“[t]he affirmative votes of at least eight (8) members of the commission are required for the commission to take any official action, including public policy recommendations and reports”
IND. CODE ANN. 4-23-32-1 (West 2020)	“Commission” defined	statute	Native American Indian Affairs Commission	for this chapter, “commission” means “the Native American Indian Affairs Commission”
IND. CODE ANN. 4-23-32-2 (West 2020)	“Native American Indian” defined	statute	Native American Indian Affairs Commission	defines “Native American Indian” for the purposes of the Native American Indian Affairs Commission
IND. CODE ANN. 4-23-32-3 (West 2020)	Native American Indian affairs commission; establishment	statute	Native American Indian Affairs Commission	establishes the Native American Indian Affairs Commission
IND. CODE ANN. 4-23-32-7 (West 2020)	Study of issues; recommendations	statute	Native American Indian Affairs Commission	topics that the Native American Indian Affairs Commission may make recommendations for
IND. CODE ANN.	Study restrictions	statute	Native American	“The commission may

4-23-32-8 (West 2020)			Indian Affairs Commission	not study or make recommendation s on the following issues: (1) Negotiations between a tribe and the state or federal government concerning tribal sovereignty; (2) Gaming on tribal land”
IND. CODE ANN. 4-23-32-4 (West 2020)	Members	statute	Native American Indian Affairs Commission	establishes the membership for the Native American Indian Affairs Commission
IND. CODE ANN. 33-42-9-11 (West 2020)	Notarial act performed in a foreign jurisdiction; presumption of validity; evidence	statute	notaries	“foreign” government “means a government other than the United States, a state, or a federally recognized Indian tribe”
IND. CODE ANN. 33-42-9-9 (West 2020)	notarial act performed in the jurisdiction of a federally recognized Indian tribe; presumption of validity; evidence	statute	notaries	“[a] notarial act performed under the authority and in the jurisdiction of a federally recognized Indian tribe is presumed valid and has the same effect as a notarial act performed by a notarial officer of Indiana” if certain conditions are met
Lake County Estate Forms, Form A	Form A. Personal Representative’s Information	local rule/form	probate	personal representative form includes

	Sheet			“American Indian” as “race”
IND. CODE ANN. 32-17.5-2-9 (West 2020)	“State”	statute	property	for the purpose of the Uniform Disclaimer of Property Interests Act, “state” is defined to include Tribes
IND. CODE ANN. 5-26.5-1-8 (West 2020)	“Sexual assault”	statute	public safety	for the purposes of the address confidentiality program, “sexual assault” is defined as conduct that constitutes a misdemeanor or felony under Tribal law
IND. CODE ANN. 5-26.5-1-9 (West 2020)	“Stalking”	statute	public safety	for the purposes of the address confidentiality program, “stalking” is defined as conduct that constitutes a misdemeanor or felony under Tribal law
IND. CODE ANN. 4-23-30.2-7 (West 2020)	“Young person of color” defined	statute	social services	for the Board for the Coordination of Programs Serving Vulnerable Individuals, “young person of color” is defined to include American Indians, Alaska Natives, and Native Hawaiians
IND. CODE ANN. 6-9-7-7 (West 2020)	Innkeeper’s tax fund; establishment; distribution of money; advisory committee;	statute	tax	county tax commission to include “[a] member appointed by the Native American

	bonds			Indian Affairs commission”
329 IND. ADMIN. CODE 9-8-3 (West 2021)	Definitions	regulation	waste management	defines “local government” to include Tribes for the purposes of solid waste management
327 IND. ADMIN. CODE 6.1-2-37 (West 2021)	“Municipal” defined	regulation	waste management	for the purposes of industrial waste, “municipal” is defined to include Tribes
IND. CODE ANN. 14-25-15-1 (West 2020)	Enactment and contents	statute	water	Great Lakes water resources compact requires consultation with Tribes and impacts Native communities
312 IND. ADMIN. CODE 9-10-13.1 (West 2021)	Falconry licenses	regulation	wildlife	falconry permit requirements regardless of the number of state, Tribal, or territorial falconry permits possessed
345 IND. ADMIN. CODE 1-3-31.5 (West 2021)	Movement of fish into Indiana	regulation	wildlife	individuals responsible for VHS fish in the state must ensure “VHS-susceptible species of live fish moved into the state from a VHS-affected or at-risk region must be transported with documentation from the appropriate state, tribal, or federal authority for aquatic animal health stating that the fish are from a group of

				fish or facility certified as having tested negative for the VHS virus according to either of the following standards: . . .”
312 IND. ADMIN. CODE 9-10-9 (West 2021)	Wild animal rehabilitation permit	regulation	wildlife	“[c]arcasses of wild animals that are euthanized or otherwise die while in the care of a permit holder must be . . . donated to a person with a permit from the United States Fish and Wildlife Service for Native American religious purposes”

