

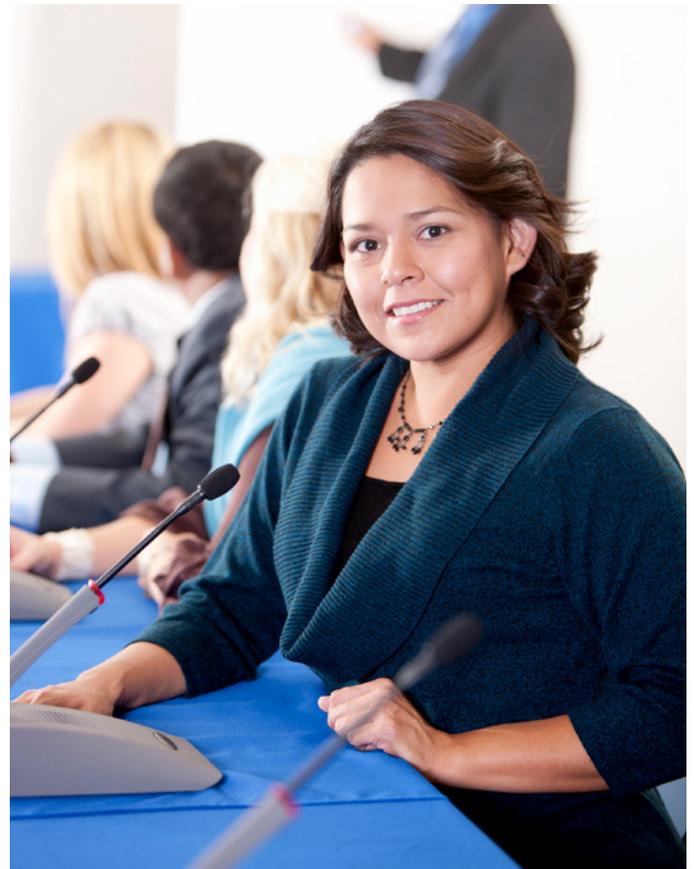
# DRAFTING TRIBAL PUBLIC HEALTH LAWS & POLICIES

## to Reduce and Prevent Chronic Disease



**Laws and policies can support the efforts of Tribal nations to reduce and prevent chronic disease within their communities.**

Tribes are sovereign nations with unique political and legal status, which makes them distinct from other cultural and racial groups in the U.S. They have their own legal systems and so have the ability to swiftly address the needs of their communities through various policy approaches. Depending on the Tribe, a Tribe's laws and policies might be found in written documents such as a treaty, Constitution, Tribal code, and Tribal court case law. A Tribe's laws might also be found in unwritten forms, such as customary laws and traditions. Some Tribes include both written and unwritten laws in their legal systems.



*This resource is intended as a guide for Tribal communities working on laws or policies to promote public health. The information contained in this guide is not intended to be used as or to replace legal advice. Readers are encouraged to consult with Tribal legal counsel before moving forward with policy initiatives.*

There are at least 574 federally recognized Tribes in the U.S. and many more Tribes that are seeking federal recognition or are state-recognized. Each Tribe has its own system of laws and governance. Tribal nations might or might not view written laws and other types of policies to be useful in the same way as Western nations do. Nonetheless, many Tribes have chosen to implement a system of written laws and policies to varying degrees. Regardless of what form Tribal laws or other policies take, laws and policies that are clearly understood and supported by community members are more likely to be sustainable. Laws and policies with community buy-in tend to be self-enforcing, thus requiring fewer resources to monitor and reducing the chances of negative community reactions.

This publication is designed to assist Tribal leaders, health directors, public health advocates, and community members in thinking about how to draft *written* public health laws and policies for their Tribes, if that is their goal, with a focus on policies related to commercial tobacco use, healthy foods, and physical activity. It provides tips to help readers work through the policy writing process with the end goal of developing public health laws and policies that are relevant, practical, and supported by their communities. Although this publication is an introductory general guide and is not a substitute for in-depth and tailored technical assistance, it offers guidance and ideas developed over years of experience in working on public health policy development, both with Tribal and non-Tribal communities.

### **What is policy?**

At the most basic level, a policy is a plan or course of action designed to influence and determine decisions. Policies can be written or unwritten. Written policies can take the form of Tribal codes, resolutions, treaties, executive orders, agency regulations, and other types of legal policies made by a Tribal government. Organizations can also have written policies, such as wellness or travel policies. Unwritten laws or policies can take the form of customary law, traditions, and organizational systems of practice.

## **Good policies start and end with community engagement**

**Community engagement is the foundation of good policy development:** Community engagement is particularly important for laws and policies related to healthy eating, active living, and commercial tobacco use because these policies touch on areas that are rooted in culture, connected with historical and ongoing trauma and resilience, and are intensely



Whatever form Tribal laws and policies take, laws and policies that are clearly understood and supported by community members are more likely to be sustainable.

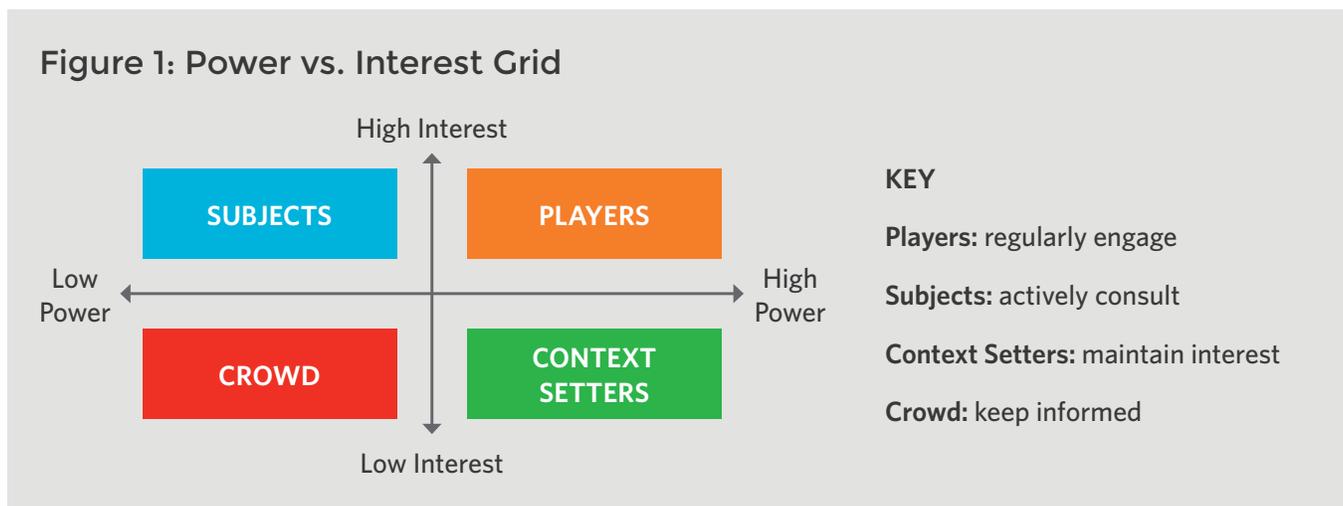
personal. Through community engagement, people from across a community, including youth, elders, parents, teachers, health staff, child care providers, government staff, community leaders, policymakers, farmers, small business owners, and others who have an interest in the problem or issue to be addressed can bring their perspectives and experience to the policy work. Community engagement processes also raise up community members who might not hold elected positions or formal titles, but who bring valuable life experience and perspectives,

or who are influential because of their relationships and reputation within the community. Engaging these natural community leaders as coalition members or policy champions will also assist with carrying policy initiatives forward.

**Community engagement leads to practical solutions:** An effective community engagement process helps ensure that the law or policy developed will address the practical priorities coming from the community. Engaging community members and other key participants from the beginning in the policy development process not only leads to better understanding of what the real needs are, but also about what approaches are more likely to work or not work on a practical level. For example, if a community were to consider creating a tax on sugary drinks, it would be important to engage with the Tribe’s tax or revenue department, as well as community members, the Tribal Council, area store owners, and community programs that might benefit from the tax revenues, as part of the policy development process.

**Community engagement leads to deeper community support:** Community engagement promotes buy-in and support from community members, and also can help anticipate and address potential concerns. Communicating policy intentions to the general public in a clear, consistent, and transparent way throughout the policy development process helps to prevent community push-back when policies are enacted. Also, inviting the general public to comment on drafted policies gives community members a chance to feel heard and invested in the policy.

**Community engagement requires strategic thinking and flexibility:** Community engagement can be done in different ways, and usually more than one way is a good idea. Community engagement include: surveys, community meetings and events, individual meetings, and talking circles. It often involves building a coalition. Different groups will have different



Graphic: Rae O’Leary, Canli Coalition of the Cheyenne River Sioux Tribe

degrees of involvement. Some may be community members or representatives of specific community groups who actively participate in the coalition, others may be policymakers with decision making authority, and some people may even be potential opponents to the policy. Consequently, being strategic about how and when to engage various types of perspectives and roles is also important. For example, the Canli Coalition of the Cheyenne River Sioux Tribe uses a power vs. interest grid to think about how to engage different types of groups (see [Figure 1](#)).

Community engagement also requires flexibility. As community needs and priorities are better understood, as more perspectives are included, and as more information is gathered, the policy *strategy* may change or shift, although the policy *goal* remains constant.

The Additional Resources section below includes resources that provide ideas and inspiration for building effective community engagement. For example, the Canli Coalition of the Cheyenne River Sioux Tribe's [guide for commercial tobacco policy change](#)<sup>1</sup> describes the role of the coalition and how the Canli Coalition worked effectively over time to build community support and achieved success in changing the commercial tobacco policy within the Tribe. The First Nation's Development Institute's report [Indigenous Food Systems: Transformative Strategies to Perpetuate Nationhood](#)<sup>2</sup> provides case studies detailing various ways of community engagement with food systems work across Indian Country. Also, the First Kids 1st — Every Child is Sacred initiative's Tribal Leadership Series [guide on youth engagement](#)<sup>3</sup> provides practical suggestions for how to engage Tribal youth in policy initiatives.

### Why written laws and policies?

Both written and unwritten policies are useful and can be effective. Putting policies in writing can help promote wider awareness of a policy across a community or organization, as well as helping people coming from outside a community or organization learn about the policy. Written policies can:

- Provide consistency through leadership or management changes.
- Facilitate consistent implementation and enforcement.
- Facilitate good understanding about what is expected of everyone — including who is responsible for implementing the policy, how it will be enforced, and the rights and responsibilities created by the policy.
- Help promote a sense of fairness by aiding understanding of how the policy will be applied across a community, organization or department.

## The Drafting Process

At some point during the community engagement process, coalition members or advocates likely will find it helpful to start cultivating connections, gathering policy research to help inform the policy development process, and thinking about the actual writing of the law or policy. The Cherokee Nation's Healthy Tribal Nations Toolkit uses a simple four-step framework to describe the basic policy drafting process.<sup>4</sup> This framework is included here with a few additions:

**Research:** This step includes gathering research about the how the policy is expected to impact health — for examples, how a tax could decrease sugary drink consumption, or how breastfeeding support policies can lead to improved health outcomes for mothers and babies. It also includes gathering as much local data as possible both before and after the policy is implemented to aid in showing the policy's actual impact. It also includes talking with advocates who have worked on Tribal public health policy development either within the same Tribe or for other Tribes, collecting policy examples, and talking with technical assistance providers who may be able to provide specialized expertise on the public health issue being focused on, or on Tribal public health policy development in general.

Research should also focus on the Tribe's system for adopting policies and laws. Some Tribes have complex legislative processes, while others have expedited processes. In many Tribes, the Tribe's legal counsel plays a critical role in recommending new policies or laws. It also can be helpful to know what standard or template language is typically included in the Tribe's laws, what components are customary to include, and to get an understanding of where a new law or policy might fit into the Tribe's existing policy systems. For example, a policy might fit better in a Tribal government human resources manual than in the Tribe's legal code, or vice versa. Here again, the Tribe's legal counsel will be a critical source of guidance on these questions.

**Engage:** Engage a local policy champion or a coalition subcommittee or similar group to draft the policy. If working with a group to write the policy, it can be helpful to have a point person who is responsible for managing the draft and ensuring that edits are supported by the group's consensus. A technical assistance provider may be able to provide support for this role. Additionally, it will be important for the group to engage in frank discussions about what compromises could be acceptable if needed to get a policy passed, and at what point it may be better for the group to pause and come back another day. Holding these discussions in advance can prepare the group for thinking through critical decision points under pressure. Finally, engaging the Tribe's legal counsel early in the drafting stage can be hugely helpful — it can help to avoid unnecessary surprises and confusion.

**Invite:** Invite feedback through talking circles, open meetings, community meetings, one-on-one conversations, and through other means of outreach appropriate for the Tribal community. Provide opportunities for community members to comment on drafts of the policy. These activities can build on the foundation of community engagement that is already in place.

**Revise:** Incorporate community and stakeholder input and feedback into the draft as much as possible, recognizing the importance of compromise while at the same time seeking to sustain the effectiveness of the proposed law or policy. Although this is much easier to say than to do, it is an important task that is worth the time and effort. An organization that provides legal technical assistance can review the draft law and help, but here again, the coalition is a crucial part of this process.

## Policy Review

Table 1 below explains the typical components of a law or policy, and provides prompts for things to think about in drafting each component. The following principles also should be kept in mind throughout the policy development process to ensure that the law or policy is both comprehensive and understandable. Some of these principles can conflict with each other, such as the goals to be specific and to be concise. Finding the right balance takes some experimenting, but applying them to a draft policy is a good way to determine the best approach.

### Be clear and specific

- Use definitions appropriately.
- Include all the necessary policy elements.
- Avoid assumptions — make the meaning and intentions clear.
- Communicate why the policy is needed and what change is expected.

### Be concise

- Choose words with care and precision.
- Make every word count — eliminate unnecessary words.
- Keep language as simple as possible.

## Be consistent

- Use language that is consistent with the law or policy objectives.
- Check for consistency with other parts of the policy, and consistency with other policies or laws. For example, other written laws or policies may already define the same terms that the new law or policy also uses, so consistency between those sets of laws and policies could be important for clarity. Or, if there is a need to define a term in a different way from another law, the policy language can make clear that the new definition applies only to the new law or policy.
- Avoid unnecessary exemptions. Exemptions can undermine a law's effectiveness, make enforcement harder, and encourage lawsuits if people think the exemptions make the law unfair.

## Be practical

- Consider the ability to achieve the policy's purpose.
- Consider the following factors: cost of implementation, effective date leaving enough time to make changes, people's ability to follow the law or policy, the ability to enforce the law or policy, and what kinds of consequences for violations make sense within the context of the community and the offense.

## Be true to the community

- Incorporate the Tribe's native language, principles, and concepts into the law or policy.
- Use example policies but consider carefully what language to borrow or leave out, and how to tailor the law or policy to the specific community context.
- Avoid writing by "cut and paste" because another community's law or policy will reflect political compromises that might not be necessary or helpful.
- Anticipate challenges to or concerns about the proposed law or policy, including political, bureaucratic, practical and legal challenges.
- If exemptions are proposed, consider whether they are truly needed within the specific community context, and if so, make them as narrow as possible.



Photo: Robert Slocum, courtesy of the Canli Coalition of the Cheyenne River Sioux Tribe

## Be connected

- Any new law or policy will exist within a framework of other laws and policies, and may reflect local, national, or international trends. Draw on information from these other sources to inform the development of new policy initiatives.
- There are community members, other interest groups, legal technical assistance providers, and colleagues who are working on the same or similar issues. Reach out and stay connected — ideas, inspiration, and support can come from all of these sources.

## Table 1: Policy Elements

<b>Findings</b>	<p>Findings are brief statements of fact, data, or statistics relevant to the issue being addressed and that support the need for the policy. Teachings, beliefs, or principles specific to the Tribe could also be included. Think about:</p> <ul style="list-style-type: none"> <li>• Do the findings support the purpose of the policy?</li> <li>• Do the findings anticipate challenges?</li> <li>• Do the findings address values and purposes important to the Tribe?</li> </ul>
<b>Purpose</b>	<p>The purpose is a statement that explains the goal(s) of the policy. Teachings, beliefs, or principles specific to the Tribe could also be helpful to include in this section.</p>
<b>Definitions</b>	<p>The definitions are detailed explanations of the key words or phrases in the policy. Definitions are important for promoting understanding, but it is also important to not go overboard and define things that do not need definition. Think about:</p> <ul style="list-style-type: none"> <li>• What are the “key” terms — the words or phrases that are essential for clear and consistent understanding of what the policy is about, who or what it applies to, who is responsible for carrying it out, etc.</li> <li>• Are there any words or phrases that have a specialized meaning within the context of the policy, so that a definition is necessary?</li> <li>• Are there words or phrases that could mean different things to different readers, so that a definition is helpful to avoid confusion?</li> <li>• Are the definitions written broadly enough to encompass new or emerging concepts or products without being overly broad?</li> <li>• Are there any unique terms to the Tribe that warrant definition? If so, consult local cultural experts for assistance and reference them by name or organization.</li> </ul>
<b>Main policy provisions</b>	<p>The main policy provisions state the prohibitions and/or requirements of the policy and identify the parties to whom the provisions apply. Think about:</p> <ul style="list-style-type: none"> <li>• Are all the requirements and prohibitions reasonable?</li> <li>• Do the provisions address the purpose of the policy?</li> <li>• Are the provisions consistent with other policies and laws of the Tribe?</li> <li>• Are the provisions clearly stated?</li> <li>• Is it clear to whom and where the policy applies?</li> </ul>

*(continued)*

**Table 1: Policy Elements** *(continued)*

<b>Exceptions or exemptions</b>	<p>This section contains any exemptions or exceptions to the prohibitions or requirements that are necessary to achieve the purpose of the policy. Exceptions can open the door to creative violations of the policy. Think about:</p> <ul style="list-style-type: none"> <li>• Are the exceptions or exemptions truly necessary?</li> <li>• If so, are they limited and written as narrowly as possible?</li> </ul>
<b>Enforcement</b>	<p>The enforcement section typically identifies the parties responsible for enforcement, outlines the enforcement procedures, any penalties, fines or other consequences for violation of the policy that may be imposed, and any appeal process. Think about:</p> <ul style="list-style-type: none"> <li>• What kind of enforcement mechanisms does the Tribe use for other policies that may be similar?</li> <li>• What kind of enforcement mechanisms are appropriate, considering the community context and the nature of the offense?</li> <li>• Who would be responsible for enforcing the policy?</li> <li>• What, if any, additional resources or capacity would the Tribe need to enforce the policy appropriately?</li> </ul>
<b>Implementation</b>	<p>The implementation section typically states the effective date for the policy, addresses how the policy should be publicized to community members, and describes the steps that should or must be taken to operationalize the policy. Think about:</p> <ul style="list-style-type: none"> <li>• What kind of implementation processes does the Tribe use for other policies that may be similar?</li> <li>• What, if any, additional resources or capacity would the Tribe need to implement the policy appropriately?</li> <li>• If the policy requires significant changes or adjustments, would a delayed implementation date be beneficial to allow people or regulated entities time to comply with it?</li> </ul>
<b>Evaluation</b>	<p>The evaluation section outlines the timeline and process to assess the effectiveness of the policy, including assessing how well it is meeting the goals or whether there are unintended consequences. It can also provide a framework for policy revision. Think about:</p> <ul style="list-style-type: none"> <li>• What kinds of measures make sense?</li> <li>• Which department or agency is best equipped to evaluate the policy?</li> <li>• How will the evaluation report(s) be shared with community members?</li> <li>• What actions should be taken in response to evaluation report(s) and by whom?</li> </ul>

## Additional Resources

Listed below is a sampling of publications and other resources available to support Tribal policy development in chronic disease prevention areas.

### General resources for Tribal public health policy development

 **California Rural Indian Health Board, Inc.**

*Tribal Policy, System, and Environmental Strategies for Preventing Chronic Disease*  
[crihb.org/wp-content/uploads/2016/11/ACORNS\\_PSE\\_toolkit.pdf](http://crihb.org/wp-content/uploads/2016/11/ACORNS_PSE_toolkit.pdf)

 **First Kids 1st: Every Child Is Sacred**

*Tribal Leadership Series Youth Engagement*

[www.nicwa.org/wp-content/uploads/2018/11/Youth-Engagement-for-Tribal-Leaders.pdf](http://www.nicwa.org/wp-content/uploads/2018/11/Youth-Engagement-for-Tribal-Leaders.pdf)

 **Great Lakes Indian Fish and Wildlife Commission and partners**

*Dibaginjigaadeg Anishinaabe Ezhitwaad: A Tribal Climate Adaptation Menu*  
[glifwc.org/ClimateChange/TribalAdaptationMenuV1.pdf](http://glifwc.org/ClimateChange/TribalAdaptationMenuV1.pdf)

 **National Congress of American Indians**

Tribal Public Health Law Database

[www.ncai.org/policy-research-center/initiatives/projects/tribal-public-health-law#database](http://www.ncai.org/policy-research-center/initiatives/projects/tribal-public-health-law#database)

 **Northwest Portland Area Indian Health Board and National Indian Child Welfare Association**

*Tribal Policy Guide* (2019) available soon from the Northwest Portland Area Indian Health Board's website at [www.npaihb.org](http://www.npaihb.org).

 **Office for State, Tribal, Local and Territorial Support, CDC**

*Tribal Public Health and the Law: Selected Resources*

[www.cdc.gov/phlp/docs/tribalph-resource.pdf](http://www.cdc.gov/phlp/docs/tribalph-resource.pdf)

 **Tribal Epidemiology Centers**

[tribalepicenters.org](http://tribalepicenters.org)

 **U.S. National Library of Medicine**

*American Indian and Alaska Native Health*

[medlineplus.gov/americanindianandalaskanativehealth.html](http://medlineplus.gov/americanindianandalaskanativehealth.html)

## Additional Resources *(continued)*

### Resources for Tribal food systems and policy development

 **American Indian Cancer Foundation**  
Healthy Native Foods  
[www.americanindiancancer.org/healthynativefoods](http://www.americanindiancancer.org/healthynativefoods)

 **Feed 7 Generations**  
[www.feed7generations.org](http://www.feed7generations.org)

 **First Nations Development Institute**  
Knowledge Center  
[www.firstnations.org/knowledge-center](http://www.firstnations.org/knowledge-center)

 **Indigenous Food & Agriculture Initiative resources**

- *Model Tribal Food and Agriculture Code*  
[indigenousfoodandag.com/resources/model-food-and-ag-code](http://indigenousfoodandag.com/resources/model-food-and-ag-code)
- Food Safety Training for Indian Country  
[www.nativefoodsafety.org](http://www.nativefoodsafety.org)

 **National Farm to School Network**  
*Farm to School in Native Communities: Teaching the future from the past*  
[www.farmtoschool.org/our-work/native-communities](http://www.farmtoschool.org/our-work/native-communities)

 **Seeds of Native Health**  
[seedsofnativehealth.org](http://seedsofnativehealth.org)

 **W. K. Kellogg Foundation**  
Intertribal Food Systems: A National Intertribal Survey and Report  
[communityfood.wkkf.org/reports/intertribal-food-systems](http://communityfood.wkkf.org/reports/intertribal-food-systems)

## Additional Resources *(continued)*

### Resources for Tribal active living policy and program development

 **California Safe Routes to School Technical Assistance Resource Center**  
*Creating Safe Routes to School Programs for Tribal Communities in California*  
[caatpresources.org/includes/docs/CreatingSafeRoutestoSchoolProgramsTribalCommunitiesCalifornia.pdf](http://caatpresources.org/includes/docs/CreatingSafeRoutestoSchoolProgramsTribalCommunitiesCalifornia.pdf)

 **Notah Begay III Foundation**  
[www.nb3foundation.org](http://www.nb3foundation.org)

 **Promoting Physical Activity Among Native American Youth: A Systematic Review of the Methodology and Current Evidence of Physical Activity Interventions and Community-Wide Initiatives (Sheila Fleischhacker et al., 2016)**  
[www.ncbi.nlm.nih.gov/pmc/articles/PMC4911341](http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4911341)

 **Safe Routes to School Resources**

- *Growing Safe Routes to School in Indian Country* webinar  
[www.saferoutespartnership.org/resources/webinar/srts-indian-country](http://www.saferoutespartnership.org/resources/webinar/srts-indian-country)
- *Walking and Bicycling in Indian Country: Safe Routes to School in Tribal Communities*  
[www.saferoutespartnership.org/resources/fact-sheet/tribal-brief](http://www.saferoutespartnership.org/resources/fact-sheet/tribal-brief)

### Resources for Tribal commercial tobacco control policy development

 **American for Nonsmokers' Rights**  
*Smoke Free Tribal Casinos*  
[nonsmokersrights.org/sites/default/files/2017-11/Tribal-Casinos-4-pager\\_FINAL.pdf](http://nonsmokersrights.org/sites/default/files/2017-11/Tribal-Casinos-4-pager_FINAL.pdf)

 **The Canli Coalition of the Cheyenne River Sioux Tribe**  
*Timeline & Resource Guide for Tobacco Policy Change*  
[www.missouri-breaks.com/canli-guide](http://www.missouri-breaks.com/canli-guide)

 **Gambling with our Health: Smoke-Free Policy Would Not Reduce Tribal Casino Patronage (Isaiah "Shaneequa" Brokenleg et al., 2014)**  
[www.ncbi.nlm.nih.gov/pmc/articles/PMC4699561/pdf/nihms745445.pdf](http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4699561/pdf/nihms745445.pdf)

 **Indigenous Peoples Task Force**  
*Creating Healthier Policies in Indian Casinos Tribal Report*  
[www.indigenouspeoplestf.org/pdfs/CasinoTribalReportfinal\\_8\\_2007b.pdf](http://www.indigenouspeoplestf.org/pdfs/CasinoTribalReportfinal_8_2007b.pdf)

## Additional Resources *(continued)*

 **National Native Network**  
[keepitsacred.org](http://keepitsacred.org)

 **Northern Plains Tribal Tobacco Control Technical Assistance Center**  
*South Dakota Tribal Tobacco Policy Toolkit*  
[bit.ly/SDTribalTobPolicyToolkit](http://bit.ly/SDTribalTobPolicyToolkit)

 **Northwest Portland Area Indian Health Board**  
*Tribal Tobacco Policy Workbook*  
[www.npaihb.org/images/projects\\_docs/WTPP/Final%20Policy%20Workbook.pdf](http://www.npaihb.org/images/projects_docs/WTPP/Final%20Policy%20Workbook.pdf)

This publication was prepared by the Public Health Law Center at Mitchell Hamline School of Law, St. Paul, Minnesota, located in the Bdote Region of the traditional homelands of the Dakota People, in partnership with the Great Lakes Inter-Tribal Epidemiological Center, Great Lakes Inter-Tribal Council, Inc., residing on the Lac du Flambeau Band of Lake Superior Chippewa Indians Reservation. It was made possible with funding provided by the Centers for Disease Control and Prevention's Good Health and Wellness in Indian Country grant program.

The Public Health Law Center wishes to thank the following people for their review of a draft of this publication: Daanis Chosa, Alyssa Diaz, and Chris Johnson of the American Indian Cancer Foundation; Connie Watson, BALAC Coordinator for the Bay Mills Indian Community; Rae O'Leary of the Canli Coalition; and Rebecca Noothed, Research Assistant at the Public Health Law Center.

The Public Health Law Center provides information and legal technical assistance on issues related to public health. The Center does not provide legal representation or advice. This document should not be considered legal advice.



## Endnotes

- 1 Canli Coalition of the Cheyenne River Sioux Tribe and Missouri Breaks Research Industries, Inc., *The Canli Coalition of the Cheyenne River Sioux Tribe: Timeline & Resource Guide for Tobacco Policy Change*, <https://www.missouri-breaks.com/canli-guide>.
- 2 First Nation's Development Institute, *Indigenous Food Systems: Transformative Strategies to Perpetuate Nationhood*, <https://www.firstnations.org/publications/indigenous-food-systems-transformative-strategies-to-perpetuate-nationhood>.
- 3 First Kids 1st — Every Child Is Sacred, Tribal Leadership Series, *Youth Engagement* (2018), <https://www.nicwa.org/wp-content/uploads/2018/11/Youth-Engagement-for-Tribal-Leaders.pdf>.
- 4 Cherokee Nation, *Healthy Tribal Nations Toolkit* (copy on file with Public Health Law Center).