

IMPROVING LAW ENFORCEMENT DATA
FOR MISSING
AND MURDERED
INDIGENOUS
PEOPLE



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WORKING WITH AMERICAN INDIAN AND ALASKA NATIVE DATA

SECTION I. SPECIAL CONSIDERATIONS

Erasure of American Indians and Alaska Natives in Data

American Indians and Alaska Natives (AI/AN) are often omitted in data collection and analysis. This occurs when AI/AN are categorized as “Other race” or “Multiracial,” grouped with other small populations, misclassified as another race. As a result of these systemic inequities in data, AI/AN are undercounted in local and national statistics, which leads to an inaccurate representation of social, economic, and health measures, and results in insufficient resource allocation. Ensuring Indigenous peoples are included in data collection and analysis may require more resource-intensive approaches to collect relevant data elements, identify inclusive datasets, and apply appropriate statistical methods for small populations.¹

Protecting Confidentiality of Small Populations

When analyzing small populations data, special considerations must be applied to protect the confidentiality of victims. If reportable data contains less than 10 individuals, the data must be suppressed. Data suppression is the redaction or withholding of information to protect individual identities, privacy, and personal information. It is also important to avoid associating or grouping multiple identifying characteristics, including demographic and geographic information, which could lead to the identification of victims in small populations.

¹ Urban Indian Health Institute. *Best Practices for American Indian and Alaska Native Data Collection*. Urban Indian Health Institute; 2020:1-8. <https://www.uihi.org/download/best-practices-for-american-indian-and-alaska-native-data-collection/?wpdmdl=16644&refresh=62476ead44f561648848557>

Indigenous Data Sovereignty

In data collection and analysis, Indigenous Data Sovereignty must be upheld as it is derived from the inherent right of Indigenous nations to govern their peoples, lands, and resources as acknowledged in federal and international treaty law.² Indigenous Data Sovereignty is the authority to govern the collection, ownership, and application of one's own data.³ This government-to-government relationship between tribes and states means the collection, analysis, and presentation of AI/AN data must be negotiated with tribes and urban Native communities.

SECTION II. ACTION STEPS TO UPHOLD INDIGENOUS DATA SOVEREIGNTY

Step 1	Hold a tribal consultation or urban confer to request permission to collect tribe-specific data elements (e.g. tribal affiliation). Be transparent on what information can be released if there is a public records request.
Step 2	In collaboration with tribes, develop a Data Use Agreement (DUA) or Memorandum of Understanding (MOU) to establish the permitted uses for tribe-specific data, and set protocols for how data will be shared back to tribes, including frequency.
Step 3	Request input from tribes and urban Native communities on analysis, interpretation, and presentation of AI/AN data.

2. Rainie SC, Rodriguez-Lonebear D, Martinez A. *Indigenous Data Sovereignty in the United States: A Call to Action for Native Nations, Tribal Citizens, Governments, Organizations, Scholars, and Funders*. University of Arizona Native Nations Institute; 2017:1-2. <https://static1.squarespace.com/static/58e9b10f9de4bb8d1fb5ebbc/t/5b297686f950b7690cf09a9/1529443976962/Policy+Brief+Indigenous+Data+Sovereignty+in+the+United+States+Vo.3+copy.pdf>

3. Kukutai T, Taylor J. *Indigenous data sovereignty: Toward an agenda*. ANU Press; 2016. https://books.googleusercontent.com/books/content?req=AKW5QadocZpW5oNLFmeEsQcHz3h2Pca_TtCG-yduThZXzPv4WUlnjH5U7iUQY2XHBFLWaWl4N8iborCYrCYM5akACsAhLyMRIHQj0lv7EtUbD_L-r2fWWI4PqHXFjwvoesET-tP5Nt1XpMvAxS6oLR-7gr96VtuzCfXVZXMcjlojAp5sm_A64FGaCMf5lzbNvBP69NA29a08ixVedQDISDHmQ8nGAJPeoZEOyOdpfOhEs8DAqdh_NhngJmCRLxME9EKfQDj7to7xSqgTgMu9TlgyloDy1RMMw

SECTION III. IMPLEMENTATION OF RECOMMENDED DATA ELEMENTS

The data elements indicated below are intended to improve the accuracy of data collected on AI/AN people and strengthen data sharing between tribes and law enforcement agencies, with the ultimate goal of bringing justice to victims. It must be recognized that these recommended data elements may not be comprehensive, as data collection is a continuously evolving process that requires ongoing quality improvement and evaluation. Suggestions for quality improvement (QI) processes are highlighted below.



Terminology Key:

Variable: Element you are assessing

Description: Variable description

Data Type: Defines what type of data are allowable

Numeric codes: Values are the allowable numeric codes. Labels are the corresponding descriptors for each numeric code.

Branching Logic: When an answer to one question enables another question to appear.

Required: Question cannot be bypassed without a response entered.

Collection of Race

The collection of race data should, at a minimum, include the following categories: White/Caucasian, Black/African American, Asian, American Indian/Alaska Native, Native Hawaiian/Pacific Islander, and Other Race, with an option to specify race (see Table 1). Categories may need to be tailored to local contexts to ensure they adequately capture racial diversity and self-identification of race.

Data tools should allow for the selection of multiple races with the ability to disaggregate the data once collected. When AI/AN is selected, it should include branching logic on tribal affiliation. Regardless of whether an individual affiliates with a tribe, they should be included in counts of American Indians/Alaska Natives. Some individuals may not know their tribe or may belong to tribes that are not federally recognized.



Quality Improvement Tip

Conduct an annual review of the “Other Race” category. When responses are repeated more than once, consider adding an additional race category. When responses match existing race categories, group the responses with the appropriate categories.

Table 1. Suggested Race Variable Architecture and Response Categories

Variable	Description	Data Type	Numeric Codes		Branching Logic	Required
			Value	Label		
Race	Self-identified race	Numeric	1	White/Caucasian		Yes
			2	Black/African American		
			3	Asian		
			4	American Indian/Alaska Native	If selected, ask “What is your tribal affiliation?”	
			5	Hawaiian/Pacific Islander		
			6	Other Race	If selected, ask “What is your race?”	
			999	Unknown		

Collection of Tribal Affiliation

Tribal affiliation is the self-identification of association with a particular tribe or tribes and community attachment.⁴ This differs from tribal citizenship or enrollment, as only tribes determine and define tribal citizenship under their rights as sovereign nations.⁵ Someone may be affiliated with a tribe by way of descendency or some other means but not enrolled due to eligibility requirements, missing documentation, or lack of federal recognition of their tribe, among other reasons. If your jurisdiction includes tribes and federally defined tribal lands, however, the addition of tribal affiliation should not be adopted until a tribal consultation and/or urban confer has taken place with the relevant tribe(s).

Selection of tribal affiliation should be prompted after the selection of AI/AN race. Data tools should allow for a drop-down option of the affiliated tribe(s), with a list of all federally recognized tribes (see Table 2). It should also permit the selection of multiple tribes with the ability to disaggregate the data once collected. In addition to the list of all federally recognized tribes, there should be an option for “Other” and for “state-recognized tribe”, with the inclusion of branching logic to specify tribe. The “Other” option may be used when a person identifies with a specific subgroup (band, clan) rather than a larger tribe or other Indigenous groups such as Canadian First Nations.



Quality Improvement Tip

Conduct an annual review of the list of federally recognized tribes to ensure it is up to date. Add in any newly recognized tribes. Updated listings are published each year in the Federal Register.

Table 2. Suggested Tribal Affiliation Variable Architecture and Response Categories

Variable	Description	Data Type	Numeric Codes		Branching Logic	Required
			Value	Label		
Tribal affiliation	Self-identified tribal affiliation	Numeric	1-576	See appendix for a list of all federally recognized tribes		Yes, if race=4
			777	Other tribe	If selected, ask “What is your tribe?”	
			888	State-recognized tribe	If selected, ask “What is your state-recognized tribe?”	
			999	Unknown		

4. U.S. Census Bureau. *Understanding and Using American Community Survey Data: What Users of Data for American Indians and Alaska Natives Need to Know*. U.S. Government Publishing Office; 2021:7. Accessed May 10, 2024. https://www.census.gov/content/dam/Census/library/publications/2021/acs/acs_aian_handbook_2021.pdf

5. *Santa Clara Pueblo v. Martinez*. US 436, 49 (Supreme Court of the United States 1978). Accessed May 10, 2024. [https://scholar.google.com/scholar_case?case=8956958372276107542&q=santa+clara+pueblo+v.+martinez+436+u.s.+49+\(1978\)&hl=en&as_sdt=6,48&as_vis=1](https://scholar.google.com/scholar_case?case=8956958372276107542&q=santa+clara+pueblo+v.+martinez+436+u.s.+49+(1978)&hl=en&as_sdt=6,48&as_vis=1)

Collection of Ethnicity

Ethnicity should be collected as a separate data field from race. There should be two categories for ethnicity: Hispanic/Latino and Not Hispanic/Latino (see Table 3).

Table 3. Suggested Ethnicity Variable Architecture and Response Categories

Variable	Description	Data Type	Numeric Codes		Branching Logic	Required
			Value	Label		
Ethnicity	Self-identified ethnicity	Numeric	1	Hispanic/Latino		Yes
			2	Not Hispanic/Latino		
			999	Unknown		

Collection of Tribal Land Information

Prior to the collection of tribal land information, a tribal consultation must take place so the collecting agency has a clear understanding of how to manage and share tribe-specific information. Agencies with federal trust land (e.g. tribal land held in trust by the federal government for the benefit of a tribe or tribal members⁶) in their jurisdiction should collect information on whether the incident occurred on, the missing person(s) was last seen on, the deceased person(s) was found on, and/or the victim’s residence was on Indian Country,* an Alaska Native Village, or tribal corporation lands (See Table 4).⁷ Tribal land data fields should be required for all persons, not only those who identify as AI/AN. These data fields should include branching logic to allow for the selection of tribal reservation(s) in your jurisdiction.



Quality Improvement Tip

Maintain a record of reservation boundaries and the zip codes in which they intersect with for the ease of data entry. Conduct an annual review of the proportion of “Unknown” responses to ensure staff are trained appropriately.

* Indian Country, as defined by 18 U.S.C. § 1151, is all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

6. National Conference of State Legislatures State-Tribal Institute. *Trust Land Overview*. National Conference of State Legislatures; 2012. Accessed January 21, 2021. <https://www.ncsl.org/research/state-tribal-institute/trust-land-overview.aspx>

7. 18 U.S. Code § 1151 - Indian Country Defined.; 2012. Accessed May 9, 2024. <https://www.govinfo.gov/app/details/USCODE-2011-title18/USCODE-2011-title18-partI-chap53-sec1151/summary>

Table 4. Suggested tribal land variable architectures and response categories

Variable	Description	Data Type	Numeric Codes		Branching Logic	Required
			Value	Label		
Incident on tribal land	Incident occurred on tribal land	Numeric	1	Yes	If selected, ask “Which tribal land did this occur on?” and choose from drop down.	Yes
			2	No		
			999	Unknown		
Missing from tribal land	Missing person last seen on tribal land	Numeric	1	Yes	If selected, ask “Which tribal land did this occur on?” and choose from drop down.	Yes
			2	No		
			999	Unknown		
Deceased on tribal land	Deceased person found on tribal land	Numeric	1	Yes	If selected, ask “Which tribal land did this occur on?” and choose from drop down.	Yes
			2	No		
			999	Unknown		
Primary residence on tribal land	Victim’s primary residence is on tribal land	Numeric	1	Yes	If selected, ask “Which tribal land did this occur on?” and choose from drop down.	Yes
			2	No		
			999	Unknown		

SECTION IV. DATA ANALYSIS AND REPORTING GUIDELINES

Analyzing violence data requires special considerations for victims' rights, privacy, and confidentiality. Data should never be used to stigmatize communities intentionally or unintentionally, nor should generalizations be made regarding entire populations. When working with AI/AN data, these same considerations must be applied with additional care for Indigenous Data Sovereignty, or the authority of tribes to govern the collection, ownership, and application of data from their members.³

Urban Indian Health Institute (UIHI) recommends providing a written report on tribe-specific data to the identified tribal representatives on a quarterly basis. However, specific reporting procedures—including frequency, format, and the appropriate representatives—should be discussed and determined during the tribal consultation process.

The following sections outline how to analyze the recommended data elements proposed in Section III and provide analysis practice examples.

Analyzing Race and Ethnicity Data

Apply an Inclusive Definition of AI/AN

In data analysis, AI/AN should be defined as anyone marking AI/AN alone or AI/AN in any combination of race or Hispanic ethnicity, given almost half of AI/AN people identify as multiracial.⁸



In Practice

In 2020, there was a total of 30 victims of sexual violence. Of those, two victims identified as AI/AN. Person X identified as AI/AN, Black, and Hispanic. Person Y identified as AI/AN alone. To calculate the proportion of AI/AN victims of sexual violence, you would count both Person X and Person Y in the numerator (2), and all 30 victims in the denominator.

Protect Privacy With Data Suppression

When reportable data contains less than 10 individuals, use data suppression to protect victims' privacy. Secondary suppression may be required to ensure the suppressed counts cannot be recalculated through subtraction. This occurs when additional counts that *do* exceed 10 individuals are suppressed to avoid inadvertent disclosure. If the value of all information is not the same, suppress counts that contain less meaningful information.⁹

⁸ 2010 Census Shows Nearly Half of American Indians and Alaska Natives Report Multiple Races. U.S. Census Bureau; 2012. Accessed May 9, 2024. https://www.census.gov/newsroom/releases/archives/2010_census/cb12-cn06.html

⁹ Washington Department of Health. Department of Health Agency Standards for Reporting Data with Small Numbers. Published online May 2018. Accessed June 18, 2021. <https://www.doh.wa.gov/Portals/1/Documents/1500/SmallNumbers.pdf>



In Practice

Agency Z is producing an annual public report of domestic violence in Jade County, with a focus on the disproportionate impact on communities of color. Among all domestic violence victims 5 identified as AI/AN, 15 identified as Black, 15 identified as Asian, and 12 identified as White.

Race of the victims would be reported as the following, “In 2020, there was a total of 47 victims of domestic violence. By race, 15 identified as Black and 15 identified as Asian, the number of victims that identified as White and AI/AN has been suppressed to protect the privacy and confidentiality of the victims.” In this case, White was chosen for secondary suppression because the focus of the annual report was on communities of color.

Aggregate Racial Data To Limit Data Suppression

To limit data suppression, increase the sample size by aggregating racial data across years or meaningful geographic regions. This requires uniform data collection procedures across the years or regions of interest.



In Practice

In 2019 there were seven AI/AN victims of domestic violence. In 2020 there were eight AI/AN victims of domestic violence. When analyzing one-year intervals, the number of AI/AN victims could not be reported due to suppression guidelines. To overcome this challenge, Agency X aggregated the total number of AI/AN victims across two years to report 15 AI/AN victims from 2019-2020.

Analyzing Tribal Affiliation Data

Uphold Indigenous Data Sovereignty With a Data Use Agreement or Memorandum of Understanding

Self-identified tribal affiliation is intended to capture the vast cultural diversity of AI/AN people. The collection of tribal affiliation should only be implemented if it is approved with the proper tribal consultation and/or urban confer. Permitted uses of tribe-specific data and protocols for sharing data back to tribes should be outlined in a Data Use Agreement (DUA) or Memorandum of Understanding (MOU). Tribal affiliation is highly sensitive information, akin to personal identity, and should never be used for any purposes other than quality improvement of service delivery. If other purposes are identified, a tribal consultation and/or urban confer must be required prior to the release of information.

Reinforce the DUA/MOU With an Internal Agency Policy

A DUA/MOU should be reinforced by an internal agency policy to ensure the confidentiality of tribal affiliation information and defer authority to govern this information to tribes. In this policy, it should be stated that tribal affiliation will not be released without the approval of each relevant tribal nation. If the request for tribal affiliation is research-related, additional requirements may be necessary, such as a tribal IRB and/or tribal resolution. Research is defined as any investigation designed to develop knowledge. Activities may include informing policy, evaluating systems, or testing hypotheses. If an external agency or subcontractor has access to tribal affiliation data for quality improvement processes, the contract of agreement should recognize tribal affiliation as confidential information subject to the security precautions and protocols outlined in the DUA/MOU.

Report Tribe-Specific Information as an Aggregated Total

The release of tribal affiliation by individual tribe is not only a violation of Indigenous Data Sovereignty but could also expose the identity of victims, endangering their safety. In public reports, never identify individual tribes by name. Tribal affiliation should only be reported as the total number of tribes served. This requires tribal affiliation data to be disaggregated to calculate how many unique tribes are represented. Individuals with multiple tribal affiliations may appear more than once in the total number of tribes.



In Practice

In 2020, there were 7 assault victims affiliated with Tribe X, 12 assault victims affiliated with Tribe Y, and one assault victim affiliated with both Tribe X and Tribe Y. When reporting this information publicly, it should be stated as, “In 2020, Agency Z served 20 AI/AN victims across two different tribes”. If the number of victims were less than 10, then only the number of tribes served would be reported and the number of victims would be suppressed.

Report Back to Tribes the Total Number of Victims Affiliated With Their Tribe

When sharing data on tribal affiliation back to tribes, include the total number of victims affiliated with their tribe and the total number of victims affiliated with all other de-identified tribes.



In Practice

In Agency X’s DUA it states they will report the number of victims of sexual violence to Tribe Y each quarter. In Quarter 4 of 2020, Agency X reports the following to Tribe Y, “There was a total of 40 sexual violence victims this quarter, 25 identified with Tribe Y and 10 identified with other tribes.”

Notify Tribes When Suppression Must be Exercised

If suppression is required, the tribe should still be notified when the victim(s) are affiliated with their tribe with the statement that the number of victims was less than 10, thus requiring data suppression to protect victim privacy.



In Practice

In 2020, there were five victims of sexual violence affiliated with Tribe Y. Agency X reports the following to Tribe Y, “In 2020, the number of sexual violence victims affiliated with Tribe Y was less than 10. The exact number of victims has been suppressed to protect the privacy of the victims.”

Analyzing Tribal Land Data

Report Tribal Land Data as an Aggregated Total Stratified By Race

Tribal land data fields should be required for all persons, not only those who identify as AI/AN. In public reports of incidents, missing persons, deceased persons, or victims’ residences on specific tribal lands should never be identified, as this could violate the privacy of the victim. Instead, only report the total number of incidents, missing persons, deceased persons, or victims’ residences on tribal lands, stratified by race and ethnicity. Stratifying by race allows for a comparative analysis of violence on tribal lands across races, as many non-Native persons live on tribal lands.



In Practice

In a public report of missing persons in Washington State, Agency X reports the following, “There were 100 missing persons in Washington State this year. Among those, 30 persons were last seen on tribal lands. By race, 18 identified AI/AN and 12 identified as Black.” If the total number of missing persons last seen on tribal lands was less than 10, the data would be suppressed.

Suppress Stratified Tribal Land Data To Protect Privacy

As with other reportable data, suppression should be exercised when counts are less than 10. For tribal land data, secondary suppression may be required after it is stratified by race.



In Practice

In 2020, there were 18 incidents on tribal lands. Among those, 5 victims identified as AI/AN, 2 victims identified as Black, and 11 victims identified as Asian. In public reports of incidents on tribal lands, Agency X would state, “There was a total of 18 incidents on tribal lands. Among those, 11 identified as Asian. The total number of victims that identified as Black and AI/AN has been suppressed to protect the privacy and confidentiality of the victims.”

Report Data Related to Tribal Lands Back to Tribes

When reporting data related to tribal lands back to tribes, include the total number of incidents, missing persons, deceased persons, and victims’ residences on their tribal land and the total number on all other de-identified tribal lands. All data should be stratified by race and ethnicity, as applicable according to the suppression threshold of 10 counts. To provide tribes with the most granular data possible, continue to stratify tribal land data fields by demographic and violence-related categories, including, but not limited to, age, gender, sexual orientation, homelessness, and violence type.



In Practice

Agency X is preparing to send data on missing persons last seen on tribal lands to Tribe Y. They first calculate the total number of missing persons last seen on tribal lands. Then they stratify by reservations in their jurisdiction.

Agency X reports the following to Tribe Y, “A total of 43 missing persons were last seen on tribal lands. Of those, 21 missing persons were last seen on Tribe Y’s lands and 12 persons were last seen on other tribal lands. Among those that were last seen on Tribe Y’s tribal lands, 11 identified as AI/AN and 10 identified as Black. The race of the missing victims last seen on other tribal lands is suppressed due to counts less than 10.”

SECTION V. ADVANCED STATISTICAL ANALYSIS

Advanced statistical analyses can be used to identify trends in the data and compare the occurrence of violence between populations. When conducting statistical tests or population comparisons, it is recommended to use a p-value threshold of 0.05. A p-value less than 0.05 signifies statistical significance.

The relative standard error (RSE) can be used to determine unreliable estimates. It is recommended to use an RSE threshold of 30%. When estimates exceed 30% or 0.30, rate instability should be noted

Key Suggested Thresholds

P-value = 0.05

For statistical significance

Relative standard error (RSE) = 30%

For reliability of rates

Best Practices for Small Populations Data Analysis

- Recognize that statistical insignificance or a p-value greater than 0.05 does not mean disparities do not exist. Statistical significance indicates whether the relationship between variables is likely not caused by chance.
- Apply weighted sampling to increase statistical power and representation in the data. Weighted sampling is used when your sample population over- or under-estimates your target population. To calculate the statistical weight, divide the target population by the sample population and use the result as a multiplier in your calculations.
- Acknowledge the limitations of the data, including the degree of missingness and racial misclassification, data sources utilized, and statistical assumptions.
- Indicate when descriptions of AI/AN are not inclusive of multiracial individuals and when methodologies for collection of race/ethnicity are not uniform.
- Perform regular evaluations of methodologies to identify areas for improvement.

Generating Rates of Violence

A rate is the occurrence of events over a specific time period. Rates can be used to compare the proportion of events between population groups of different sizes. To calculate the rate of violence, first calculate the total number of incidents of violence. Then, divide the total incidents by the specified population total. To calculate the rate per 100,000, multiply the rate by 100,000 (see Example 1).

As noted previously, it is recommended to apply an inclusive definition of AI/AN. Total population counts of AI/AN alone or AI/AN in any combination of race and Hispanic ethnicity can be obtained from data.census.gov using the American Community Survey. Data are available down to the county level. Additional data on AI/AN population counts may be obtained from state, territorial, and tribal population forecasting organizations. Prior to using any dataset, first determine how AI/AN is defined (e.g. AI/AN alone or AI/AN in any combination of race or Hispanic ethnicity), as data sources may define AI/AN differently.

Example 1

$$\frac{\text{Number of AI/AN victims of sexual violence in Washington}^*}{\text{Total AI/AN population in Washington}^*} \times 100,000$$

**AI/AN defined as AI/AN alone or in any combination of race and ethnicity*



TRIBAL CONSULTATION OVERVIEW AND GUIDELINES

On November 5, 2009, President Obama expanded on decades of forward movement in the practice of tribal consultations by holding a historic meeting with tribal leaders from across the United States where he promised to improve the partnership between the federal government and Native nations. As an initial step toward fulfilling this commitment, the President issued an Executive Memorandum that directed all federal agencies to develop a plan within 90 days to consult and coordinate with tribal governments under President Clinton's Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments".¹⁰

The unique government-to-government relationship requires thoughtful communication and careful planning to ensure the protection of both the sovereignty of Native nations and their people as well as the individual rights of Native peoples as United States citizens under the United States constitution.

What Is a Tribal Consultation?

Tribal consultation is an enhanced form of communication that emphasizes trust, respect, and shared responsibility. It is an open and free exchange of information and opinion between tribal governments and non-tribal agencies which leads to mutual understanding and comprehension. Tribal consultations are ongoing conversations to establish and maintain a positive government-to-government relationship and an opportunity for tribes to provide *meaningful* and *timely* input on issues that may have a *substantial direct effect* on them or their members.¹¹

¹⁰. National Congress of American Indians. *Data Disaggregation: The Asterisk Nation*. National Congress of American Indians Policy Research Center; 2020. Accessed December 3, 2020. <http://www.ncai.org/policy-research-center/research-data/data>

¹¹. Centers for Medicare & Medicaid Services. *Centers for Medicare & Medicaid Services Tribal Consultation Policy*. U.S. Department of Health & Human Services: Centers for Medicare & Medicaid Services; 2015:1. Accessed May 10, 2024. <https://www.cms.gov/outreach-and-education/american-indian-alaska-native/aian/downloads/cmstribalconsultationpolicy2015.pdf>

What Is the Purpose of a Tribal Consultation?

Tribes are sovereign nations, meaning they have the full right and power of a governing body over themselves.¹²

A tribal consultation is held to:

- Ensure the inclusion of federally recognized tribes in decision-making processes for actions by non-tribal entities that may affect the tribes or their members.
- Form a relationship that leads to the exchange of information, mutual understanding, and informed decision-making.
- Engage in open, continuous, and meaningful communication.¹³

While most state and local agencies are not required to consult with tribes in their locality, conducting a tribal consultation in the right way may benefit both the agency and the tribal nation when a decision impacts the tribe and their people in any way.

Why Should Law Enforcement Agencies Hold Tribal Consultations?

Above all, law enforcement agencies should hold tribal consultations with tribes to honor the government-to-government relationship with Native nations. Other reasons include safeguarding the civil rights of American Indians and Alaska Natives, discussing data collection and analysis of data related to tribes and tribal people, and addressing any action or decision of the law enforcement agency that may impact a tribe or its people.¹⁴

Tribal Sovereignty

Tribal governments are an important and unique member of the family of American governments. The U.S. Constitution recognizes that tribal nations are sovereign governments, just like Canada or California.

Sovereignty is a legal word for an ordinary concept—the authority to self-govern. Hundreds of treaties, along with the Supreme Court, the President, and Congress, have repeatedly affirmed that tribal nations retain their inherent powers of self-government.¹²

¹² National Congress of American Indians. Policy Issues: Tribal Governance. NCAI.org. Published November 11, 2020. Accessed May 9, 2024. <https://web.archive.org/web/2020111202327/https://www.ncai.org/policy-issues/tribal-governance>

¹³ Monette DJ, Greenwood K, Gonzales-Rogers P, Durham P. U.S. Fish & Wildlife Service Tribal Consultation Handbook. U.S. Fish & Wildlife Service; 2018:1-2. Accessed May 10, 2024. <https://www.fws.gov/sites/default/files/documents/Tribal%20Consultation%20Handbook.PDF>

¹⁴ AG Order No. 3481-2014: Attorney General Guidelines Stating Principles for Working With Federally Recognized Indian Tribes. Published online December 3, 2014:73905-73906. Accessed May 9, 2024. <https://www.federalregister.gov/documents/2014/12/12/2014-28903/attorney-general-guidelines-stating-principles-for-working-with-federally-recognized-indian-tribes>

Fundamental Reasons

- Honor the government-to-government relationship between federal, state, and local institutions and Native nations.¹⁴
- Safeguard the civil rights of American Indians and Alaska Natives.¹⁴
- Ensure law enforcement agencies understand tribal self-determination, tribal autonomy, and that tribal problems generally are best addressed by tribal solutions, including solutions informed by tribal traditions and customs.¹⁴
- Protect American Indian and Alaska Native women and children from violence and exposure to violence.¹⁴
- Work with tribes to hold perpetrators accountable, to protect victims, and to reduce the incidence of domestic violence, sexual assault, and child abuse and neglect in tribal communities.¹⁴
- Protect tribal treaty rights, tribal lands and natural resources, and tribal jurisdiction through litigation, where appropriate, and to handle litigation involving tribes in a manner that is mindful of the government-to-government relationship.¹⁴

Data Implications

Law enforcement agencies work with data on a daily basis and it is important that they collect accurate and relevant data to enable law enforcement agencies and tribes to understand the scope of crime-related issues and make meaningful, data-driven decisions. Tribal consultations are a place where law enforcement agencies and Native nations can discuss any issues related to the collection and analysis of data from tribes regarding crime in Indian Country¹⁵ and establish what kind of data need to be gathered and reported so Native nations can better address the issue of disproportionate violence against Native peoples.

Tribal consultations also provide a space for the law enforcement agency and tribe to determine what information the tribe requests from the county, ensure the data collected on tribal members flows back to the tribe, discuss what data related to American Indian and Alaska Native peoples should be released publicly and what should not be released publicly, and establish lines of communication and create a data-sharing agreement (DSA) or Memorandum of Understanding (MOU).

Conducting a tribal consultation provides a place for a law enforcement agency to respect Indigenous Data Sovereignty—the right of a nation to govern the collection, ownership, and application of its own data. This term derives from the tribe's inherent rights as a sovereign nation and is essential to understanding the importance of reviewing data collection and analysis practices at a tribal consultation.²

¹⁵ *Echo Hawk Announces Tribal Consultation on Tribal Law and Order Act*. Indian Affairs - Office of Public Affairs; 2010:1-2. Accessed May 10, 2024. <https://web.archive.org/web/20230625193228/https://www.bia.gov/as-ia/opa/online-press-release/echo-hawk-announces-tribal-consultation-tribal-law-and-order-act>

When Should You Have a Tribal Consultation?

A tribal consultation should occur when a project, program, action, etc. may affect tribal lands, people, or interests.

- **It is the non-tribal entity's job to do as much work as necessary to determine the tribal interests that may be affected by any given project, even if the project is not taking place on federally designated tribal land.**
- The National Historic Preservation Act Section 106 regulations (36 CFR Part 800.15) direct federal agencies to make a “reasonable and good faith” effort to identify whether there would be tribal interest in an undertaking.¹⁶
- It is important to consult with tribal officials throughout all stages of the process of developing regulations, programs, actions, etc.

Who Should Be Present at a Tribal Consultation?

- Tribal Council or other types of elected officials that speak on behalf of the well-being of the tribe
- The leaders and decision-makers of the non-tribal entity

A formal consultation must include the most senior leaders of each party. Ensuring appropriate staff members are present at initial and, if necessary, follow-up meetings with tribal governments shows a commitment to the government-to-government relationship. Consultations with tribal council officials and tribal program staff should, if possible, be conducted between the same levels of officials.¹⁷

What Is the Process for Requesting and Holding a Tribal Consultation?

1. Identify the action that requires a tribal consultation.
2. Identify the affected and potentially affected tribes.
3. Determine if a tribal consultation agreement has already been established between the state or local agency and a tribe.
 - a. Follow the policies and procedures outlined in this agreement, if so.

¹⁶ Federal Transit Administration. Federal Transit Administration: Tribal Consultation. Federal Transit Administration. Published 2020. Accessed May 9, 2024. <https://www.transit.dot.gov/regulations-and-guidance/environmental-programs/tribal-consultation>

¹⁷ Hanschu C, House EJr, Garcia JA. *State-Tribal Consultation Guide: An Introduction for Colorado State Agencies to Conducting Formal Consultations with Federally Recognized American Indian Tribes*. Colorado Commission of Indian Affairs; 2014:21. Accessed January 20, 2022. https://www.colorado.gov/pacific/sites/default/files/CO_State_Tribal%20Consultation%20Guide.pdf

- 4.** Request a tribal consultation through the designated communication channels.
 - a.** This could be through an officially designated liaison, a “Dear Tribal Leader” letter, a governing board, or some other means as determined with local tribes.
- 5.** Determine the method(s) in which communication will happen between non-tribal agencies and tribes with the guidance of tribal officials.
 - a.** Written correspondence, official notification, meetings, etc.
- 6.** Schedule the tribal consultation with the guidance of tribal officials.
 - a.** Establishing and adhering to a formal schedule of meetings is vital.
 - b.** Consult the tribe during all aspects of the activity.
- 7.** Measure and report results and outcomes of the consultation; develop and utilize appropriate evaluation measures.¹³

Tribal governments can request a tribal consultation from federal agencies when there is an issue or action that they wish to discuss.

URBAN CONFER OVERVIEW AND GUIDELINES



Congress has specifically declared that it is the policy of the United States “to ensure the highest possible health status for Indians and urban Indians.”¹⁸ To do this, it is important that any action that could have an effect, whether positive or negative, on American Indian and Alaska Native communities and community members be discussed with the tribes and organizations that encompass and serve those people.

Tribal consultation and urban confer policies have been enacted to ensure tribal leaders and urban Indian organizations who serve the involved populations are equal partners in the decision-making on actions that could affect the health and well-being of the people in their communities.

Urban Indian organizations are a major provider of health care and social services to urban American Indians and Alaska Natives across the country. When the Indian Health Care Improvement Act (IHCA) was enacted in 1976, it identified the authorities, responsibilities, and functions of the Indian Health Service (IHS) as the primary federal agency charged with providing health care to Native peoples under the federal government’s trust responsibility—“the highest moral obligations that the United States must meet to ensure the protection of tribal and individual Indian lands, assets, resources, and treaty and similarly recognized rights”.¹⁹ Urban confers are held to collaborate with urban Indian-serving organizations and ensure the urban Indian community is taken into consideration when actions are taken that may affect them.¹⁸

¹⁸. Chapter 26 - Conferring with Urban Indian Organizations | Part 5. In: *Indian Health Manual*. Indian Health Service; 2023:5-26.1A. Accessed May 9, 2024. <https://www.ihs.gov/ihtm/pc/part-5/p5c26/>

¹⁹. Jewel S. U.S. Secretary of the Interior Order No. 3335: Reaffirmation of the Federal Trust Responsibility to Federally Recognized Indian Tribes and Individual Indian Beneficiaries. Published online August 20, 2014:1-6. Accessed May 10, 2024. <https://www.doi.gov/sites/doi.gov/files/migrated/news/pressreleases/upload/Signed-SO-3335.pdf>

Consulting Urban Indian Organizations (UIO) matters because Native-led organizations have the understanding and expertise to better advocate for the economic, social, and cultural needs of Native peoples.²⁰ An urban confer helps non-Indigenous governments fulfill their role in honoring the trust and treaty obligations to American Indian and Alaska Native peoples.²¹

Nationwide, 76% of American Indians and Alaska Natives live within cities.²² UIOs hold a unique position to ensure the needs and interests of this population are fulfilled. Urban confer policies respect the inherent sovereign rights of American Indians and Alaska Natives living outside of tribal jurisdictions. Additionally, an urban confer process can help to address the systemic inequities urban American Indians and Alaska Natives experience within a non-tribal governing jurisdiction.

What Is an Urban Confer?

An urban confer is a place for urban Indian-serving organizations and federal, state, and local agencies to come together and participate in a free exchange of information when an agency is planning an action that will or may affect the urban Indian community and/or the urban Indian-serving organization.

This exchange of information leads to a mutual understanding and emphasizes trust, respect, and shared responsibilities between UIOs and non-Native agencies. During an urban confer, urban Indian-serving organizations should be given space to represent the needs of urban-dwelling American Indians and Alaska Natives and provide meaningful and timely input on issues that may have a substantial direct effect on them.¹¹ An urban confer is more than just a singular feedback session—it is an ongoing, repeated effort at relationship-building and shared decision-making.

What Are Urban Confer Policies?

Urban confer policies stem from decades of deliberate federal policy efforts (e.g. relocation, termination, forced assimilation) that have contributed to a significant number of American Indian and Alaska Native peoples residing in urban cities. Urban confer policies allow UIOs and government agencies a formal mechanism for engagement to fulfill the trust responsibility to American Indians and Alaska Natives, regardless of where they reside.

Typically, UIOs, or agencies party to the urban confer policy, can invoke an urban confer when an event, issue, or form of continual communication is enacted to discuss the effects a program or policy will have on urban American Indians and Alaska Natives.²¹

²⁰ National Congress of American Indians. About NCAI | Issue Advocacy & Public Education. NCAI.org. Published 2020. Accessed May 9, 2024. <https://ncai.org/about-ncai>

²¹ Indian Health Service – COVID-19 Supplemental 5 Urban Confer. Virtual Session presented at: COVID-19 Supplemental 5 Tribal Consultation and Urban Confer; January 4, 2021. Accessed May 10, 2024. https://usetinc.org/covid19/uset-events/indian-health-service-covid-19-supplemental-5-urban-confer/?mc_id=308

²² U.S. Census Bureau. (2021). County Population by Characteristics: 2010-2020. <https://www.census.gov/programs-surveys/popest/technical-documentation/research/evaluationestimates/2020-evaluation-estimates/2010s-county-detail.html>.

When Should You Have an Urban Confer?

An urban confer should occur when a critical event or issue arises that may affect the health and well-being of the urban Indian population in an urban area. A critical event or issue is one that significantly affects one or more UIOs and/or the urban Indian community.

For example, when official appropriations are passed, such as the recent Coronavirus Response and Relief Supplemental Appropriations Act (2021), an urban confer process is crucial to ensuring the needs of urban Natives are represented.²¹

Who Should Be Present at an Urban Confer?

- Leaders of all UIOs that may be affected by the event or issue or may have their local urban Indian community affected
- Leaders of the federal, state, county, or other regional agencies

What Is the Process for Requesting and Holding an Urban Confer?

1. Identify the action that requires an urban confer.
2. Identify the affected and potentially affected communities and the UIOs involved in providing services to those communities.
3. Request an urban confer through designated communication channels.
 - a. This could be through an officially designated liaison, a “Dear Urban Leader” letter, a governing board, or some other means as determined with local UIOs.
4. Determine the method(s) in which communication will happen between non-Native agencies and UIOs with the guidance of the organizations.
 - a. Written correspondence, official notification, meetings, etc.
5. Schedule confer with the guidance of the UIOs.
 - a. Establishing and adhering to a formal schedule of meetings is vital.
 - b. Consult the organizations during all aspects of the activity.
6. Measure and report results and outcomes of the confer; develop and utilize appropriate evaluation measures.

UIOs can request an urban confer for issues and actions that they wish to discuss as well. It is the responsibility of the non-Native agency to respond in a timely manner.

COLLECTING RACE AND ETHNICITY: DOING IT RIGHT SAVES TIME LATER!

NEVER Assume a Person's Race by Looking at Them. Ask!

<p>Collecting Race Data</p>	<ol style="list-style-type: none">1. Ask the person: “What is your race?”2. Record their response. Options should include<ul style="list-style-type: none">• White/Caucasian• Black/African American• Asian• American Indian/Alaska Native• Native Hawaiian/Pacific Islander• Other (Have them specify their race) <p>If more than one race, record ALL races specified. Do not put them in the “Other” category.</p>
<p>Collecting Tribal Affiliation Data</p> <p>Only collected when the person chooses American Indian/Alaska Native.</p> <p>If they identify as American Indian/Alaska Native (alone or with other races), ask them for their tribal affiliation.</p>	<p>“What is your tribal affiliation, if any?”</p> <p>Record the tribe(s) they specify OR that no tribe was specified.</p> <p>Do not ask for their tribal citizenship or enrollment. Affiliation is different.</p> <p>Asking for their tribal affiliation is the correct way to gather this information.</p>
<p>Collecting Ethnicity Data</p> <p>Ethnicity should be collected separately from race.</p>	<p>“What is your ethnicity?”</p> <p>Options should include:</p> <ul style="list-style-type: none">• Hispanic/Latino• Not Hispanic/Latino

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