

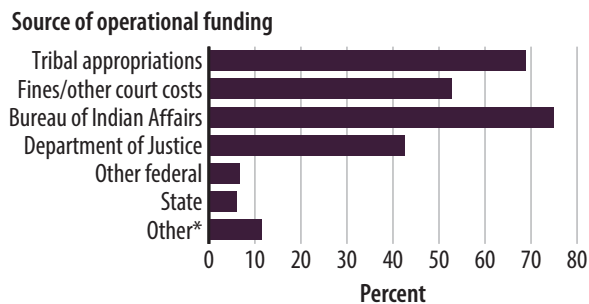


Tribal Courts in the United States, 2014 – Statistical Tables

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The National Survey of Tribal Court Systems (NSTCS), 2014 was the first complete enumeration of tribal court systems operating in the United States. The NSTCS consisted of three surveys specific to tribal court systems in the lower 48 states, Alaska Native villages, and the Code of Federal Regulations Courts (CFR Courts) operated by the Bureau of Indian Affairs (BIA). It covered a variety of complex topics, including tribal court administration and operations; prosecution, public defense, and civil legal services; pretrial, probation, and reentry programs and services; juvenile cases, domestic violence cases, and protection orders; enhanced sentencing authority; and information systems access.

FIGURE 1
Tribal court systems reporting sources of operational funding, 2014



Note: Details do not sum to 100% because respondents could report multiple sources. See table 4a for percentages.

*Includes private foundations, other grants, or other sources.

Source: Bureau of Justice Statistics, National Survey of Tribal Court Systems, 2014.

Highlights

- During 2014, about 234 tribal courts served federally recognized tribes in the lower 48 states, with approximately 80% serving 9,999 or fewer residents.
- Most (77%) tribal courts in the lower 48 states exercised both civil and criminal jurisdiction in 2014.
- About 72% of tribal courts exercised criminal jurisdiction over both tribal members and other persons, while less than a third (28%) exercised such jurisdiction over tribal members only.
- Most tribal court systems operating in the U.S. during 2014 reported having a formal court (99%), followed by an indigenous or a traditional court (23%), an intertribal court (10%), a joint jurisdiction state-tribal court (8%), or a tribal council serving as the judiciary (3%).
- About 69% of tribal court systems received tribal appropriations to sustain operations in 2014, 41% received P.L. 93-638 contract monies, 22% received self-governance compact funds, and 32% received U.S. Department of Justice Coordinated Tribal Assistance Solicitation grants.
- About 1 in 4 (24%) tribal courts operated a victim services program during 2014, and 1 in 5 (20%) provided free civil legal services to persons meeting income or ability-to-pay criteria.
- Nearly all (90%) tribal courts had a tribal prosecutor or prosecutor's office during 2014, and 61% had a tribal public defender or defense office.

During the survey development, data collection, and analytical processes, BJS encountered significant challenges in carrying out this first-time data collection. Analysis of survey responses revealed several data quality issues, which required a substantial amount of time to resolve and result in a statistical analysis file that could be used to produce valid and reliable estimates. Given these factors and other resource constraints, statistics from the 2014 NSTCS are now available

These statistical tables summarize the administration and operations of tribal court systems located in the lower 48 states. BJS limited the scope to core survey items and to tribes in the lower 48 states due to data

quality issues with survey responses for other parts of the NSTCS. (See *Methodology*.) The tables cover the number and types of courts, subject- and person-level jurisdiction exercised, sources of operational funding, handling of juvenile or Indian Child Welfare Act matters, and aspects of courthouse workgroups.

The tables show the total percentage of tribal court systems that reported each item and subitem, as well as percentages categorized by resident population on the tribes' reservation or land or in the tribes' community. The U.S. Census Bureau's American Community Survey 2012-2016 5-year population is used to report tribal land resident population, including both Indians and non-Indians.

Other key findings

- Forty-two percent of tribal courts maintained registries of restraining orders, protection orders, or both in 2014 (**table 2**).
- One in 4 tribal court systems serving 999 or fewer residents reported operating an indigenous or a traditional court, compared to nearly 1 in 3 serving a resident population of 10,000 or more (**table 3**).
- Ninety-one percent of tribal court systems also had an appellate court or an appellate process in place during 2014.
- Nearly 9 in 10 tribal courts reported receiving funding from two or more sources (89%) (**table 4b**).
- Most tribal courts reported handling juvenile and Indian Child Welfare Act (ICWA) matters during 2014, including guardianship (90%), child abuse or neglect (87%), and foster care placement (81%) matters (**table 5**).
- Other juvenile and ICWA matters in tribal courts involved termination of parental rights (75%), adoptive placements (74%), juvenile delinquency (69%), preadoptive placements (68%), and status offense (65%).
- About 58% of tribal courts provided access to guardians ad litem for children in child welfare or dependency cases.
- More than half (55%) of tribal court systems relied on county or local government social services for court-ordered treatment in juvenile or family cases during 2014.
- Nearly 3 in 5 (59%) tribal courts serving 999 or fewer residents did not have a public defender or defense office, compared to about 1 in 4 (25%) tribal courts serving 10,000 or more residents (**table 7**).
- About 1 in 5 tribal courts exercised enhanced sentencing of criminal defendants pursuant to the Tribal Law and Order Act.
- During 2014, most (76%) tribal courts had a pretrial release program, and fewer than half (45%) had a pretrial diversion program (**table 8**).
- Most tribal courts (86%) had a probation program in operation during 2014, which were funded by tribal budgets (81%), federal grant programs (42%), nonfederal grant programs (5%), or other funding sources (2%) (**table 9**).

Tribal court systems and jurisdiction in Indian country

Three types of sovereign entities coexist in the U.S.: the federal government, the states, and the Indian tribes.¹ A key aspect of sovereignty is the ability to establish a judicial system and administer justice. Each of the three types has its own judicial system, and each plays a role in the administration of justice in this country.

The Code of Federal Regulations Courts (Courts of Indian Offenses or CFR Courts), established in the 1880s, were the first iteration of the formal tribal courts, operating under written guidelines in the CFR.² The CFR Courts assisted in adjudicating less serious criminal offenses and resolving disputes among tribal members on reservations.

The Indian Reorganization Act of 1934 partially restored tribal nations' right to self-governance.³ Many tribal nations have since established and implemented tribal constitutions, developed tribal codes and laws, and created their own court systems.

Jurisdiction over crimes committed in Indian country varies by the type and seriousness of the crime, whether the offender or victim is a tribal member, and the location of the offense. Due in part to Public Law 83-280 (commonly referred to as P.L. 280), federal, state, or local criminal justice agencies have concurrent jurisdiction with tribal agencies over some crimes committed in Indian country among American Indians.

Public Law 83-280 (commonly referred to as Public Law 280 or P.L. 280) transferred federal jurisdiction in Indian country to six states. Specifically, Congress extended criminal jurisdiction over tribal lands to Alaska, California, Minnesota (except the Red Lake Reservation), Nebraska, Oregon (except the Warm Springs Reservation), and Wisconsin. These are mandatory P.L. 280 states.⁴

P.L. 280 also permitted other states to acquire jurisdiction at their option. These states could take partial jurisdiction until the 1968 amendment to the law. The optional P.L. 280 states assumed jurisdiction either in whole or in part over Indian country within their boundaries. Arizona, Idaho, Iowa, Montana, Nevada, North Dakota, South Dakota, Utah, and Washington operate under this arrangement.

In states where P.L. 280 does not apply, the federal government retains criminal jurisdiction for major crimes committed under the General Crimes Act (18 U.S.C. § 1152), the Major Crimes Act (18 U.S.C. § 1153), and the Assimilative Crimes Act (18 U.S.C. § 13). The Violent Crime Control and Law Enforcement Act of 1994 expanded federal criminal jurisdiction in Indian country in such areas as guns, violent juveniles, drugs, and domestic violence.

In addition to P.L. 280, other federal and state laws, court opinions, and contracts between states and tribes have further affected jurisdiction for particular tribes. The National Survey of Tribal Court Systems collected information regarding P.L. 280 jurisdiction, which is reported in tables 1a and 1b. However, in future studies, BJS plans to collect and report on additional factors associated with tribal-level jurisdiction.

The **Tribal Law and Order Act (TLOA) of 2010** was signed into law on July 29, 2010 (P.L. 111-211, 124 Stat. 2258). TLOA was enacted in an effort to clarify governmental responsibilities regarding crimes in Indian country; increase and improve collaboration among jurisdictions; support tribal self-governance and jurisdiction; reduce the prevalence of violent crime in Indian country; combat crimes such as domestic violence, sexual assault, and drug trafficking; reduce the rates of substance abuse in Indian country; and support the collection and sharing of crime data among jurisdictions.⁵

TLOA amended the Indian Civil Rights Act (ICRA) of 1978 to expand tribal courts' sentencing authority under certain conditions (P.L. 90-284, 82 Stat. 73 (as amended)). Previously, tribes were restricted to issuing sentences of up to 1 year of imprisonment, a fine of up to \$5,000, or both in criminal cases. Under TLOA, tribes can impose sentences of up to 3 years' imprisonment per offense and 9 years maximum in multiple-offense cases, fines of up to \$15,000, or both for qualifying crimes if they have met certain requirements for defense counsel, law trained judges, and so forth. Sentences may include a combination of incarceration and community corrections, such as probation and halfway houses. Under no circumstance can the term of the sentence exceed 9 years. Tribes are not required to implement enhanced sentencing authority but choose whether it is appropriate for their community.

Continued on next page

¹Sandra D. O'Connor, *Lessons from the Third Sovereign: Indian Tribal Courts*, 33 Tulsa L. J. 1 (1997).

²See <https://www.bia.gov/regional-offices/southern-plains/court-indian-offenses>.

³See <https://www.loc.gov/law/help/statutes-at-large/73rd-congress/session-2/c73s2ch576.pdf>.

⁴See P.L. 83-280, August 15, 1953, codified as 18 U.S.C. § 1162, 28 U.S.C. § 1360, and 25 U.S.C. §§ 1321-1326.

⁵See <https://bja.ojp.gov/sites/g/files/xyckuh186/files/Publications/TLOAESAQuickReferenceChecklist.pdf>.

Tribal court systems and jurisdiction in Indian country (continued)

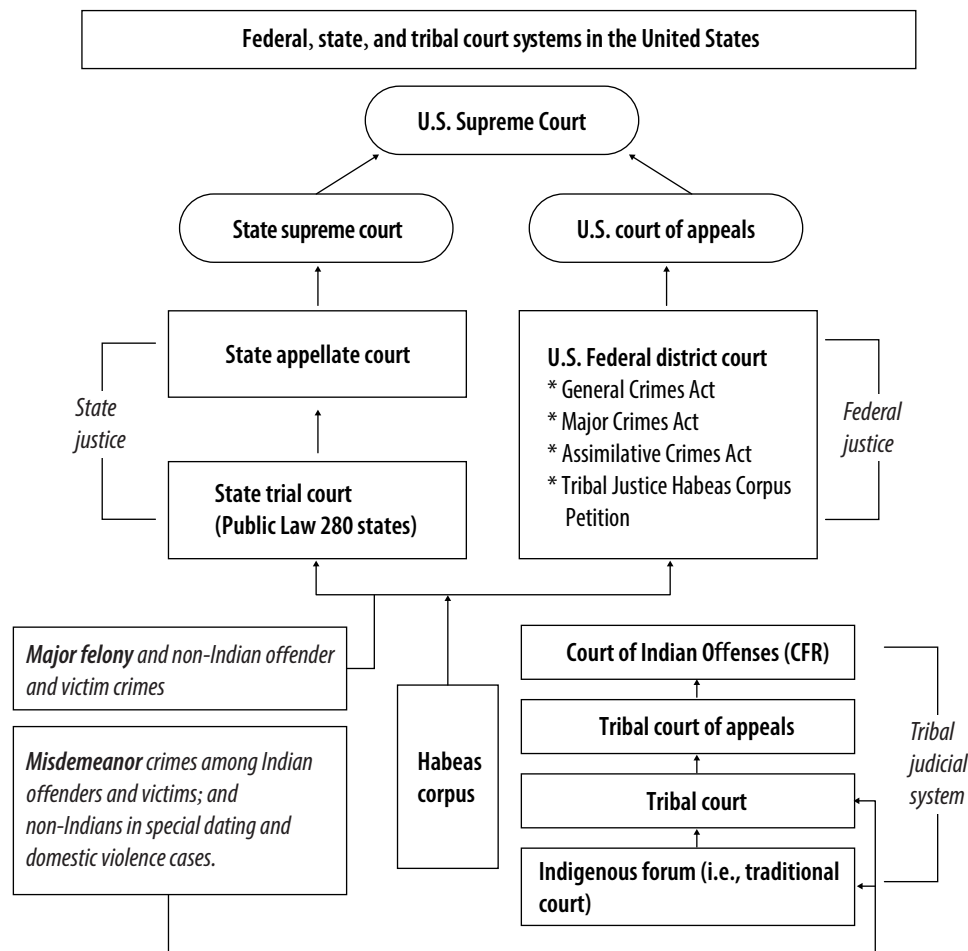
The **Violence Against Women Reauthorization Act** of 2013 recognized the rights of tribes to exercise expanded jurisdiction over non-Indians in cases of domestic violence, dating violence, and criminal violations of protection orders. The law generally took effect on March 7, 2015, but some tribes participated in the U.S. Department of Justice’s “Pilot Project” to begin exercising this jurisdiction prior to March 7, 2015.

Tribal court systems operating in Indian country vary in structure and involve four main legal institutions: Courts of Indian Offenses or CFR Courts, tribal courts of appeal, tribal courts of general jurisdiction, and

indigenous forums (also known as traditional courts).⁶ The complexity of criminal jurisdiction in Indian country among federal, state, and tribal law enforcement authorities also applies to the judicial forums that decide criminal cases. Some issues are handled directly by indigenous forums or tribal courts, others are sent through the federal court system, and still others are handled by state courts. In recent years, the expanded collaboration among tribal and state courts has led to the rise in joint jurisdiction state-tribal courts.

⁶See <https://bjs.ojp.gov/data-collection/census-tribal-justice-agencies-american-indian-and-alaska-native-tribal>.

FIGURE 2
Integration of federal, state, and tribal court systems in the U.S.



Source: From “American Indians, American Justice,” by V. Deloria and C. M. Lytle, 1983, University of Texas Press. Copyright 1983 by the University of Texas Press. Adapted with permission.

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FIGURE 2. Integration of federal, state and tribal court systems in the U.S.

TABLE 1A**Tribal court systems, by resident population and P.L. 280 jurisdiction, 2014**

Resident population	Number of court systems	Percent of court systems	Number of court systems—			Percent of court systems—		
			Subject to P.L. 280 jurisdiction ^a	Not subject to P.L. 280 jurisdiction ^b	Not reporting P.L. 280 jurisdiction	Subject to P.L. 280 jurisdiction ^a	Not subject to P.L. 280 jurisdiction ^b	Not reporting P.L. 280 jurisdiction
Total	234	100%	82	124	27	100%	100%	100%
0–999 residents	94	40.2	40	38	15	49.2	30.6	56.4
1,000–9,999	92	39.3	36	49	7	43.6	39.4	26.1
10,000 or more	48	20.5	6	37	5	7.3	29.9	17.5

Note: Details may not sum to totals due to rounding. P.L. 280 jurisdiction is based on participants' responses to the survey.

^aState and tribal governments share criminal jurisdiction in Indian country.

^bFederal and tribal governments share criminal jurisdiction in Indian country.

Source: Bureau of Justice Statistics, National Survey of Tribal Court Systems, 2014.

TABLE 1B**Tribal court systems subject to P.L. 280 jurisdiction, by resident population, 2014**

Subject to P.L. 280 jurisdiction	Number of court systems	Percent of court systems	Number of court systems serving ^a —			Percent of court systems serving ^a —		
			0–999 residents	1,000–9,999	10,000 or more	0–999 residents	1,000–9,999	10,000 or more
Total	234	100%	94	92	48	100%	100%	100%
Yes ^b	82	35.2	40	36	6	43.0	39.0	12.5
No ^c	124	53.1	38	49	37	40.5	53.2	77.5
Not reported	27	11.7	15	7	5	16.5	7.8	10.0

Note: Details may not sum to totals due to rounding. P.L. 280 jurisdiction is based on participants' responses to the survey.

^aRefers to the resident population of the court's jurisdiction. Tribal court systems may also have jurisdiction over and serve nonresidents in matters occurring on tribal land.

^bState and tribal governments share criminal jurisdiction in Indian country.

^cFederal and tribal governments share criminal jurisdiction in Indian country.

Source: Bureau of Justice Statistics, National Survey of Tribal Court Systems, 2014.

TABLE 2**Tribal court systems reporting jurisdiction exercised and administrative characteristics, by resident population, 2014**

Jurisdiction and administration	Number of court systems	Percent of court systems	Percent of court systems serving ^a —		
			0–999 residents	1,000–9,999	10,000 or more
Subject-matter jurisdiction exercised					
Both civil and criminal	176	77.4%	61.0%	83.6%	97.5%
Civil only	50	22.1	37.7	16.4	2.5
Criminal only	1	0.5	1.3	0.0	0.0
Person-level criminal jurisdiction exercised					
Tribal members only	47	28.3%	33.3%	19.0%	36.8%
Tribal members and other persons ^b	119	71.7	66.7	81.0	63.2
Maintained registry of restraining/protection orders					
Yes	85	41.5%	33.3%	47.8%	46.9%
No	92	45.0	54.2	41.8	31.3
Not sure/do not know	27	13.5	12.5	10.4	21.9

Note: Details may not sum to the known total of tribal courts due to item nonresponse. Details may not sum to totals due to rounding.

^aRefers to the resident population of the court's jurisdiction. Tribal court systems may also have jurisdiction over and serve nonresidents in matters occurring on tribal land.

^bReflects criminal jurisdiction that tribes reported exercising in 2014, though federal law holds that all tribes have criminal jurisdiction over members of any tribe. "Other persons" includes members of other tribes and non-Indians. "Non-Indians" includes defendants consenting to tribal jurisdiction or court systems of tribes that participated in the U.S. Department of Justice's "Pilot Project" to exercise special domestic violence criminal jurisdiction under Section 908 of the Violence Against Women Reauthorization Act of 2013 (P.L. 113-4) before the law went into effect on March 7, 2015.

Source: Bureau of Justice Statistics, National Survey of Tribal Court Systems, 2014.

TABLE 3**Types of courts associated with tribal court systems, by resident population, 2014**

Type of court	Number of court systems	Percent of court systems	Percent of court systems serving ^a —		
			0–999 residents	1,000–9,999	10,000 or more
Associated with tribal court system^{b,c}					
Formal tribal court ^d	217	98.9%	98.6%	98.6%	100%
Indigenous/traditional court	50	22.8	25.0	16.2	31.6
Intertribal court	23	10.3	13.9	9.5	5.3
Joint jurisdiction state-tribal court	18	8.1	6.9	12.2	2.6
Tribal council serving as judiciary	6	2.7	2.8	1.4	5.3
Had an appellate court/appellate process					
Yes	205	91.0%	85.1%	92.0%	100%
No	20	9.0	14.9	8.0	0.0

Note: Details may not sum to the known total of tribal courts due to item nonresponse. Details may not sum to totals due to rounding.

^aRefers to the resident population of the court's jurisdiction. Tribal court systems may also have jurisdiction over and serve nonresidents in matters occurring on tribal land.

^bDetails do not sum to totals because respondents could report multiple types of courts.

^cOne tribe also indicated participation in a Bureau of Indian Affairs/Courts of Indian Offenses court.

^dA court presided over by a judge or magistrate and created following the Indian Reorganization Act in 1934.

Source: Bureau of Justice Statistics, National Survey of Tribal Court Systems, 2014.

TABLE 4A**Tribal court systems reporting sources of operational funding, by resident population, 2014**

Source of operational funding	Number of court systems	Percent of court systems	Percent of court systems serving ^a —		
			0–999 residents	1,000–9,999	10,000 or more
Tribal					
Tribal appropriations	171	85.6%	86.6%	81.4%	93.3%
Fines/other court costs	137	68.9	68.7	64.3	80.0
	105	52.7	59.7	50.0	43.3
Federal					
Bureau of Indian Affairs	149	74.9%	67.2%	78.6%	83.3%
P.L. 93-638 contracts	82	41.3	34.3	47.1	43.3
Self-governance compact	44	22.2	13.4	22.9	40.0
Other BIA funding	76	38.3	28.4	44.3	46.7
U.S. Department of Justice	85	42.5	37.3	48.6	40.0
DOJ Coordinated Tribal Assistance Solicitation	64	32.3	26.9	38.6	30.0
Other DOJ grants	42	21.0	20.9	21.4	20.0
Other federal	13	6.6	3.0	8.6	10.0
Substance Abuse and Mental Health Services Administration	2	1.2	0.0	1.4	3.3
Other federal funding	12	6.0	3.0	8.6	6.7
State	12	6.0%	3.0%	8.6%	6.7%
Other	23	11.4%	9.0%	15.7%	6.7%
Private foundations	1	0.6	0.0	1.4	0.0
Other grants	17	8.4	4.5	12.9	6.7
Other ^b	8	4.2	6.0	2.9	3.3

Note: Details do not sum to totals because respondents could report multiple sources of funding. Details may not sum to totals due to rounding. BIA denotes Bureau of Indian Affairs. DOJ denotes U.S. Department of Justice.

^aRefers to the resident population of the court's jurisdiction. Tribal court systems may also have jurisdiction over and serve nonresidents in matters occurring on tribal land.

^bIncludes casino or gaming earnings, tribal business enterprises, and other sources.

Source: Bureau of Justice Statistics, National Survey of Tribal Court Systems, 2014.

TABLE 4B**Number of operational funding sources reported by tribal court systems, by resident population, 2014**

Number of operational funding sources	Number of court systems	Percent of court systems	Percent of court systems serving*—		
			0–999 residents	1,000–9,999	10,000 or more
1	23	11.5%	9.2%	14.3%	10.0%
2	54	27.3	35.4	21.4	23.3
3 or more	121	61.2	55.4	64.3	66.7

Note: Details may not sum to the known total of tribal courts due to item nonresponse. Two tribes indicated zero sources of funding. Details may not sum to totals due to rounding.

*Refers to the resident population of the court's jurisdiction. Tribal court systems may also have jurisdiction over and serve nonresidents in matters occurring on tribal land.

Source: Bureau of Justice Statistics, National Survey of Tribal Court Systems, 2014.

TABLE 5**Tribal court systems handling juvenile and Indian Child Welfare Act matters, by resident population, 2014**

	Number of court systems	Percent of court systems	Percent of court systems serving ^a —		
			0–999 residents	1,000–9,999	10,000 or more
Cases of juvenile law violations handled by tribal courts^b					
Juvenile delinquency	159	69.3%	48.7%	79.7%	90.0%
Status offense	148	64.6	55.1	73.0	67.5
All cases of juvenile law violations treated as cases of juvenile dependency/child in need of care	72	31.3	26.9	32.4	37.5
ICWA/dependency cases handled by tribal courts^b					
Guardianship	187	90.2%	85.9%	91.7%	96.8%
Child abuse/neglect	181	87.4	81.7	88.9	96.8
Foster care placements	167	80.5	76.1	81.9	87.1
Termination of parental rights	156	75.3	67.6	76.4	90.3
Adoptive placements	153	73.6	67.6	70.8	93.5
Preadoptive placements	141	67.8	63.4	66.7	80.6
Other ^c	6	2.9	0.0	6.9	0.0
Children in child welfare/dependency cases have access to—					
GAL only	106	57.8%	56.7%	60.3%	54.8%
CASA only	2	1.3	3.3	0.0	0.0
Both GAL and CASA	23	12.4	8.3	4.8	35.5
Neither service	52	28.5	31.7	34.9	9.7
Tribal court system relies on county/local government social services for court-ordered treatment in juvenile/family cases					
Yes	109	54.8%	51.6%	62.0%	45.2%
No	90	45.2	48.4	38.0	54.8

Note: Details may not sum to the known total of tribal courts due to item nonresponse. Details may not sum to totals due to rounding. CASA denotes Court Appointed Special Advocate. GAL denotes guardian ad litem. ICWA denotes Indian Child Welfare Act.

^aRefers to the resident population of the court's jurisdiction. Tribal court systems may also have jurisdiction over and serve nonresidents in matters occurring on tribal land.

^bDetails do not sum to totals because respondents could report multiple types of cases.

^cIncludes transfers of ICWA matters to tribal courts, conservatorship, child support, emancipation, and child trust fund access.

Source: Bureau of Justice Statistics, National Survey of Tribal Court Systems, 2014.

TABLE 6**Tribal court systems with victim services and civil legal services, by resident population, 2014**

Service offered	Number of court systems	Percent of court systems	Percent of court systems serving ^a —		
			0–999 residents	1,000–9,999	10,000 or more
Victim services program					
Yes	50	24.2%	18.6%	26.0%	32.3%
Outside funding for victim services program					
Federal only	31	68.4	66.7	64.7	77.8
Federal and state	1	2.6	8.3	0.0	0.0
State only	1	2.6	0.0	5.9	0.0
None	12	26.3	25.0	29.4	22.2
No	158	75.8	81.4	74.0	67.7
Free civil legal services^b					
Available to all individuals	16	7.6%	5.8%	9.7%	6.5%
Available to individuals meeting income/ability-to-pay qualification	42	20.4	20.3	16.7	29.0
Not available	148	72.1	73.9	73.6	64.5

Note: Details may not sum to the known total of tribal courts due to item nonresponse. Details may not sum to totals due to rounding.

^aRefers to the resident population of the court's jurisdiction. Tribal court systems may also have jurisdiction over and serve nonresidents in matters occurring on tribal land.

^bExcludes three respondents who indicated they had free civil legal services but did not answer follow-up question on whether those services were based on income scale or ability to pay.

Source: Bureau of Justice Statistics, National Survey of Tribal Court Systems, 2014.

TABLE 7**Tribal court systems with prosecutor and public defender programs, by resident population, 2014**

Tribal court system—	Number of court systems	Percent of court systems	Percent of court systems serving ^a —		
			0–999 residents	1,000–9,999	10,000 or more
Had tribal prosecutor/prosecutor's office					
Yes	155	89.7%	93.8%	83.3%	94.6%
No	18	10.3	6.2	16.7	5.4
Exercised Tribal Law and Order Act enhanced sentencing					
Yes	32	18.5%	10.4%	19.7%	27.0%
No	142	81.5	89.6	80.3	73.0
Had tribal public defender/defense office					
Yes	103	61.0%	41.3%	67.8%	75.0%
No	66	39.0	58.7	32.2	25.0
Had contract with local/private attorney to provide public defense/indigent services					
Yes	73	49.2%	55.0%	49.1%	40.7%
No	75	50.8	45.0	50.9	59.3
Provided free criminal defense services to—					
Tribal members only	32	21.3%	25.6%	15.8%	25.8%
Tribal members and other persons	76	49.6	35.9	54.4	58.1
Both nonmember Indians and non-Indians	16	10.2	12.8	8.8	9.7
Nonmember Indians only	60	39.4	23.1	45.6	48.4
Required income/ability-to-pay qualification for free criminal defense services					
Yes	51	48.9%	39.1%	61.9%	34.8%
No	54	51.1	60.9	38.1	65.2

Note: Details may not sum to the known total of tribal courts due to item nonresponse. This table includes respondents who reported exercising criminal jurisdiction. Details may not sum to totals due to rounding.

^aRefers to the resident population of the court's jurisdiction. Tribal court systems may also have jurisdiction over and serve nonresidents in matters occurring on tribal land.

Source: Bureau of Justice Statistics, National Survey of Tribal Court Systems, 2014.

TABLE 8**Tribal court systems with pretrial programs, by resident population, 2014**

Pretrial program	Number of court systems	Percent of court systems	Percent of court systems serving ^a —		
			0–999 residents	1,000–9,999	10,000 or more
Pretrial diversion program^b					
Prior to formal charge	44	28.7%	17.1%	32.1%	37.5%
Not prior to formal charge	25	16.3	17.1	14.3	18.8
No	85	55.0	65.9	53.6	43.8
Pretrial release program					
Yes	117	76.0%	68.3%	78.9%	80.6%
Court-offered pretrial release options ^c					
Release on own recognizance	115	98.0	92.9	100	100
Bail	111	94.9	89.3	97.8	96.0
Held pending further hearing/trial	93	79.6	71.4	84.4	80.0
Other ^d	25	21.4	14.3	22.2	28.0
No	37	24.0	31.7	21.1	19.4

Note: Details may not sum to the known total of tribal courts due to item nonresponse. Details may not sum to totals due to rounding. This table includes respondents who reported exercising criminal jurisdiction.

^aRefers to the resident population of the court's jurisdiction. Tribal court systems may also have jurisdiction over and serve nonresidents in matters occurring on tribal land.

^bExcludes three respondents who indicated they had pretrial diversion programs but did not answer follow-up question on whether those programs operated prior to formal charge.

^cDetails do not sum to totals because respondents could report multiple pretrial release options.

^dIncludes release to third-party custodian, house arrest or electronic monitoring, and court-ordered conditions (e.g., drug court).

Source: Bureau of Justice Statistics, National Survey of Tribal Court Systems, 2014.

TABLE 9**Tribal court systems with probation programs, by resident population, 2014**

Probation services	Number of court systems	Percent of court systems	Percent of court systems serving ^a —		
			0–999 residents	1,000–9,999	10,000 or more
Had probation program					
Yes	134	86.2%	78.0%	89.7%	90.3%
Funding for probation program ^b					
Tribal budget	103	81.1	80.6	81.6	80.8
Federal grant program(s)	53	41.5	35.5	49.0	34.6
Nonfederal grant program(s)	6	4.7	3.2	8.2	0.0
Other ^c	2	1.9	6.5	0.0	0.0
No	21	13.8	22.0	10.3	9.7

Note: Details may not sum to the known total of tribal courts due to item nonresponse. This table includes respondents who reported exercising criminal jurisdiction. Details may not sum to totals due to rounding.

^aRefers to the resident population of the court's jurisdiction. Tribal court systems may also have jurisdiction over and serve nonresidents in matters occurring on tribal land.

^bDetails do not sum to totals because respondents could report multiple sources of funding.

^cIncludes other tribal enterprise funding and volunteers.

Source: Bureau of Justice Statistics, National Survey of Tribal Court Systems, 2014.

Methodology

The National Survey of Tribal Court Systems (NSTCS), 2014 was the first complete enumeration of tribal court systems operating in the United States. It consisted of three surveys specific to tribal court systems in the lower 48 states, Alaska Native villages, and the Code of Federal Regulations Courts (CFR Courts) operated by the Bureau of Indian Affairs (BIA). The response rate across all three surveys was 81.3%. Due to data collection challenges and the limited number of Alaska Native villages and CFR Courts that participated in this collection, this report includes only tribal court systems in the lower 48 states. Data for the NSTCS were collected by Kauffman & Associates, Inc., an American Indian- and woman-owned management consulting firm, in collaboration with the Tribal Law and Policy Institute.

Data for the 2014 NSTCS were collected through mail, email, and telephone nonresponse follow-up. During 2015, the NSTCS questionnaire was mailed and emailed to 249 tribal court systems or judicial forums in Indian country in the lower 48 contiguous states that were determined to potentially be operating during the reference period of calendar year 2014. The survey universe was created by compiling information from the following sources:

- 2002 Census of Tribal Justice Agencies respondents
- Tribal Law and Policy Institute
- National Tribal Court Judges Association
- United States Tribal Court Directory⁷
- an FBI list of agencies with originating agency identifiers during 2014
- an address request from among all the federally recognized tribes not identified by the above sources.

The responding agencies were screened for eligibility and were excluded if either of the following conditions existed during 2014:

- The tribe did not operate its own tribal court, either due to coverage by a BIA court or jurisdiction exercised by state and local government through P.L. 280 or consent.
- The tribal court was under construction or otherwise not operational during 2014.

Data on the number and type of tribal court systems were obtained from all eligible federally recognized tribes. The final universe of eligible respondents in the lower 48 states included 234 tribal court systems, of which 196 (83.8%) participated in the survey. The Intertribal Court of Southern California provided a combined response to NSTCS. In addition, some of the member tribes submitted their own response. For the purpose of this analysis, only the combined response was retained and treated as a single court system.

The 2014 NSTCS covered a variety of complex topics—many collected by the Bureau of Justice Statistics for the first time. The analysis of survey responses revealed several data quality issues. To address these, BJS has limited the scope to core survey items and to tribes in the lower 48 states. However, item response rates vary across the tables.

While the NSTCS requested data on tribal resident population, the number of residents was not collected for many tribes due to item and unit nonresponse. Therefore, the reported population estimates are from the 2012-2016 American Community Survey (ACS). This 5-year dataset was used so that the NSTCS reference year (2014) was the midpoint. Adjustments were made for the population of several tribes:

- The Mashpee Wampanoag Tribe and the United Keetoowah Band of Cherokee Indians are included in the 0-999 population category in these statistical tables, as the ACS did not include a population for these tribes.
- The populations for the Fallon Paiute-Shoshone Reservation and Off-Reservation Trust Land and the Fallon Paiute-Shoshone Colony and Off-Reservation Trust Land in Nevada are combined for the Fallon Paiute-Shoshone tribe.
- The populations for tribes in Oklahoma include the Oklahoma Tribal Statistical Area (OTSA) and any corresponding Joint Use Area (JUA).

Unit nonresponse weights were computed using the 2012-2016 ACS population. Each court system's weight is based on its resident population category (0-999, 1,000-9,999, and 10,000 or more residents).

⁷See Schwartz, A., & Hunter, M. J. B. (2011). *United States tribal courts directory* (4th ed.). William S. Hein & Co.

Terms and definitions

Code of Federal Regulations Courts (CFR Courts)—Courts initially set up by the U.S. Department of the Interior as the Courts of Indian Offenses to handle less serious criminal offenses and to resolve disputes between tribal members in Indian country. In 1883, CFR Courts were made a regular part of Bureau of Indian Affairs (BIA) activities on Indian reservations, operating under written guidelines in the CFR. Up until 1934, the CFR Court system operated in about two-thirds of reservations.

Coordinated Tribal Assistance Solicitation—A U.S. Department of Justice (DOJ) program in which federally recognized tribes and tribal consortia can apply for funding to develop comprehensive and coordinated approaches to public safety and victimization. Most of the DOJ's programs specific to tribal governments are included in and available through this solicitation.⁸

Court Appointed Special Advocate—A community volunteer whom a judge appoints to gather information and make recommendations in the best interest of children in custodial cases while keeping the children's wishes in mind.

Formal tribal court—The first iteration of tribal courts operated under written guidelines in the CFR. Since the Indian Reorganization Act of 1934, formal tribal courts have incorporated judges, prosecutors, and defense counsel (similar to state and local courts) that are under tribal control. Some tribes have developed a hybrid or blended judicial system featuring dispute resolution elements common to indigenous courts or CFR Courts, plus contemporary practices to ensure due process.

Guardian ad litem—A guardian who represents the interests of minor children in legal matters involving divorces, custody, abuse, and neglect or parental rights.

Indigenous or traditional courts—An indigenous forum that tribes use to address criminal activity by consensus, often referred to as peacemaking, a council of elders, or sentencing circles. Indigenous courts have served one of the most important roles exercised by tribal government: resolving disputes in the community, which may include Indians of other tribes.

Intertribal court system—A consortium of tribal governments that shares a court when it is economically and administratively feasible. Member tribes of an intertribal court combine their resources to ensure that each tribe has a court, sharing judges, prosecutors, and related court services.

Joint jurisdiction state-tribal courts—A court operating under a joint power agreement between tribal and state governments that collaborate on shared goals of improving access to justice, fostering public trust, and increasing accountability.

Jurisdiction—Tribal court authority over the parties (persons) and the type of legal issues (subject) to adjudicate their dispute.

Civil jurisdiction—A tribal court's authority to hear civil matters not deemed a criminal offense, including lawsuits, taxes, probate, and a host of family law matters, such as divorces, adoptions, child custody, and other Indian Child Welfare Act cases. The National Survey of Tribal Court Systems (NSTCS) collected data on whether tribal courts exercised civil jurisdiction.

Criminal jurisdiction—A tribal court's authority to hear matters related to criminal offenses. According to U.S. law, all tribes have criminal jurisdiction over Indians of any tribe. Tribal courts generally lack criminal jurisdiction over non-Indians, except in limited circumstances involving dating and domestic violence involving Indian victims within a tribe's jurisdiction, provided the non-Indian offender has sufficient ties to the tribe and the tribe provides for the protection of certain rights of the defendant.⁹ The NSTCS collected data on whether tribal courts exercised criminal jurisdiction.

Personal jurisdiction—A tribal court's authority over certain persons or personal rights to adjudicate disputes. The court's personal jurisdiction may vary for civil and criminal matters. The NSTCS collected data on three classes of persons over whom courts exercised personal criminal jurisdiction: member Indians, nonmember Indians, and non-Indians.

Subject matter jurisdiction—A tribal court's authority to hear particular types of cases. Tribal constitutions, statutes, and codes create different courts and generally limit their subject matter jurisdiction. Some courts have criminal jurisdiction, civil jurisdiction, or both, and some specialize in a particular area of law, such as probate, family, or juvenile law.

Nonmember Indian—The NSTCS defined *Nonmember Indian* as an individual who is a member of a tribe other than the specific tribe on whose land they reside.

Continued on next page

⁸See <https://bja.ojp.gov/funding/opportunities/o-bja-2021-60008>.

⁹See <https://fas.org/sgp/crs/misc/R43324.pdf>.

Terms and definitions (continued)

P.L. 93-638 contracts (638 contracts)—Contracts to transfer federal program responsibility and funds to a tribe under the Indian Self-Determination and Education Assistance Act of 1975 (P.L. 93-638).¹⁰ In a 638 contract, the federal government transfers funds (including administrative overhead costs) it would spend on programs benefiting the tribe, and the tribe uses the funds to develop staff, processes, and infrastructure to administer the programs itself.

Pretrial diversion program—An alternative to prosecution intended to divert certain offenders away from traditional criminal justice processing and into a program of supervision and services.¹¹ In most cases, offenders are diverted before being charged with a crime. Participants who successfully complete the program will not be charged or, if charged, will have the charges against them dismissed. Unsuccessful participants are returned for prosecution.

Pretrial release program—A program to release a defendant before trial, with or without conditions. A defendant may be released on their own

¹⁰See https://www.bia.gov/sites/bia.gov/files/assets/bia/ots/ots/pdf/Public_Law93-638.pdf.

¹¹See <https://www.justice.gov/jm/jm-9-22000-pretrial-diversion-program>.

recognizance or under nonfinancial conditions that require monitoring in the community. Nonfinancial conditions may include regular contact with a pretrial services program, drug testing, a curfew, or electronic monitoring.

Self-governance compact—An executed document describing the official terms and conditions of the relationship between a sovereign tribe and a federal government entity.

Tribal Law and Order Act (TLOA) enhanced sentencing authority—A tribal court's enhanced sentencing authority under TLOA. TLOA allowed felony sentencing in tribal courts for certain crimes, established new minimum standards for protecting defendants' rights in tribal courts, and encouraged federally recognized Indian tribes to develop alternatives to incarceration in response to crime in their communities.¹² To acquire enhanced sentencing authority, tribal courts must create and adopt criminal codes and rules of evidence, establish rules of criminal procedure that are available to the public, provide qualified legal counsel to defendants, have law-trained judges, and record all criminal proceedings.

¹²See <https://bja.ojp.gov/sites/g/files/xyckuh186/files/Publications/TLOA-TribalCtsSentencing.pdf>.



The Bureau of Justice Statistics of the U.S. Department of Justice is the principal federal agency responsible for measuring crime, criminal victimization, criminal offenders, victims of crime, correlates of crime, and the operation of criminal and civil justice systems at the federal, state, tribal, and local levels. BJS collects, analyzes, and disseminates reliable statistics on crime and justice systems in the United States, supports improvements to state and local criminal justice information systems, and participates with national and international organizations to develop and recommend national standards for justice statistics. Doris J. James is the acting director.

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