

COLLATERAL CONSEQUENCES OF CONVICTION AND RESTORATION OF RIGHTS IN TRIBAL LAW

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I. INTRODUCTION

Criminal convictions bring not only direct consequences such as imprisonment or fines, but a universe of indirect harms that affect eligibility for public benefits, occupational credentials, and civic duties, often without notice.¹ Collectively referred to as “collateral consequences,” these secondary harms can sweep in collateral damage as it were, affecting families through loss of parental rights or access to housing, and even diluting community voting strength.² These exclusions compound at all levels of government and extend beyond to an even wider net of unwritten, informal, or private contractual provisions, such as those in rental agreements.³

Federally recognized Indian tribes also impose collateral consequences of conviction.⁴ However, these are not listed, for instance, among the 42,756 collateral consequences in the National Inventory of Collateral Consequences of Conviction as of 2024.⁵ Yet, the thousands of tribal collateral consequences are in addition to the great array of exclusions in state, federal, and local law.⁶ Native Americans are more likely to be justice-involved and more

1. See Michael Pinard, *Collateral Consequences of Criminal Conviction: Confronting Issues of Race and Dignity*, 85 N.Y.U. L. REV. 457, 467-69 (2010); John Hagan & Ronit Dinovitzer, *Collateral Consequences of Employment for Children, Communities, and Prisoners*, 26 CRIME & JUST. 121, 122 (1999).

2. See generally Gabriel J. Chin, *Collateral Consequences of Criminal Conviction*, CRIMINOLOGY, CRIM. JUST., L. & SOC’Y, 2017, at 1, 2; Christopher Uggen & Jeff Manza, *Democratic Contraction? Political Consequences of Felon Disenfranchisement in the United States*, 67 AM. SOCIO. REV. 777 (2002).

3. See Wayne A. Logan, *Informal Collateral Consequences*, 88 WASH. L. REV. 1103, 1105-09 (2013).

4. Although tribal collateral consequences are largely unexplored, previous literature has addressed different aspects of the tribal law consequences of criminal convictions. Scholars have considered whether tribal court convictions should count as prior convictions in subsequent state and federal prosecutions, including under the federal sentencing guidelines. See, e.g., Neil Fulton, *All Things Considered: The Effect on Tribal Sovereignty of Using Tribal Court Convictions in United States Sentencing Guideline Calculations*, 46 AM. J. CRIM. L. 241, 244 (2019); Jon M. Sands & Jane L. McClellan, *Policy Meets Practice: Why Tribal Court Convictions Should Not Be Counted*, 17 FED. SENT’G REP. 215, 216 (2005). In addition, the extension of sex offender registries to Indian Country has also generated scholarly commentary. Virginia Davis & Kevin Washburn, *Sex Offender Registration in Indian Country*, 6 OHIO ST. J. CRIM. L. 3, 9-10 (2008); Lori McPherson, *Sex Offender Registration in Indian Country: SORNA Implementation and 18 U.S.C. § 2250*, 69 DEP’T JUST. J. FED. L. & PRAC. 209, 225, 228 (2021). In the realm of tribal gaming and casinos, some research has looked at the policy purposes of criminal background checks for employees. Heather Saum, *Native American Gaming: Will Organized Crime Organize on the Reservation?*, 3 GAMING L. REV. 49, 52-54 (1999).

5. See generally *Collateral Consequences Inventory*, NAT’L INVENTORY OF COLLATERAL CONSEQUENCES OF CONVICTION, <https://niccc.nationalreentryresourcecenter.org/consequences> [<https://perma.cc/DF4U-UV7D>] (last visited June 22, 2025) (click “search” without filters to see total number in database).

6. Alex C. Ewald, *Collateral Consequences in the American States*, SOC. SCI. Q., Mar. 2012, at 1, 2.

harshly punished than the general population, and therefore more likely to face collateral consequences, so tribal consequences add an additional layer that non-Native criminal offenders do not face.⁷ In this way, tribal governments contribute to overcriminalization and excessive punishment even though tribal criminal jurisdiction is highly restricted by a matrix of federal statutes such as the Major Crimes Act and Supreme Court precedent.⁸

Although tribal courts lack criminal jurisdiction over non-tribal members, they have civil and regulatory (non-criminal) authority over non-members in cases involving tribal business matters or activities that threaten tribal integrity.⁹ Formal collateral consequences are civil or regulatory in nature, not criminal, and therefore do not rely on the jurisdiction of criminal courts.¹⁰ Attaching collateral consequences to certain types of business permits or licenses can help tribes assert regulatory control over economic activity on Indian reservations by non-tribal members.¹¹ In addition, federal and state law can impose collateral consequences or implicitly encourage tribes to adopt them¹². In the realm of gaming and casino ordinances, exclusions for certain positions can spare the tribe the expense of onerous employment background checks.¹³ Yet, when drawn too broadly, collateral consequences have

7. See generally Travis W. Franklin, *Sentencing Native Americans in U.S. Federal Courts: An Examination of Disparity*, 30 JUST. Q. 310, 334-38 (2013).

8. See ANGELIQUE WAMBDI EAGLEWOMAN & STACY L. LEEDS, *MASTERING AMERICAN INDIAN LAW* 56-63 (2d ed. 2019).

9. M. Gatsby Miller, Note, *The Shrinking Sovereign: Tribal Adjudicatory Jurisdiction Over Nonmembers in Civil Cases*, 114 COLUM. L. REV. 1825, 1832 (2014) (citing *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 195 (1978) (holding that tribes lack criminal jurisdiction over non-members)); see also *id.* (citing *Montana v. United States*, 450 U.S. 544, 565-66 (1997) (holding that tribes have civil jurisdiction over non-members in some circumstances)).

10. Alessandro Corda & Johannes Kaspar, *Collateral Consequences of Criminal Conviction in the United States and Germany*, in *CORE CONCEPTS CRIM. L. & CRIM. J.* 392, 400 (Kai Ambos et al. eds., 2022).

11. See Joseph Thomas Flies-Away, Carrie Garrow & Miriam Jorgensen, *Native Nation Courts: Key Players in Nation Rebuilding*, in *REBUILDING NATIVE NATIONS: STRATEGIES FOR GOVERNANCE AND DEVELOPMENT* 115, 135 (Miriam Jorgensen ed., 2007).

12. For instance, federal officials must approve tribal sex offender registries, gaming and casino ordinances, alcohol and marijuana sales ordinances, and even tribal constitutions, all of which may contain collateral consequences. See generally 34 U.S.C. § 20927 (on approval of sex offender registries by U.S. Attorney General); 34 U.S.C. § 20929 (application of sex offender registry requirements to Indian tribes); 18 U.S.C. § 1161 (application of Indian liquor laws on approval of U.S. Secretary of the Interior); 7 C.F.R. 990.2 (2025) (primary regulatory authority of hemp production on approval of U.S. Secretary of Agriculture); 25 U.S.C. § 2710(b) (tribal regulation of gaming on approval of Chairman of the National Indian Gaming Commission); 25 U.S.C. § 5123(a) (tribal constitutions effective on approval of U.S. Secretary of the Interior).

13. See generally Amending the Pueblo of Santa Ana Gaming Ordinance to Establish Separate Licensing Requirements for “Non-Gaming Employees, Res. No. 99-R-42 (1999) (Pueblo of Santa Ana Tribal Council), <https://www.nigc.gov/images/uploads/gamingordinances/pueblosantaana-santaanaamend042700.pdf> [<https://perma.cc/9DR2-42DE>] (repealing a background check

deleterious effects for offenders, their families, and communities because they perpetuate social stigma and lead to informal discrimination in housing, employment, and education.¹⁴ Collateral consequences reinforce racial hierarchy and social exclusion, impose significant financial obligations, reduce prospects for employment, create health disparities, and erect barriers to education, thereby discouraging reintegration and contributing to recidivism.¹⁵

This article provides a typology of collateral consequences and restoration of rights mechanisms in tribal law and provides proposals for reform. The data comes from a full-length study of all 347 tribal jurisdictions in the lower 48 U.S. states, published as *Criminal Convictions in U.S. Tribal Law: Collateral Consequences, Pardons, and Expungements in Indian Country*.¹⁶ An article of this length cannot exhaustively describe the problem of collateral consequences and restoration of rights for tribal members in every jurisdiction; rather, the purpose is to use illustrative rather than comprehensive examples in order to motivate better policy. Because tribal jurisdictions are extremely varied in size, legal development, and views on criminal offenses and punishment, they also can be innovative laboratories of experimentation,¹⁷ pioneering cutting-edge policies such as marijuana expungements, policies to clear criminal records, restorative forgiveness and apology procedures, initiatives to prevent employment discrimination on the basis of arrest records, revocation of sex offender registration, and waivers for casino employment, among others.¹⁸

requirement for lower-level employees like restaurant and maintenance employees because the procedure made hiring too difficult for these positions).

14. See Corda & Kaspar, *supra* note 10, at 401.

15. See generally ZACHARY HOSKINS, BEYOND PUNISHMENT? A NORMATIVE ACCOUNT OF THE COLLATERAL LEGAL CONSEQUENCES OF CONVICTION 15 (2019); Breanne Pleggenkuhle, *The Financial Costs of a Criminal Conviction: Context and Consequences*, 45 CRIM. JUST. & BEHAV. 121 (2018); Abigail E. Horn, *Wrongful Collateral Consequences*, 87 GEO. WASH. L. REV. 315, 319 (2019); Joni Hersch & Erin E. Meyers, *The Gendered Burdens of Conviction and Collateral Consequences on Employment*, 45 J. LEGIS. 171 (2018).

16. See generally ANDREW NOVAK, CRIMINAL CONVICTIONS IN U.S. TRIBAL LAW: COLLATERAL CONSEQUENCES, PARDONS, AND EXPUNGEMENTS IN INDIAN COUNTRY (2025).

17. See Katherine Florey, *Making It Work: Tribal Innovation, State Reaction, and the Future of Tribes As Regulatory Laboratories*, 92 WASH. L. REV. 713, 716-17 (2017).

18. See, e.g., 24 NORTHERN ARAPAHO CODE § 205(b) (2021), <https://northernarapaho.com/DocumentCenter/View/1113/Title-24-Marijuana-Type-PDF> [<https://perma.cc/3BBT-CWCC>] (expungements for marijuana offenses); § 5-5-3 PUEBLO OF ACOMA LAWS 2003 (2019 REPLACEMENT) [PUEBLO OF ACOMA LAW AND ORDER CODE § 5-5-3 (2019), <https://www.puebloofacoma.org/wp-content/uploads/2021/07/Title-05-Criminal-Procedure.2019-Edition.pdf> [<https://perma.cc/98AW-TP2A>]] (establishing record-clearing opportunities); LUMMI NATION CODE OF LAWS § 5.12.010 (2022), <https://www.lummi-nsn.gov/userfiles/994/Title5CodeofOffensesLIBCResolution2022-031.pdf> [<https://perma.cc/F8HV-7T2V>] (restorative forgiveness procedures); POARCH BAND OF CREEK INDIANS TRIBAL CODE § 33-4-6(a) (2024), [https://library.municode.com/tribes and tribal nations/poarch band of creek indians/codes/code_of_ordinances](https://library.municode.com/tribes%20and%20tribal%20nations/poarch%20band%20of%20creek%20indians/codes/code_of_ordinances) [<https://perma.cc/4HV6-EFCA>] (initiatives to prevent employment

Researching tribal law across so many jurisdictions is fraught with difficulty. Tribal codes and ordinances may not be accessible, updated, or catalogued consistently.¹⁹ Readers are cautioned that tribal law is constantly changing; defense counsel and their clients should consider this analysis as inspiration to double-check the laws of their specific jurisdictions.

II. AN OVERVIEW OF COLLATERAL CONSEQUENCES IN INDIAN COUNTRY

This article categorizes tribal collateral consequences under four headings: (1) restrictions on tribal office; (2) restrictions on business licenses, permits, or regulated professions; (3) limitations on civil rights and tribal social services; and (4) limitations in the tribal gaming industry. However, these are undoubtedly an undercount, not only because of the barriers to accessing tribal law in many jurisdictions, but also because of the positivistic nature of this legal analysis. Collateral consequences may be indirect, hidden, or discretionary, and therefore may not appear in a search of black letter law. That is, collateral consequences may be incorporated by reference to a different law (indirect), subsumed into another element of eligibility or operated according to an informal policy (hidden), or left to a secondary actor to decide after the fact (discretionary).²⁰ Automatic collateral consequences are overbroad per se, but at least uniformly applied; discretionary or informal

discrimination based on arrest record); SOUTHERN UTE INDIAN TRIBAL CODE § 23-1-108(3)(a)-(e), <https://www.southernute-nsn.gov/wp-content/uploads/sites/15/2023/05/Title-23-SORNA-official-final-version-12May2023.pdf> [<https://perma.cc/N6KA-NQYW>] (revocation of sex offender registration); Stockbridge Munsee Community Gaming Ordinance, Res. No. 021-21 §§ GMG.01.04(dd)-(ee), GMG.01.09(l)(37) (2021) (Stockbridge Munsee Tribal Council), https://www.nigc.gov/images/uploads/gamingordinances/20210624_Stockbridge-Munsee_Community_Ord_Amend.pdf [<https://perma.cc/48VT-HRS7>] (waivers for gaming licenses).

19. See Bonnie Shucha, *Whatever Tribal Precedent There May Be: The (Un)Availability of Tribal Law*, 106 LAW LIBR. J. 199, 201 (2014); Jacob Franchek, Note, *Digitizing Tribal Law: How Codification Projects Such as Tribal Law Online Could Give New Rise to American Indian Sovereignty*, 94 WASH. UNIV. L. REV. 1025, 1026-27 (2017).

20. This typology is similar to that laid out by Corda & Kaspar, *supra* note 10, at 400-403 (distinguishing formal/informal and automatic/discretionary collateral consequences). By contrast, Christopher Uggen and Robert Stewart classify collateral consequences of felony convictions by the type of harm that they cause: economic consequences (such as employment and public assistance), social consequences (such as parenting and social shame), physical consequences (such as housing and travel), and civic consequences (such as voting or jury service). Christopher Uggen & Robert Stewart, *Piling On: Collateral Consequences and Community Supervision*, 99 MINN. L. REV. 1871, 1877, 1888, 1889, 1892, 1896, 1899, 1902-03 (2015). Uggen and Stewart also reference a distinction between “sanctions” (restrictions that are automatic upon conviction) and “disqualifications” (restrictions that an authority is authorized, but not required, to impose). *Id.* at 1875-76.

collateral consequences can be more finely tuned in application but also more arbitrary.²¹

Tribal constitutions adopted under the Indian Reorganization Act of 1934 are the organic charters laying out the structure of government and tribal rights and duties in many jurisdictions.²² Tribal constitutions vary significantly based on underlying cultural norms, but also tend to follow a template.²³ Left open in the era of the so-called Indian New Deal under President Franklin D. Roosevelt was the degree to which the rights in the U.S. Constitution applied to litigants in tribal court, which was partially solved by a significant piece of civil rights legislation, the Indian Civil Rights Act of 1968, which allowed tribal members to challenge tribal criminal proceedings by bringing a habeas corpus claim in federal court.²⁴ Also unresolved was the degree to which tribal court decisions are entitled to “full faith and credit” by state and federal courts.²⁵ Since the 1960s, tribal governments have adopted increasingly sophisticated tribal codes, many of which are publicly available and routinely published.²⁶ A significant influence on drafting tribal codes is the tribal general counsel or attorney general, who frequently looks to the laws of other tribal jurisdictions or sample laws, sometimes through networks created by organizations such as the Tribal In-House Counsel Association, National Native American Bar Association, and National Tribal Judicial Center.²⁷ Improving access to tribal law materials, especially over the internet, can facilitate legal sharing among tribes facing similar resource and regulatory constraints.²⁸ Benefiting from increased online availability, tribal judges frequently “refer to the decisions of other tribal courts when seeking persuasive authority.”²⁹

21. See Christopher Gowen & Erin Magary, *Collateral Consequences: How Reliable Data and Resources Can Change the Way Law Is Practiced*, 39 FORDHAM URB. L.J. 65, 67 (2011).

22. See Robert J. Miller, *American Indian Constitutions and Their Influence on the United States Constitution*, 159 PROCS. AM. PHIL. SOC'Y 32, 44-46 (2015).

23. See David E. Wilkins & Sheryl Lightfoot, *Oaths of Office in Tribal Constitutions: Swearing Allegiance, but to Whom?*, 32 AM. INDIAN Q. 389, 389-91 (2008).

24. See Jennifer S. Byram, *Civil Rights on Reservations: The Indian Civil Rights Act and Tribal Sovereignty*, 25 OKLA. CITY U. L. REV. 491, 494 (2000).

25. See Alex Tallchief Skibine, *Troublesome Aspects of Western Influences on Tribal Justice Systems and Laws*, 1 TRIBAL L.J. 1, 4 (2000).

26. See Robert D. Cooter & Wolfgang Fikentscher, *American Indian Law Codes: Pragmatic Law and Tribal Identity*, 56 AM. J. COMPAR. L. 29, 31-34 (2008).

27. See *id.* at 35-37; Kristen A. Carpenter & Eli Wald, *Lawyering for Groups: The Case of American Indian Tribal Attorneys*, 81 FORDHAM L. REV. 3085, 3157-59 (2013); Matthew L.M. Fletcher, *Bullshit and the Tribal Client*, 2015 MICH. ST. L. REV. 1435, 1470 (2015).

28. See Bonnie Shucha, “Whatever Tribal Precedent There May Be”: *The (Un)Availability of Tribal Law*, 106 LAW LIBR. J. 199, 202 (2014).

29. *Id.* at 202-03.

The full study looked at all 347 federally-recognized Indian tribes in the lower 48 states.³⁰ These political entities encompass enormous diversity, varying both in population and per capita income by orders of magnitude.³¹ The federal government holds 326 reservations in trust for these tribes, which can range from one acre in size (Pit River Tribe cemetery) to sixteen million acres (Navajo Nation).³² Tribal law codes may have significant gaps. Some tribes have decided not to make their codes publicly available to non-tribal members, while others do not update the codes regularly to account for newly passed ordinances.³³

A. RESTRICTIONS ON TRIBAL OFFICE

Restrictions on serving in or running for elected or appointed tribal office are among the most common collateral consequences in tribal law.³⁴ Tribal constitutions, which may contain restrictions on elected office, must be approved by the U.S. Secretary of the Interior before they enter into force.³⁵ Restrictions on running for tribal office with a prior criminal conviction are numerous and varied. At least 57 jurisdictions had eligibility restrictions on running for tribal office, with automatic restoration of the right after a set number of years, including seven that have a pardon or waiver process to shorten that period.³⁶

For instance, the Caddo Nation of Oklahoma prohibits persons with felony convictions from running for tribal office for two years and the Mechoopda Indian Tribe of Chico Rancheria extends that exclusion to three

30. See generally NOVAK, *supra* note 16. The 231 Alaskan Native tribal entities are not included. Though considered tribes for purposes of federal law, finding and researching these codes and ordinances is more difficult. However, the study came across some collateral consequences of criminal conviction in Alaskan Native tribal law, and for purposes of the study the four Alaskan gaming tribes are included in the section on gaming ordinances.

31. Max Minzer, *Treating Tribes Differently: Civil Jurisdiction Inside and Outside Indian Country*, 6 NEV. L.J. 89, 89 (2005).

32. *What Is a Federal Indian Reservation?*, U.S. DEP'T OF THE INTERIOR INDIAN AFFS. (Aug. 19, 2017, 2:53 PM), <https://www.bia.gov/faqs/what-federal-indian-reservation> [<https://perma.cc/335G-2PC2>].

33. See Shucha, *supra* note 19, at 201-02.

34. At least 50 tribal jurisdictions restrict the right to run for tribal office for a term of years, another 36 restrict the right to run for office based on a felony conviction for life, and 30 more include at least some misdemeanors in their lifelong exclusions. As per the disclaimers above, this may be an undercount because some tribes do not make their legal materials public. However, because tribal constitutions are often easier to find than other types of tribal legal materials (and because not all tribes have legal codes), it was more likely that research would reveal exclusions on tribal office compared to other types of collateral consequences. See NOVAK, *supra* note 16, at 36, 40, 42.

35. See generally 25 U.S.C. § 5123(a), (d) (noting that the U.S. Secretary of the Interior must approve tribal constitutions).

36. NOVAK, *supra* note 16, at 36.

years and to misdemeanors involving moral turpitude or dishonesty.³⁷ Some tribes exclude certain types of convictions from the sunset date, the end of any punishment for a criminal conviction. For instance, the Jamestown S'Klallam Tribe prohibits persons with felonies from running for tribal office for five years after any punishment is complete, unless the conviction is for domestic, elder, or child abuse, a drug felony, or child molestation, then the exclusion is for life.³⁸ In California, both the Karuk Tribe and the Yurok Tribe restore the right to run for tribal office ten years after sentencing or conviction for certain crimes, but maintain a lifelong exclusion for other convictions, including those resulting in sex offender registration.³⁹ At least 36 jurisdictions exclude persons convicted of a felony from running for tribal office for life.⁴⁰ Another 21 jurisdictions add at least some misdemeanors to that lifelong bar, most commonly crimes of dishonesty, moral turpitude, fraud, embezzlement, bribery, theft, or crimes where the tribe was a victim.⁴¹

Many jurisdictions provide a path to restore the right to run for tribal office, either through a waiver process or a pardon from the appropriate authority. The Assiniboiné and Sioux Tribes of the Fort Peck Indian Reservation permit a pardon to waive ineligibility for that tribe's felony exclusion for running for tribal office.⁴² The Mescalero Apache Tribe creates a special restoration of rights procedure: the tribal executive may grant a pardon restoring the right to run for office but may not pardon him or herself for this purpose.⁴³ The Eastern Band of Cherokee Indians provides an exclusion from running for tribal office for persons with felony convictions but allows an ineligible candidate to file a petition with the tribal court to potentially restore the right

37. CONST. AND BY-LAWS OF THE CADDO INDIAN TRIBE OF OKLAHOMA art. iv, § 4, https://img1.wsimg.com/blobby/go/2dc7a2b6-16b1-4bf6-9fba-14c9d27b132b/downloads/1cil4ambn_391523.PDF?ver=1748450120108 [<https://perma.cc/2WHA-7KWR>]; CONST. OF MECHOOPDA INDIAN TRIBE OF CHICO RANCHERIA art. V, § 2(b).

38. See JAMESTOWN S'KLALLAM TRIBE TRIBAL CODE § 5.07.02(A)(2) (2019), <https://jamestowntribe.org/wp-content/uploads/2019/05/Title-5-Elections-With-2019-Amendments-4-30-19approved.pdf> [<https://perma.cc/4PER-YZHD>].

39. See CONST. OF THE KARUK TRIBE art. VII, § 4, https://www.karuk.us/images/docs/hr-files/Tribal%20Constitution%207_19_2008.pdf; YUOK TRIBE CONST. art. 3, § 5(a), <https://yurok.tribal.codes/Constitution/III> [<https://perma.cc/2LBN-MUBD>].

40. NOVAK, *supra* note 16, at 40.

41. *Id.* at 42-43.

42. See CONST. AND BY-LAWS OF THE ASSINIBOINE AND SIOUX TRIBES art. V, § 5(b), https://fortpecktribes.org/wp-content/uploads/2019/08/fpt_constitution_bylaws.pdf [<https://perma.cc/QNS2-HTNP>].

43. See CONST. OF THE MESCALERO APACHE TRIBE art. VI, § 1, <https://mescaleroapachetribe.com/constitution/>; MESCALERO APACHE TRIBAL CODE §§ 1-3-7, 9-4-1 (2016), <https://mescaleroapachetribe.com/wp-content/uploads/Tribal-Code-FINAL-092716-for-tabbing-372018.pdf> [<https://perma.cc/22LX-B7E9>].

to run for office.⁴⁴ While not a restoration of rights, the Quileute Tribe provides for the right to run as a write-in candidate when a person is otherwise ineligible to run for office due to a conviction for a felony or crime of dishonesty.⁴⁵

Collateral consequences have also proliferated in appointed tribal office. The transfer of authority from federal to tribal control over the past several decades “has been accompanied by rapid growth in tribal bureaucracies: more offices, more programs, more people, and more activity.”⁴⁶ Unsurprisingly, these restrictions are common in positions of public trust like judges, court personnel, and law enforcement.⁴⁷ At least 93 tribal jurisdictions prohibit persons with certain criminal convictions from serving as a tribal court judge, of which the most common construction, used by at least 20 of them, is to exclude persons convicted of any felony or, within the previous one year, a misdemeanor.⁴⁸ Some jurisdictions have more elaborate exclusions. In Oklahoma, the Sac and Fox Tribe disqualifies from serving as district court judge any person with a felony conviction or, within the previous two years, a misdemeanor conviction.⁴⁹ For Sac and Fox Supreme Court justices, however, the bar is lifelong for felonies and offenses justifying banishment or involving moral turpitude and five years for other convictions.⁵⁰ These kinds of exclusions can extend to other legal personnel. The Standing Rock Sioux Tribe has a lifelong felony bar for tribal prosecutors and public defenders and

44. CHEROKEE CODE OF THE EASTERN BAND OF THE CHEROKEE NATION § 14-1.4(b)-(c) (2018), [https://library.municode.com/tribes and tribal nations/eastern band of cherokee indians/codes/code_of_ordinances](https://library.municode.com/tribes%20and%20tribal%20nations/eastern%20band%20of%20cherokee%20indians/codes/code_of_ordinances) [<https://perma.cc/W9MX-CGTW>]. See generally *id.*, Part I, § 17 (“No person shall ever be eligible for office or appointment of honor, profit, or trust who shall have aided, abetted, counselled, or encouraged any person or persons guilty of defrauding the Eastern Band of Cherokee Indians, or themselves have defrauded the Tribe, or who may hereafter aid or abet, counsel or encourage anyone in defrauding the Eastern Band of Cherokee Indians. Neither shall any person be eligible to such office, who has been convicted of a felony.”).

45. QUILETE NATION ELECTION ORDINANCE § 22(3) (2022), <https://quileutenation.org/wp-content/uploads/2024/05/Election-Ordinance-2022-Approved.pdf> [<https://perma.cc/63UB-425J>].

46. Stephen Cornell & Miriam Jorgensen, *Getting Things Done for the Nation: The Challenge of Tribal Administration*, in REBUILDING NATIVE NATIONS: STRATEGIES FOR GOVERNANCE AND DEVELOPMENT 146, 151 (Miriam Jorgensen ed., 2007).

47. This is true for collateral consequences in state and federal law, too. See Stewart M. Weintraub, Comment, *The Collateral Consequences Exception to the Concurrent Sentence Doctrine*, 44 TEMP. L.Q. 385, 392-93 (1971).

48. NOVAK, *supra* note 16, at 49, 51.

49. See SAC AND FOX NATION CODE OF LAWS § 9-102(c) (2014), https://www.sacandfoxnation-nsn.gov/wp-content/uploads/2021/01/9_Courts_2014-12-11.pdf [<https://perma.cc/8NU5-S3UV>].

50. *Id.* § 9-203(c).

a 10-year bar for tribal court administrators and court clerks.⁵¹ The Klamath Tribes of Oregon exclude from the tribal Judicial Commission any person “convicted of a felony or a misdemeanor involving dishonesty or moral turpitude within ten years from the date of appointment.”⁵² Notably, some jurisdictions allow restoration of the right to serve as a tribal judge through a pardon or expungement. For instance, the Ho-Chunk Nation has a felony exclusion for trial court judges and supreme court justices “unless pardoned.”⁵³

Other occupations of public trust frequently have exclusions for former convictions attached to the position. Election oversight bodies are one example. For the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, persons with felony convictions may not serve as election supervisors, election commissioners, or election judges unless pardoned.⁵⁴ For law enforcement, collateral consequences can attach to all levels, including police oversight bodies, chiefs or sheriffs, and line officers. The Oneida Tribe of Wisconsin excludes any person with a felony conviction or misdemeanor conviction resulting from a plea bargain for a felony arrest from serving on the police commission even if the underlying crime was pardoned.⁵⁵ By contrast, the Ho-Chunk Nation allows a tribal council waiver to restore eligibility for a police commissioner if the candidate does not pose a threat to the credibility and integrity of the commission.⁵⁶ For officers, the most common exclusion is to exclude anyone with a felony conviction or misdemeanor convictions within the preceding one year.⁵⁷ Fitting this model are the tribal codes of the Chippewa Cree Indians of the Rocky Boy’s Reservation, Lummi

51. See STANDING ROCK SIOUX TRIBAL CODE OF JUSTICE §§ 1-402, 1-408, 1-502(a), 1-509(a) (2021), [https://www.standingrock.org/wp-content/uploads/mdocs/Title%20I%20-%20\(1\)%20Courts.pdf](https://www.standingrock.org/wp-content/uploads/mdocs/Title%20I%20-%20(1)%20Courts.pdf) [<https://perma.cc/G9VW-45B9>].

52. See 1 KLAMATH TRIBAL CODE § 5.06(a)(3) (2006), https://ktj-live-8df4857580a04c80b1ece864d3d589-cd4fbe8.divio-media.com/documents/Title_1_Chapter_5_-_Judicial_Commission_Ordinance.pdf [<https://perma.cc/VM83-5H2A>].

53. See CONST. OF THE HO-CHUNK NATION art. VII, § 8(a)-(c), <https://ho-chunknation.com/wp-content/uploads/2019/10/Final-HCN-Constitution-July-2019-1.pdf> [<https://perma.cc/4M95-5DMP>].

54. FORT PECK TRIBES COMPREHENSIVE CODE OF JUSTICE § 5-106(d) (2025), <https://fptc.org/comprehensive-code-of-justice-ccoj> [<https://perma.cc/L4AW-JN28>].

55. See ONEIDA CODE OF LAWS § 301.6-3(c) (2004), <https://oneida-nsn.gov/wp-content/uploads/2022/01/Chapter-301-Oneida-Nation-Law-Enforcement-Ordinance-02-25-15-C.pdf> [<https://perma.cc/HV4U-7KSB>].

56. See HO-CHUNK NATION LAWS § 1-14-7(b)(2)(d) (2015), <https://ho-chunknation.com/wp-content/uploads/2025/02/05.05.15-Law-Enforcement-Commission-Est-Org-Act-1HCC14.Tech-Correction.pdf> [<https://perma.cc/P3W9-TN46>].

57. The complete study found seven tribal jurisdictions in total with this conviction exclusion. See NOVAK, *supra* note 16, at 62.

Tribe, and Pueblo of Pojoaque, among others.⁵⁸ These exclusions can extend to corrections officials too. The Sac and Fox Tribe of the Mississippi excludes persons with felony convictions or misdemeanors involving perjury or false statements from serving as probation or parole officers.⁵⁹ The Seminole Tribe of Oklahoma has a criminal conviction exclusion on police officers cross-deputizing with state and county law enforcement: persons with felony convictions, domestic violence convictions with firearm restrictions, or misdemeanor convictions in the previous year are ineligible.⁶⁰

Collateral consequences attach to many other appointed tribal offices; these include positions overseeing natural resource management. The Navajo Nation excludes persons who, within the previous five years, have a felony conviction or one of the specifically enumerated misdemeanor convictions from its elected Land Board, Farm Board, and Grazing Committee.⁶¹ For appointees to fish, wildlife, shellfish, and hunting commissions, many Pacific Northwest tribes exclude persons who have recently violated tribal hunting and fishing regulations.⁶² Given the proliferation of tribal administrative roles in recent decades, the positions to which collateral consequences might apply have become increasingly varied, complex, and specific.⁶³ Other

58. *See generally* CHIPPEWA CREE TRIBE LAW AND ORDER CODE § 4.1.5(2)(c)-(d) (1987), https://indianlaw.mt.gov/_docs/chippewacree/codes/law_order_code_1987.pdf [<https://perma.cc/6E5G-QM8F>]; LUMMI NATION CODE OF LAWS § 9.04.020(c), https://www.lummi-nsn.gov/userfiles/393_Title9LawEnforcementOfficersCodeResolution2016-014.pdf [<https://perma.cc/Q32J-59NT>]; PUEBLO OF POJOAQUE LAW AND ORDER CODE § D-6(a)(3) (2024), https://pojoaque.org/wp-content/uploads/2025/05/2024-10-04-POP-LOC_FINAL-1.pdf [<https://perma.cc/7Y3Q-LQMY>].

59. *See* SAC AND FOX TRIBE OF THE MISSISSIPPI IN IOWA TRIBAL CODE § 13-6608(b)(5), <https://drive.google.com/file/d/1G0zZDIWsyHq-p71-pxC0ulCTRuP42n5q/view> [<https://perma.cc/KVH2-YNXS>].

60. *See* SEMINOLE NATION CODE OF LAWS § 24-112(c)(4), https://www.sno-nsn.org/docs/Seminole_Nation_Code_PDF_September_2019_Update.pdf.

61. *See* NAVAJO NATION CODE § 11-1-8(D)(1)-(3), <https://www.nnols.org/wp-content/uploads/2022/05/5A-12.pdf>.

62. *See, e.g.*, PUYALLUP TRIBE TRIBAL LAWS § 12.04.060, <https://www.codepublishing.com/WA/PuyallupTribe/#!/PuyallupTribe12/PuyallupTribe1204.html#12.04.060> [<https://perma.cc/3S7Z-8ZYW>] (prohibiting those with recent fishing-related convictions from being members of the Fisheries Management Commission); CONFEDERATED TRIBES OF THE GRAND RONDE COMMUNITY OF OREGON TRIBAL ORDINANCES § 801(c)(1)(C) (2015), <https://www.grandronde.org/media/1194/10282015fish-and-wildlife-ord.pdf> [<https://perma.cc/SL3X-D66G>] (prohibiting those with recent hunting, fishing, or gathering violations from being members of the Fish and Wildlife Committee); LOWER ELWHA KLALLAM TRIBE TREATY HUNTING ORDINANCE § 1.3.3 (2013), <https://www.elwha.org/wp-content/uploads/1978/09/Elwha-Hunt-Ord-amended-11-20-13-final-002.pdf> [<https://perma.cc/JM3C-FQQ8>] (prohibiting those with violations of the treaty hunting ordinance from membership on the game committee for two years after conviction).

63. *See also* Cornell & Jorgenson, *supra* note 46, at 151 (“Predictably, this transfer of authority has been accompanied by rapid growth in tribal bureaucracies: more offices, more programs, more people, and more activity.”).

examples, drawn variously from around Indian Country, include limitations on appointed members of a tribal taxation authority (Standing Rock Sioux Tribe); utility authority (Fort Peck Indian Reservation); enrollment authority (Bad River Band of the Lake Superior Tribe of Chippewa Indians); economic development authority (Winnebago Tribe); construction authority (Yavapai Apache Nation); housing authority (Eastern Band of Cherokee Indians); education authority (Navajo Nation); financial services authority (Pueblo of Pojoaque); and athletics authority (Pascua Yaqui Tribe).⁶⁴ Some tribes have blanket exclusions. The Kickapoo Traditional Tribe of Texas excludes any person with a conviction arising under tribal Penal Codes from public office or service on a tribal board for at least five years, unless restored by the tribal council.⁶⁵ Tribal offices are likely susceptible to collateral consequences of conviction because they are positions of privilege and public trust.

B. RESTRICTIONS ON BUSINESS LICENSES, PERMITS, AND REGULATED OCCUPATIONS

Business licenses, permits, and regulated occupations are a significant assertion of tribal sovereignty since they allow tribes to control and distribute employment opportunities and economic benefits, including—unlike tribal

64. *See generally* STANDING ROCK SIOUX TRIBAL CODE OF JUSTICE § 16-203(B) (2014), [https://www.standingrock.org/wp-content/uploads/mdocs/Title%20XVI%20-%20\(16\)%20Tax%20Code.pdf](https://www.standingrock.org/wp-content/uploads/mdocs/Title%20XVI%20-%20(16)%20Tax%20Code.pdf) [https://perma.cc/W2BQ-U46B] (Tribal Tax Commissions); FORT PECK TRIBES COMPREHENSIVE CODE OF JUSTICE § 20-1301(3)(4) (2025), <https://fptc.org/comprehensive-code-of-justice-ccoj> [https://perma.cc/EHU9-38UQ] (Water Commission); TRIBAL COURT CODE OF THE BAD RIVER BAND OF THE LAKE SUPERIOR TRIBE OF CHIPPEWA INDIANS § 601.05(f), https://www.badriver-nsn.gov/wp-content/uploads/2020/02/Legal_CourtCode.pdf [https://perma.cc/C4YP-WS82] (Membership Committee); WINNEBAGO TRIBAL CODE § 11A-308(4) (2015), <https://winnebago-tribe.com/wp-content/uploads/2023/04/2023-01-23-2021-WTN-Tribal-Code.pdf> [https://perma.cc/9VHR-2MV4] (Board of Trustees of Economic Development Authority); YAVAPAI-APACHE CONSTRUCTION CODE § 304(B)(6)(b)(i) (2008), <https://yavapai-apache.org/wp-content/uploads/2021/01/Title-31-Yavapai-Apache-Construction-Code.pdf> [https://perma.cc/8WJR-HHQR] (conviction or judgment of liability may result in removal from the Board of Directors); CHEROKEE CODE OF THE EASTERN BAND OF THE CHEROKEE NATION, *amended by* Ordinance 433, § 44-20(b) (2025) (Tribal Housing Committee), https://library.municode.com/tribes_and_tribal_nations/eastern_band_of_cherokee_indians/ordinances/code_of_ordinances?nodeId=1357355 [https://perma.cc/H39Q-WBW5] (Housing Committee eligibility); 10 NAVAJO NATION CODE § 106(D)(4) (2010), <https://www.nnols.org/wp-content/uploads/2022/05/5A-12.pdf> [https://perma.cc/3JFL-FHZ4] (Board of Education elected and appointed members); PUEBLO OF POJOAQUE LAW AND ORDER CODE § R-2(d)(1)(D)(iii)(b) (2024), https://pojoaque.org/wp-content/uploads/2025/05/2024-10-04-POP-LOC_FINAL-1.pdf [https://perma.cc/35SG-J438] (Consumer Financial Services Regulatory Agency); 2 PASCUA YAQUI TRIBAL CODE § 4-2-10(B)(4) (2024), <https://www.pascuayaqui-nsn.gov/tribal-code-v1/> [https://perma.cc/2JV6-C7YG] (Athletic Commission).

65. *See* 18 KICKAPOO TRADITIONAL TRIBE OF TEXAS PENAL CODE § 3, <https://kickapootexas.org/wp-content/uploads/2017/05/KTTT-Ch-18-Penal-Code.pdf> [https://perma.cc/9RDF-PWUB].

criminal jurisdiction—over non-members of the tribe.⁶⁶ For alcohol sales licenses, the Ponca Tribe of Nebraska is typical, excluding all persons with convictions of felonies or alcohol-related misdemeanors.⁶⁷ More elaborate is the St. Croix Chippewa Indians, which excludes persons with felony convictions or, within the last 5 years, misdemeanor convictions for alcohol-related crimes, financial crimes, obstruction of justice, crimes involving children, gambling, tribal property offenses, crimes of violence, theft, or bribery.⁶⁸ Tobacco sales can be subject to similar restrictions. The Muscogee (Creek) Nation denies tobacco retail permits to anyone convicted of a felony.⁶⁹

The position of medical and recreational marijuana and industrial hemp in Indian Country is rapidly changing.⁷⁰ At the state level, advocates for marijuana legalization also increasingly promote policies that reduce or erase past marijuana-related convictions, but these policies have exceptions and sometimes burdensome application processes.⁷¹ The same patchwork can be seen at the tribal level. The Flandreau Santee Sioux Tribe requires employees of marijuana businesses to apply for a Cannabis Employee License, which excludes anyone with a felony conviction in the previous 30 months or 60 months for a conviction related to controlled substances.⁷²

A more discretionary variation comes from the Confederated Tribes of the Warm Springs Reservation of Oregon, which authorizes the Executive Director of the Tribe's Cannabis Commission to deny a permit to cultivate marijuana if a federal felony conviction in the previous two years is

66. See Flies-Away, Garrow, & Jorgenson, *supra* note 11, at 135.

67. See 16 PONCA TRIBE LAW AND ORDER CODE § 16-3-11(2)(d) https://poncatribene.gov/wp-content/uploads/2022/04/law_codetitle_v16_220301.pdf [<https://perma.cc/YC4M-XZBP>].

68. See Alcoholic Beverage Control Ordinance, Res. No. 12-3-09-01 § 8(6) (2009) (St. Croix Chippewa Indians of Wisconsin), <https://s3.amazonaws.com/stellar-blue-wpengine-mars-wp-media-folder/wp-media-folder-st-croix-chippewa-indians-of-wisconsin/wp-content/uploads/2021/01/Alcohol-Control-Ordinance-.pdf> [<https://perma.cc/AAK9-WXGY>].

69. See 36 MUSCOGEE (CREEK) NATION CODE § 36-5-115(B)(4), <https://www.creek-supremecourt.com/wp-content/uploads/title36.pdf> [<https://perma.cc/4PJN-334B>].

70. See generally Julie Kim & Jessica Roberts, *Green Means Go: Tribes Rush to Regulate Cannabis in Indian Country*, 8 AM. INDIAN L.J. 255 (2019).

71. See Douglas A. Berman, *Leveraging Marijuana Reform to Enhance Expungement Practices*, 30 FED. SENT'G REP. 305, 309-11 (2018).

72. FLANDREAU SANTEE SIOUX TRIBE CANNABIS CONTROL ORDINANCE § 29-3-2(a), (b)(4) (2024), [https://22154323.fs1.hubspotusercontent-na1.net/hubfs/22154323/Tribal%20Law%20and%20Order%20Code/Title%2029%20-%20Marijuana%20Control%20Ordinance%20\(final\)%20-%20022024.pdf](https://22154323.fs1.hubspotusercontent-na1.net/hubfs/22154323/Tribal%20Law%20and%20Order%20Code/Title%2029%20-%20Marijuana%20Control%20Ordinance%20(final)%20-%20022024.pdf) [<https://perma.cc/P843-Q3UP>].

“substantially related to the fitness and ability” of the applicant to lawfully comply.⁷³

Collateral consequences also apply to regulatory positions for officials who oversee these sectors, such as the Liquor Control Board of the Ponca Tribe (felony or alcohol-related crime in the previous 5 years); Tobacco Product Control Authority of the Flandreau Santee Sioux Tribe (all felonies or misdemeanors within 5 years for tobacco-related offenses); or the Hemp Commission of the Seminole Tribe of Oklahoma (convictions involving breach of trust or dishonesty).⁷⁴

Many tribes deny fishing, hunting, shellfish, or grazing licenses to persons with criminal convictions, most commonly for regulatory violations.⁷⁵ The Pueblo of Santa Ana, for instance, will deny a hunting permit to anyone with a felony conviction or a conviction for domestic violence.⁷⁶ The Puyallup Tribe disallows shellfish privileges under tribal law for persons with illegal shellfish violations, but creates an exception for convictions related to protected “Tribal Treaty rights” as a nod to the “Fish-In” civil rights protests of the 1960s.⁷⁷ In jurisdictions with treaty-protected hunting rights, the position of “designated hunter” is a ceremonial public service role to which collateral consequences could apply.⁷⁸

For instance, the Port Gamble S’Klallam Tribe excludes from designated hunter status any person with a tribal hunting conviction within the past two

73. See 743 WARM SPRINGS TRIBAL CODE § 743.405(4)-(5), <https://warmsprings-nsn.gov/bchapter/marijuana-cultivation-processing-sale> [<https://perma.cc/9X8U-247Y>].

74. See generally PONCA TRIBE LAW AND ORDER CODE § 16-2-3(3), https://poncatribene.gov/wp-content/uploads/2022/04/law_codetitle_v16_220301.pdf [<https://perma.cc/WVN5-X6FB>]; FLANDREAU SANTEE SIOUX TRIBE LAW AND ORDER CODE § 33-1-8, [https://22154323.fs1.hubspotusercontent-na1.net/hubfs/22154323/Title%2033%20Tobacco%20Control%20Authority%20Ordinance%20-%2012122023%20\(final\).pdf](https://22154323.fs1.hubspotusercontent-na1.net/hubfs/22154323/Title%2033%20Tobacco%20Control%20Authority%20Ordinance%20-%2012122023%20(final).pdf) [<https://perma.cc/U7AA-VM8R>]; SEMINOLE NATION CODE OF LAWS § 35-205 (2020), <https://www.ams.usda.gov/sites/default/files/media/SeminoleNationofOklahomaHempPlan.pdf> [<https://perma.cc/4K6X-G8ZY>].

75. See NOVAK, *supra* note 16, at 84-87.

76. See PUEBLO OF SANTA ANA HUNTING, FISHING, AND TRAPPING REGULATIONS § 3.04 (2023), <https://santaana-nsn.gov/wp-content/uploads/2025/04/PSA-Code-16a.-2023-Wildlife-Regulations-Final.pdf> [<https://perma.cc/WQ2F-6AC4>].

77. 12.12 PUYALLUP TRIBAL CODE § 12.12.160, <https://www.codepublishing.com/WA/PuyallupTribe/#!/PuyallupTribe12/PuyallupTribe1212.html#12.12.160> [<https://perma.cc/ZCL5-ZYAG>]. See generally Bradley G. Shreve, “From Time Immemorial”: The Fish-In Movement and the Rise of Intertribal Activism, 78 PAC. HIST. REV. 403, 432-33 (2009).

78. See Scott M. McCorquodale, *Cultural Contexts of Recreational Hunting and Native Subsistence and Ceremonial Hunting: Their Significance for Wildlife Management*, 25 WILDLIFE SOC’Y BULL. 568, 570 (1997) (explaining the significance of designated hunters).

years or any person prohibited from carrying a firearm.⁷⁹ Collateral consequences may also attach to grazing permits. Persons with felony convictions or misdemeanor convictions related to land or land use, theft of livestock, or violations of the grazing ordinance are ineligible for a grazing permit with the Oglala Sioux Tribe.⁸⁰

For the practice of law, lawyer licensing is often a matter of reciprocity between tribes and the surrounding state, so collateral consequences may be imported from the rules of the state bar.⁸¹ Nonetheless, some tribes have special rules. The Mohegan Tribe of Indians of Connecticut excludes persons with felony convictions from practicing before the tribal court.⁸² The Sisseton-Wahpeton Oyate of the Lake Traverse Reservation also has a felony exclusion but restores eligibility with a pardon or restoration of rights.⁸³ In addition to attorneys, lay advocates, often tribal members with some legal training but who are not lawyers, frequently appear in tribal court because they have expertise in languages, traditions, or customs.⁸⁴ The Coushatta Tribe of Louisiana has a simple exclusion for lay counselors with felony convictions.⁸⁵ A more complex example is the Washoe Tribe, which excludes from lay advocacy members of a federally-recognized tribe who have a felony conviction or non-tribal members who have either a felony conviction or, within the past year, a gross misdemeanor conviction.⁸⁶

Finally, tribal law is replete with collateral consequences that attach to other less-common business licenses and permits.⁸⁷ These include a labor organization business agent license (Squaxin Island Tribe); handgun sales

79. See 18 PORT GAMBLE S'KLALLAM TRIBE LAW AND ORDER CODE § 18.01.13(4)-(5) (2025), <https://pgst.nsn.us/wp-content/uploads/2025/03/Title-18-3.10.25.pdf> [<https://perma.cc/N69Y-N863>].

80. See OGLALA SIOUX TRIBE LAW AND ORDER CODE § 35-15 (2002), https://www.narf.org/nill/codes/oglaala_sioux/chapter35-grazing.html#top [<https://perma.cc/7NY4-2QT9>].

81. See Frank Pommersheim, *Tribal Court Jurisprudence: A Snapshot from the Field*, 21 VT. L. REV. 7, 13-14 (1996).

82. See CODE OF ORDINANCES OF THE MOHEGAN TRIBE OF INDIANS OF CONNECTICUT § 1-37(a) (2014), https://library.municode.com/tribes_and_tribal_nations/mohegan_tribe/codes/code_of_laws [<https://perma.cc/CD8Y-UNCU>].

83. See SISSETON WAHPETON OYATE CODES OF LAW § 32-01-01(5) (1998), <https://swo-nsn.gov/media/1nfeanjx/chapter-32-attorneys-swo-98-074-tribal-court-fee-schedule.pdf> [<https://perma.cc/Y2Z5-9WJE>].

84. Lauren van Schilfgaarde, *Indigenizing Professional Responsibility: The Role of Ethics in Tribal Courts*, 59 JUDGES J. 6, 10 (2020).

85. 1 COUSHATTA TRIBE OF LOUISIANA JUDICIAL CODES § 1.7.02(b)(5) (2004), <https://narf.org/nill/codes/coushatta/coutitle1.html> [<https://perma.cc/V7ZL-TYLD>].

86. See WASHOE TRIBE OF NEVADA AND CALIFORNIA LAW AND ORDER CODE TRIBAL COURT RULES § 14-II-1(b)(2)-(3) (2010), <https://washoetribe.us/departmentsdocument/14-Page-tribal-court-rules-amended-9-11-09> [<https://perma.cc/CA6E-Y8VG>].

87. See NOVAK, *supra* note 16, at 91-94.

permit (Eastern Band of Cherokee Indians); pawnbrokers permit (Navajo Nation); solid waste disposal permit (Apache Tribe); motor vehicle parts recycler license (Confederated Tribes of the Chehalis Reservation); boxing license (Mississippi Band of Choctaw Indians); amusement license (Salt River Pima-Maricopa Indian Community); peddler's license (Tulalip Tribes of Washington); private security guard license (Sault Ste. Marie Tribe of Chippewa Indians); veterinary license (Navajo Nation); bail bond license (Eastern Band of Cherokee Indians); and day care center license (Mohegan Tribe of Connecticut).⁸⁸

C. RESTRICTIONS ON CIVIL RIGHTS AND TRIBAL SOCIAL SERVICES

Restrictions on civil rights and social services are among the most problematic forms of collateral consequences, but substantially less common in tribal law compared to restrictions on tribal offices, occupational licenses, or gaming employment.⁸⁹ The most common civil rights restriction is on jury service: at least 22 tribes exclude persons with certain criminal convictions

88. *See generally* 12 SQUAXIN ISLAND TRIBAL CODE § 12.09.030(C)(2) (2025), https://library.municode.com/tribes_and_tribal_nations/squaxin_island_tribe/codes/code_of_ordinances [https://perma.cc/E8EJ-KUKR] (convictions of dishonesty or moral turpitude); CHEROKEE CODE OF THE EASTERN BAND OF THE CHEROKEE NATION § 144-2 (2025), https://library.municode.com/tribes_and_tribal_nations/eastern_band_of_cherokee_indians/codes/code_of_ordinances [https://perma.cc/N8MV-9GEM] (for felonies); NAVAJO NATION CODE § 5-1140(B) (2010), <https://www.nnols.org/wp-content/uploads/2022/05/1-5.pdf> [https://perma.cc/88J4-TDH7] (for felonies); APACHE TRIBE OF OKLAHOMA SOLID WASTE CODE § 606(b)(G), https://narf.org/nill/codes/apache_ok/solid_waste.pdf [https://perma.cc/B5SN-FR4M] (for felonies); 9.05 CHEHALIS RESERVATION TRIBAL CODE § 9.05.110(C) (2024), <https://www.codepublishing.com/WA/ChehalisTribe/#!/ChehalisTribe09/ChehalisTribe0905.html#9.05.110> [https://perma.cc/Y5SS-44SA] (for felonies); 27 CHOCTAW TRIBAL CODE § 27-1-7(1)(a)(iii), <https://www.choctaw.org/wp-content/uploads/2024/02/Title-27-Choctaw-Boxing-Commission.pdf> [https://perma.cc/P4W3-NEAJ] (for violations of applicable statutes); 15 SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY CODE OF ORDINANCES § 15-153, <https://www.srpmicnsn.gov/wp-content/uploads/2023/10/Chapter15.pdf> [https://perma.cc/M4QB-XPSQ] (for felonies within five years); TULALIP TRIBAL CODES §§ 10.10.070(2)(a)(7) (2025), 10.10.070(3)(b), <https://www.codepublishing.com/WA/Tulalip/#!/Tulalip10/Tulalip1010.html#10.10.070> [https://perma.cc/4PS5-Y6SW] (for child molestation or rape and crimes related to peddling within 10 years); SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS TRIBAL CODE § 49.401(1)(c)-(d) (2020), <https://www.saulttribe.com/government/tribal-code> (for felonies or certain misdemeanors); 20 NAVAJO NATION CODE § 20-7-1022(4) (2010), <https://www.nnols.org/wp-content/uploads/2022/05/13-20.pdf> [https://perma.cc/N6GE-YCMP] (discretionary revocation or suspension by a majority vote of the veterinary board for felonies or crimes of moral turpitude in the practice of veterinary medicine); CHEROKEE CODE OF THE EASTERN BAND OF THE CHEROKEE NATION § 58-5(c) (2025), https://library.municode.com/tribes_and_tribal_nations/eastern_band_of_cherokee_indians/codes/code_of_ordinances [https://perma.cc/C3G7-BPBT] (for felonies or convictions involving criminal street gangs); CODE OF ORDINANCES OF THE MOHEGAN TRIBE OF INDIANS OF CONNECTICUT § 5-144(b) (2025), https://library.municode.com/tribes_and_tribal_nations/mohegan_tribe/codes/code_of_laws [https://perma.cc/XG4N-7PF2] (for specific felonies).

89. NOVAK, *supra* note 16, at 150.

from serving on a tribal court jury.⁹⁰ The simplest construction is an exclusion for felony convictions only, as is used by the Comanche Nation and Yomba Shoshone Tribe for civil cases.⁹¹ Less restrictive is the Mashantucket Pequot Indian Tribe, which has a 5-year sunset on jury exclusion for persons with felony convictions for criminal proceedings.⁹² Interestingly, the Spirit Lake Tribe in North Dakota allows the tribal council to waive the exclusion for jury service for persons convicted of felonies.⁹³

Nearly as common are collateral restrictions on firearm or weapons possession. The Menominee Indian Tribe prohibits persons from possessing or using firearms or ammunition if they have any felony convictions.⁹⁴ Several tribes allow restoration of this right. For instance, the Choctaw Nation allows a pardon to restore the right to a firearm.⁹⁵ Other jurisdictions have narrower versions: the Mescalero Apache Tribe provides a discretionary prohibition of persons with a domestic violence conviction from possessing a firearm for a period of three years.⁹⁶

Voting disenfranchisement of tribal members with criminal convictions is extremely rare in Indian Country: only one jurisdiction, Seneca Nation in New York, was found to prevent persons with felony convictions from voting in tribal elections.⁹⁷ For the Mohegan Tribe of Indians in Connecticut, conviction of a felony results in the loss of “good standing” and the Council of Elders may suspend that person’s tribal “rights, benefits, and privileges,” though it is not clear whether this includes voting.⁹⁸ Some tribes authorize

90. *Id.* at 151.

91. See generally 3 COMANCHE NATION TRIBAL CODE § I-15B(1), https://www.comanchenation.com/sites/default/files/fileattachments/government/page/5648/title_3_civil_procedure.pdf; 2 YOMBA SHOSHONE TRIBE LAW AND ORDER CODE § H(3) (2001), <https://www.narf.org/nill/codes/yombacode/yomba2civpro.html#h> [https://perma.cc/9EDP-HWZE].

92. See 2 MASHANTUCKET PEQUOT TRIBAL LAWS § 21(b) (2008), <https://law.mptnnsn.gov/globalassets/laws/title-2-criminal-law.pdf> [https://perma.cc/7QUM-ZRY3].

93. See 2 SPIRIT LAKE TRIBE LAW AND ORDER CODE § 2-8-103 (2021), https://www.spirit-lakenation.com/data/upfiles/media/Title_2_Courts_2025.pdf [https://perma.cc/97R3-ZXDY].

94. See 321 MENOMINEE INDIAN TRIBE TRIBAL LAWS § 321-10(A) (2022), <https://ecode360.com/12091230>.

95. See 70 CHOCTAW NATION CRIMINAL CODE § 1283(B) (2018), <https://www.choctawnation.com/wp-content/uploads/2023/07/choctaw-nation-criminal-code.pdf> [https://perma.cc/P7TL-8N3J].

96. See MESCALERO APACHE TRIBAL CODE § 9-6-3 (2016), <https://mescaleroapachetribe.com/wp-content/uploads/Tribal-Code-FINAL-092716-for-tabbing-372018.pdf> [https://perma.cc/8K8D-QFQ9].

97. See CONST. OF THE SENECA NATION OF INDIANS sec. X, <https://sni.org/app/uploads/2021/12/Constitution-of-the-Seneca-Nation.pdf> [https://perma.cc/9CPC-HJPF].

98. CODE OF ORDINANCES OF THE MOHEGAN TRIBE OF INDIANS OF CONNECTICUT § 31-24(a)(1) (2025), https://library.municode.com/tribes_and_tribal_nations/mohegan_tribe/codes/code_of_laws [https://perma.cc/MLP2-UNPQ].

exclusion, banishment, or disenrollment from tribal membership as punishments or authorize judges to set the conditions for return to the reservation following a criminal conviction.⁹⁹ The Enterprise Rancheria of Maidu Indians authorizes disenrollment for a tribal member convicted of a violent felony.¹⁰⁰ The Lummi nation allows disenrollment for crimes that threaten the well-being of the tribe but provide a reenrollment process if the individual has not been convicted of another crime within five years.¹⁰¹ Criminal convictions may also bar enrollment by way of adoption (Sauk-Suiattle Indian Tribe) or reenrollment for persons who voluntarily relinquish tribal citizenship (Cherokee Nation).¹⁰²

Another pocket of collateral consequences pertaining to civil rights issues involves familial matters of inheritance, guardianship, parenting, or adoption. Persons with felony convictions may be excluded from serving as guardian ad litem or conservator for a juvenile or vulnerable adult, as in the Burns Paiute Tribe or Winnebago Tribe.¹⁰³ The Nooksack Indian Tribe has a broader exclusion, to include persons convicted of felonies, crimes of moral turpitude, drug crimes, domestic violence or sex offenses.¹⁰⁴ The Oneida Nation allows restoration of the right to serve as a guardian ad litem to persons with felony convictions through a pardon or legal forgiveness.¹⁰⁵ The variation is similar for inheritance and parental rights. The Washoe Tribe excludes persons with felony convictions from serving as an executor or administrator

99. Patrice H. Kunesch, *Banishment As Cultural Justice in Contemporary Tribal Legal Systems*, 37 N.M. L. Rev. 85, 116-17 (2007). Notably, this article highlights the tribal codes of the Cheyenne-Arapaho Tribes of Oklahoma and the Pawnee Tribe of Oklahoma, both of which have “an extensive sentencing structure” involving banishment. *Id.* at 116.

100. See CONST. OF THE ENTERPRISE RANCHERIA YUMEKA MAIDU art. II, § 6.

101. See 34 LUMMI CODE OF LAWS §§ 34.07.010(d), 34.07.040(a) (2008), https://www.lummi-nsn.gov/userfiles/393_Title34EnrollmentCode.pdf [<https://perma.cc/H49P-A9CG>].

102. See generally SAUK-SUIATTLE INDIAN TRIBE ENROLLMENT ORDINANCE § 15(e) (2005), <https://sauk-suiattle.com/Documents/FINALEnrollment2005.pdf> [<https://perma.cc/YKC6-TU5A>]; 11 CHEROKEE NATION OF OKLAHOMA CODE § 34(K)(2), <https://attorneygeneral.cherokee.org/media/5upcrg3j/word-searchable-full-code.pdf> [<https://perma.cc/N57D-M3Q2>].

103. See generally 5 BURNS PAIUTE TRIBE TRIBAL CODE § 5.2.342(3)(c) (2009), <https://burnspaiute-nsn.gov/wp-content/uploads/2020/09/Tribal-Code-Part-4-Title-3-Title-5.pdf> [<https://perma.cc/Q43M-7MCW>]; 18 WINNEBAGO TRIBAL CODE § 18-215(1) (2015), <https://winnebago-tribe.com/wp-content/uploads/2023/04/2023-01-23-2021-WTN-Tribal-Code.pdf> [<https://perma.cc/FRF5-QWPL>].

104. NOOKSACK INDIAN TRIBE ELDER AND VULNERABLE ADULT PROTECTION CODE § 18.08.080(A)(5) (2013), <https://nooksacktribe.org/wp-content/uploads/2020/03/Title-18-Elder-Vulnerable-Adult-Protection-Code.pdf> [<https://perma.cc/HTW8-SAVE>].

105. See 7 ONEIDA NATION CHILDREN’S CODE § 708.8-2(a)(3), <https://oneida-nsn.gov/wp-content/uploads/2022/09/Chapter-708-Childrens-Code-BC-09-14-22-A.pdf> [<https://perma.cc/DQZ3-H6SS>].

of an estate.¹⁰⁶ The Muscogee (Creek) Nation allows termination of parental rights for parents convicted of physical or sexual abuse of a child or where the parent is incarcerated for more than 10 years, taking in account other factors such as the relationship, history of abuse, and child's age.¹⁰⁷ However, the Wind River Shoshone Tribe has a broader exclusion, allowing termination of parental rights for any felony conviction regardless of the length of incarceration upon a showing that the parent is unfit.¹⁰⁸ As to foster parents, the Mescalero Apache Tribe has a typical sanction, excluding anyone convicted in the previous 7 years of a felony, serious offense involving child abuse, neglect, or violence, or any sex offense.¹⁰⁹ With a more lenient provision, the Oneida Nation in Wisconsin allows a prospective adoptive parent with a criminal record to adopt if she or he was pardoned or shows with clear and convincing evidence that adoption is in the best interests of the child.¹¹⁰

Some tribes exclude persons with criminal convictions from tribal housing. For the Pinoleville Pomo Nation, an arrest or conviction from any drug-related offense results in immediate termination of a tenant's lease and ineligibility for tribal housing, although use of any drugs without an arrest or conviction also results in eviction.¹¹¹ This type of exclusion may be softened by providing for a sunset date or a waiver. An example of a sunset date comes from Pueblo of Santa Ana, which has a homeownership program that excludes applicants who have been convicted in the previous three years of felony drug offenses, sexual abuse of children, or offenses involving bodily harm, theft, or destruction of property.¹¹² An example of a waiver is the Lac Courte Oreilles Band of Lake Superior Chippewa Indians, which excludes

106. *See* 25 WASHOE TRIBE OF NEVADA AND CALIFORNIA LAW AND ORDER CODE §§ 25-138-020(1)(b), 25-139-010(2) (2009), https://washoetribe.us/documents/29/Title_25_Probate-Code_Tax-5-1-19.pdf [<https://perma.cc/65GC-QTZV>].

107. 6 MUSCOGEE (CREEK) NATION CODE § 1-901(5)-(7), <https://www.creek-supremecourt.com/wp-content/uploads/title6.pdf> [<https://perma.cc/V6RG-8ESU>].

108. SHOSHONE AND ARAPAHO LAW AND ORDER CODE § 9-2-1(1)(d) (2004), <https://www.wrtribalcourt.com/wp-content/uploads/2022/02/Title-9-Domestic-Relations-Code.pdf> [<https://perma.cc/N7B3-JMH3>].

109. MESCALERO APACHE TRIBAL CODE § 11-13-2(A)(5) (2016), <https://mescaleroapachetribe.com/wp-content/uploads/Tribal-Code-FINAL-092716-for-tabbing-372018.pdf> [<https://perma.cc/3SY6-GUHT>].

110. *See* 7 ONEIDA NATION CHILDREN'S CODE § 708.42-2, <https://oneida-nsn.gov/wp-content/uploads/2022/09/Chapter-708-Childrens-Code-BC-09-14-22-A.pdf> [<https://perma.cc/DQZ3-H6SS>].

111. PINOLEVILLE POMO NATION HOUSING DEPARTMENT ELIGIBILITY AND OCCUPANCY POLICY § XI(K) (2018), <https://pinoleville-nsn.gov/wp-content/uploads/2020/10/Eligibility-and-Occupancy-Policy.pdf> [<https://perma.cc/3QT5-VTG3>].

112. *See* Homeownership Program Admissions, Occupancy, Collection, Termination and Grievance Policies and Procedures, § III.A.13 (2014) (Tamaya Housing, Incorporated) (Pueblo of Santa Ana), <https://www.tamayahousing.com/wp-content/uploads/2020/12/THI-Homeownership-AO-Policy.pdf> [<https://perma.cc/Y88B-DDUC>].

from tribal housing any person convicted of a crime under the tribe's public safety ordinance, though this may be restored pursuant to the tribe's Pardon and Forgiveness Code.¹¹³ Other tribal jurisdictions have housing exclusions specific to sex offenders.¹¹⁴

Finally, previous criminal convictions may affect a person's employment with the tribe or a tribal-owned agency, which is significant because the tribe may be among the largest employers on a reservation. The Oglala Sioux Tribe allows for disqualification of applicants for tribal employment who have convictions of any felony or crime involving moral turpitude.¹¹⁵ More common are limited exclusions based on the specific convictions or responsibilities inherent to the job. For instance, the Little Traverse Bay Band of Odawa Indians prohibits persons convicted of domestic violence from serving as a manager or supervisor within tribal government for a period of seven years.¹¹⁶

Collateral consequences may attach to a Tribal Employment Rights Ordinance (TERO), which authorizes a Native American hiring preference for employers on or near Indian reservations.¹¹⁷ For instance, the Mohegan Tribe of Indians may exclude from its TERO hiring preference any employee with a criminal conviction for an offense that indicates a lack of business integrity or honesty.¹¹⁸ The Poarch Band of Creeks has a "Ban the Box" policy that prohibits hiring discrimination based on prior arrests, unless, among other exceptions, the prior arrest affects the employer's insurance coverage.¹¹⁹

113. See LAC COURTE OREILLES TRIBAL CODE OF LAW § PRP.7.5.060(b) (2021), <https://law.lco-nsn.gov/us/nsn/lco/council/code> [https://perma.cc/U9RV-VLZD].

114. See, e.g., 7 WINNEBAGO TRIBAL CODE § 7-1705(1)-(3) (2015), <https://winnebago-tribe.com/wp-content/uploads/2023/04/2023-01-23-2021-WTN-Tribal-Code.pdf> [https://perma.cc/5GGQ-DTZ2].

115. 17 OGLALA SIOUX TRIBE LAW AND ORDER CODE Part III, E § 6(C) (2002), https://www.narf.org/nill/codes/oglaala_sioux/chapter17-personnel1.html [https://perma.cc/C5M5-RBC9].

116. See 15 LITTLE TRAVERSE BAY BAND OF ODAWA INDIANS TRIBAL CODE OF LAW § 9.1503(A) (2019), https://ltbbodawa-nsn.gov/wp-content/uploads/2023/04/Vol-9-Chapter_15.pdf [https://perma.cc/RU9L-K9GB].

117. See 42 U.S.C. § 2000e-2(i) (excluding tribal hiring preferences for certain employers from the definition of employment discrimination under Title VII of the Civil Rights Act of 1964).

118. CODE OF ORDINANCES OF THE MOHEGAN TRIBE OF INDIANS OF CONNECTICUT § 4-109(b) (2025), https://library.municode.com/tribes_and_tribal_nations/mohegan_tribe/codes/code_of_laws [https://perma.cc/D23Q-437Y].

119. See POARCH BAND OF CREEK INDIANS TRIBAL CODE § 33-4-6(a) (2023), https://library.municode.com/tribes_and_tribal_nations/poarch_band_of_creek_indians/codes/code_of_ordinances [https://perma.cc/ZG8B-FW46]. The "Ban the Box" campaign seeks to remove the box on initial employment applications that asks whether the applicant has a prior criminal conviction, except in certain sensitive jobs where convictions are relevant to the position. Jessica S. Henry & James B. Jacobs, *Ban the Box to Promote Ex-Offender Employment*, 6 CRIMINOLOGY & PUB. POL'Y 755, 757 (2007). The "Ban the Box" movement arose in 2006 when several major cities, including

D. RESTRICTIONS IN THE GAMING INDUSTRY

Although the Indian gaming industry has existed since the late 1970s when the Seminole Tribe of Florida established a high-stakes bingo hall on tribal lands,¹²⁰ the U.S. Supreme Court's 1987 decision in *California v. Cabazon Band of Mission Indians* halted state encroachment into tribal gaming.¹²¹ Congress created a regulatory framework in the Indian Gaming Regulatory Act (IGRA) in 1988, which established the National Indian Gaming Commission (NIGC).¹²² Under the IGRA, states and tribes must negotiate in good faith to create revenue-sharing and oversight agreements to legalize Indian gaming, but the U.S. Secretary of the Interior can override state objections.¹²³ Casinos have become one of the most important sources of economic development for Indian reservations in both tribal employment and revenue.¹²⁴

Once tribes have negotiated Tribal-State Compacts with state governments, they must submit a tribal gaming ordinance for approval to the NIGC. Because of the potential for money laundering and organized crime, the IGRA requires background checks and other hiring standards.¹²⁵ The IGRA requires tribes to issue gaming licenses to "primary management officials" ("PMOs") and "key employees" ("KOs"), the terms used in the Act, which require background checks.¹²⁶ Restrictions for persons with criminal convictions for tribal gaming offices, gaming licenses, employment, or contracts generally go above and beyond what the IGRA requires.¹²⁷

As of 2022, a total of 305 tribes have Class III Gaming Ordinances approved by the NIGC, though this includes four Alaska Native jurisdictions and two tribes, the Minnesota Chippewa Tribe and the Capitan Grande Band of Diegueno Mission Indians, that are divided into bands that have separate

Boston, Minneapolis, and San Francisco passed municipal ordinances that did not permit public employers to consider criminal records until later in the application process, as a means of combating discrimination based on prior criminal record. *See id.*

120. Matthew L.M. Fletcher, *The Seminole Tribe and the Origins of Indian Gaming*, 9 FIU L. Rev. 255, 255 (2014).

121. *See generally* 480 U.S. 202 (1987).

122. *See* Fletcher, *supra* note 120, at 268; 25 U.S.C. § 2704.

123. *See* STEPHEN L. PEVAR, *THE RIGHTS OF INDIANS AND TRIBES* 275-281 (4th ed. 2012).

124. HARVARD PROJECT ON AMERICAN INDIAN ECONOMIC DEVELOPMENT, *THE STATE OF THE NATIVE NATIONS: CONDITIONS UNDER U.S. POLICIES OF SELF-DETERMINATION* 145 (2008).

125. Kevin K. Washburn, *Recurring Problems in Indian Gaming*, 1 WYO. L. REV. 427, 431 (2001).

126. 25 U.S.C. § 2710(b)(2)(F); 25 C.F.R. §§ 556.4-556.6 (2023).

127. Although the IGRA generally relies on background checks, it does contain one collateral consequence of conviction: persons who have a felony conviction or gaming offense conviction may not serve as management contractors. *See* 25 U.S.C. § 2711(e)(1)(B).

ordinances.¹²⁸ About half of 313 studied NIGC-approved gaming ordinances attach collateral consequences to tribal gaming offices.¹²⁹ Most frequently, these restrictions attach to members of tribal gaming commissions, who are responsible for performing background checks, issuing gaming licenses, and regulating casinos.¹³⁰ These positions frequently exclude persons with prior felony convictions or with misdemeanor convictions involving embezzlement and theft or other money- or honesty-related offenses, which is a similar list to that in the NIGC Model Gaming Ordinance.¹³¹ Adding crimes such as gaming-related offenses, dishonesty, fraud, misrepresentation, or crimes of moral turpitude is also common, with sunset provisions ranging anywhere from 1 year to lifelong.¹³²

Other tribes attach collateral consequences to managerial and adjudicatory positions, including tribal gaming director, executive director, general manager, or gaming judges.¹³³ Notably, at least 33 tribes allow restoration of the right to serve in a tribal gaming office, either through a pardon from an appropriate authority or through a waiver of the exclusion, often contingent

128. Notice of Approved Class III Tribal Gaming Ordinances, 87 Fed. Reg. 24586 (Apr. 26, 2022), <https://www.govinfo.gov/content/pkg/FR-2022-04-26/pdf/2022-08853.pdf> [<https://perma.cc/FU8T-ZGUR>].

129. NOVAK, *supra* note 16, at 101.

130. KATHRYN R.L. RAND & STEPHEN ANDREW LIGHT, *INDIAN GAMING LAW & POLICY* 121 (2d ed. 2014).

131. *Compare* CHEROKEE NATION GAMING ORDINANCE § 23(A)(2) (2014) (Cherokee Nation Tribal Council), <https://www.cherokee.org/media/kmtnfzhj/ Cherokee-nation-gaming-ordinance.pdf> [<https://perma.cc/8C6C-EL2N>], *with* NAT'L INDIAN GAMING COMM'N, BULL. NO. 2018-1, REVISED MODEL GAMING ORDINANCE § 8(G) (2018), https://www.nigc.gov/images/uploads/bulletins/Bulletin_2018-1_Revised_Model_Ordinance.pdf [<https://perma.cc/4KPJ-8XEQ>].

132. NOVAK, *supra* note 16, at 102-04.

133. *See, e.g.*, Delaware Indian Gaming Act, Res. No. 99-22 § 16(c) (1999) (Tribal Council of the Delaware Tribe of Indians), <https://www.nigc.gov/images/uploads/gamingordinances/delawaretribeofindians-ordappr81999.pdf> [<https://perma.cc/XM6B-5MJC>] (excluding persons convicted within the previous 10 years of felonies or misdemeanors involving dishonesty or moral turpitude for gaming director); Seneca-Cayuga Tribe of Oklahoma Gaming Ordinance, Res. No. 61-100813 § 10.4(c)-(d) (2013) (Business Committee of the Seneca-Cayuga Tribe of Oklahoma), <https://www.nigc.gov/images/uploads/gamingordinances/senecacayugatribeok-SenecaCayuga23042.pdf> [<https://perma.cc/KM67-U39Z>] (stating persons with convictions for felonies or crimes of moral turpitude are ineligible to be Hearing Officers); Ute Mountain Ute Gaming Ordinance, Res. No. 2003-18 § 206(b)(1) (2003) (Ute Mountain Ute Tribal Council), <https://www.nigc.gov/wp-content/uploads/2025/03/utemountainutetribes-amendappr072103.pdf> [<https://perma.cc/9BGU-XKB3>] (excluding as Executive Director anyone convicted of a felony, gambling-related offense, or crime of moral turpitude); Kickapoo Tribe of Oklahoma Gaming Ordinance, Res. No. KTO2006-23 § 110(a)-(b) (2006) (Kickapoo Tribe of Oklahoma Business Committee), <https://www.nigc.gov/wp-content/uploads/2025/03/kickapootribesofok-amendappr060706.pdf> [<https://perma.cc/Y9NN-ZJV6>] (excluding as general manager anyone convicted of a felony, gaming offense, or crime involving dishonesty or moral turpitude, or, within the past two years, any other crime besides traffic violations).

on sufficient time passing or showing of rehabilitation.¹³⁴ The Oglala Sioux Tribe, for instance, may issue a waiver to qualify a candidate for the ballot for Gaming Commissioner if 10 years have passed since a conviction of a felony or specific misdemeanor and the candidate is a tribal member and of trustworthy character.¹³⁵ Not all tribes limit waivers: for instance, the Kaw Nation provides a waiver for specific misdemeanor convictions, but not felony convictions, to all candidates for Gaming Commissioner.¹³⁶

Gaming licenses for PMOs and KOs are another major source of collateral consequences in the tribal gaming industry. PMOs include positions like the chief financial officer or anyone with hiring authority; KOs include bingo callers, pit bosses, dealers, croupiers, or persons responsible for cash or security.¹³⁷

The IGRA requires tribes to conduct background checks and notify the NIGC of the results of those investigations.¹³⁸ In some jurisdictions, tribal collateral consequences for Class II gaming licenses can be as simple as an exclusion for any felony conviction in the previous 10 years.¹³⁹ However, the exclusions can be elaborate. For instance, the Omaha Tribe of Nebraska prohibits anyone from becoming a PMO or a KO who has any felony conviction within the preceding 10 years, or any conviction for a gaming offense, fraud, misrepresentation, deception, drug offense within the last 10 years, or felony involving dishonesty or untruthfulness at any time.¹⁴⁰ The Klamath Tribes of Oregon list fully 25 offenses, a conviction for which results in the mandatory

134. NOVAK, *supra* note 16, at 110; *see also* NAT'L INDIAN GAMING COMM'N, BULL. NO. 2018-1, REVISED MODEL GAMING ORDINANCE § 8(G) (2018), https://www.nigc.gov/images/uploads/bulletins/Bulletin_2018-1_Revised_Model_Ordinance.pdf [<https://perma.cc/4KPJ-8XEQ>] (specifying that a waiver is limited to tribal members).

135. *See* Oglala Sioux Tribe Amended Gaming Ordinance, Ordinance 14-41 § 13(A) (2014) (Oglala Sioux Tribal Council), https://www.nigc.gov/images/uploads/gamingordinances/20141215LtrtoTribereApprovedordinanceOglala_Sioux_-_corrected.pdf [<https://perma.cc/3EG5-34HK>].

136. *See* Kaw Nation Gaming Ordinance, Res. No. 16-109 § 8(E) (2016) (Kaw Nation Tribal Council), https://www.nigc.gov/images/uploads/gamingordinances/2016.12.01_Kaw_Nation_of_OK_Ord_Approval.pdf [<https://perma.cc/YH2Q-EKJU>].

137. *See* 25 C.F.R. §§ 502.14, 502.19 (2023).

138. *See* 25 U.S.C. § 2710(b)(2)(F). The purpose of NIGC background checks in the Indian gaming industry is to prevent infiltration by organized crime. Heather Saum, *Native American Gaming: Will Organized Crime Organize on the Reservation?*, 3 GAMING L. REV. 49, 54-55 (1999).

139. *See, e.g.*, Blackfeet Tribe Gaming Ordinance § 3-106(A), Res. No. 8-98 (1997) (Blackfeet Tribal Business Council), <https://www.nigc.gov/images/uploads/gamingordinances/blackfeettribesvtn-ordappr120197.pdf> [<https://perma.cc/4ARZ-QKPB>].

140. *See* Omaha Tribe of Nebraska Tribal Gaming Ordinance, Res. No. 13-49 § 29-1-32(b)(2)-(3) (2013) (Omaha Tribal Council), <https://www.nigc.gov/images/uploads/gamingordinances/omahatribe-2013.07.23%20Letter%20to%20Tribe%20ft%20NIGC%20re%20Ordinance%20approval%20-%20Omaha%20NE.pdf> [<https://perma.cc/XDN9-MECE>].

denial of a gaming license; the Stillaguamish Tribe lists 28 offenses and kinds of offenses.¹⁴¹ Notably, at least 45 tribal jurisdictions provide a path for restoring the right to obtain a gaming license, which disproportionately include tribes in Michigan and Wisconsin owing to the wording of those Tribal-State Compacts.¹⁴² Jurisdictions may have exclusions from restoring eligibility based on a pardon or waiver. For instance, the Habematolel Pomo of Upper Lake allows restoration of eligibility for a gaming license through a pardon, but not for convictions for gaming offenses, fraud, or misrepresentation.¹⁴³

Besides gaming offices and licenses, collateral consequences of conviction can appear in other aspects of the tribal gaming industry. Exclusions for prior criminal convictions can extend to third-party licenses and contracts to include management contractors, suppliers, vendors, manufacturers, lessees, operators, stockholders, and financiers, and can take the form of eligibility for a special license (such as a supplier's license or vendor's license) or as a condition to tribal approval of the contract.¹⁴⁴ Because Congress had an explicit aim to ensure that tribal gaming revenue remained with the tribe,¹⁴⁵ management contracts "for the operation and management of a class II gaming activity" must be approved by the NIGC.¹⁴⁶ However, other third-party contracts that may take the form of a lease, financing arrangement, or consultancy do not require mandatory NIGC background checks, so tribal gaming authorities often regulate them to prevent unlawful behavior.¹⁴⁷ At least eight jurisdictions attach collateral consequences to management contractors

141. Klamath Tribes Gaming Ordinance § 45.14(e)(1) (1995) (Klamath Tribes Executive Committee), <https://www.nigc.gov/images/uploads/gamingordinances/klamathtribes-ordappr053195.pdf> [<https://perma.cc/J3XL-S78X>]; Stillaguamish Tribe of Indian's Gaming Code, Res. No. 2017/136 § 4-4(G) (2017) (Stillaguamish Tribe Board of Directors), <https://www.nigc.gov/images/uploads/gamingordinances/20171205OrdAmendAppr.pdf> [<https://perma.cc/5FE3-8FZY>].

142. NOVAK, *supra* note 16, at 141. *See generally Tribal-State Compacts in Michigan*, MICH. GAMING CONTROL BD. <https://www.michigan.gov/mgcb/tribal-casinos/tribal-state-compacts-in-michigan> [<https://perma.cc/Y3F2-5K47>] (last visited June 21, 2025) (the uniform provision is § 4(D)(3), which contemplates a pardon or tribal waiver); *Tribal Compacts and Amendments*, WIS. DEP'T OF ADMIN., <https://doa.wi.gov/pages/aboutdoa/tribalcompactsandamendments.aspx> [<https://perma.cc/LU5A-DEQP>] (last visited June 21, 2025) (the uniform provision at § 9(A)(1)-(2), which contemplates a pardon or tribal waiver).

143. Gaming Code of the Habematolel Pomo of Upper Lake, Res. No. 06-12-01 § 5.16.4(B)-(C) (2012) (Habematolel Pomo of Upper Lake Executive Council), <https://www.nigc.gov/images/uploads/gamingordinances/habematolel-20120706ltrtoTribereApprvdAmdTrbGagCode.pdf> [<https://perma.cc/DE3Y-RNJD>].

144. NOVAK, *supra* note 16, at 136-37.

145. Kevin K. Washburn, *The Mechanics of Indian Gaming Management Contract Approval*, 8 GAMING L. REV. 333, 333 (2004).

146. *See* 25 U.S.C. § 2711; 25 C.F.R. § 531.1(n) (2025).

147. *See* Linda A. Epperly, *Indian Gaming Offenses and Tribal White Collar Crime*, 58 U.S. ATT'YS BULL. 64, 66-67 (2010).

and sixteen to third-parties involved in gaming.¹⁴⁸ For instance, the Colorado River Indian Tribes excludes persons with felony or gaming offense convictions from manufacturer and supplier licenses.¹⁴⁹

At least 45 tribal jurisdictions allow for the restoration of gaming license rights, either through pardon or expungement to restore eligibility or by creating a special waiver process.¹⁵⁰ Some tribes have both. The Stockbridge Munsee Community allows restoration of eligibility for a gaming license through a pardon and has a tribal gaming waiver issued by the tribal council on the recommendation of the gaming compliance department.¹⁵¹ The standards for a waiver also vary across jurisdictions.

The Alabama-Coushatta Tribe in Texas permits waivers only for tribal members and only if a “significant amount of time” has passed and the applicant is now of trustworthy character.¹⁵² The Fond du Lac Band of Lake Superior Chippewa (Minnesota Chippewa Tribe) opens waivers to all applicants, not just tribal members, “if the Band by governmental resolution waives such a restriction after the applicant has demonstrated to the Band evidence of sufficient rehabilitation and present fitness.”¹⁵³ Restricting gaming waivers to tribal members reflects a broader policy choice to hire more tribal members in the gaming industry, a goal of many gaming tribes and consistent with the IGRA’s policy of “promoting tribal economic development, self-sufficiency, and strong tribal governments.”¹⁵⁴

148. NOVAK, *supra* note 16, at 138-39.

149. Gaming Ordinance of the Colorado River Indian Tribes, Res. No. 112-94 § 602(d)(1) (1994) (Colorado River Tribal Council), <https://www.nigc.gov/images/uploads/gamingordinances/coloradoriverindiantribes-ordappr091494.pdf> [<https://perma.cc/H9PE-D6YA>].

150. NOVAK, *supra* note 16, at 141.

151. Stockbridge Munsee Community Gaming Ordinance, Res. No. 021-21 §§ GMG.01.04(dd)-(ee), GMG.01.09(l)(37) (2021) (Stockbridge Munsee Tribal Council), https://www.nigc.gov/images/uploads/gamingordinances/20210624_Stockbridge-Munsee_Community_Ord_Amend.pdf [<https://perma.cc/6Y4P-GL7S>].

152. Alabama-Coushatta Tribe of Texas Class II Tribal Gaming Ordinance, Res. No. 2015-038 § 11(6)(a)(3)(a) (2015) (Alabama-Coushatta Tribal Council), <https://www.nigc.gov/images/uploads/gamingordinances/20151008AlabamaCoushatta2.pdf> [<https://perma.cc/FM8Q-9NDD>].

153. See Fond du Lac Band Gaming Ordinance #09/93, Res. No. 1071/16 Amended § 1310(a)(5)(i) (2016) (Fond du Lac Reservation Business Committee) (Fond du Lac Band of Lake Superior Chippewa), <https://www.nigc.gov/images/uploads/gamingordinances/Ordapproval07122016.pdf> [<https://perma.cc/PFH7-KR7B>].

154. Jacob Ornelas, Vincent W. Slaugh & Christopher K. Anderson, *Hiring Preference and Operational Complexity for Tribal Enterprises*, 34 PROD. & OPERATIONS MGMT. 812, 812 (2024) (quoting 25 U.S.C. § 2702(1)).

III. FEDERAL LAW, STATE LAW, AND TRIBAL COLLATERAL CONSEQUENCES

Federal law influences tribal collateral consequences in several ways. First, federal law sometimes requires exclusions for certain types of criminal convictions, such as in tribal employment concerning children.¹⁵⁵ Second, federal agencies issue model constitutions or ordinances containing collateral consequences that serve as influential templates for drafting tribal laws.¹⁵⁶ Finally, some types of tribal laws require regulatory approval from a federal agency before taking effect, especially in highly regulated areas like alcohol sales and gaming; even when not a necessary condition of approval, attaching collateral consequences to tribal services or benefits may tacitly receive federal support.¹⁵⁷

Notably, state law may also influence tribal collateral consequences through, for instance, tribal-state compacts to share revenues or harmonize regulations or reciprocal licensing arrangements, as with lawyer licensing or cross-deputized police officers.¹⁵⁸

The first way in which federal law encourages the adoption of collateral consequences is through model ordinances, which become influential templates for drafting tribal laws.¹⁵⁹ The NIGC issues a Model Gaming Ordinance, which introduces collateral consequences of conviction for

155. See, e.g., 25 C.F.R. § 63.19 (2020) (for employment involving children); 25 C.F.R. § 533.6 (2015) (for management contracts in the casino and gaming industry); 7 C.F.R. § 990.6(e)(1) (2021) (for industrial hemp production).

156. See, e.g., 25 U.S.C. § 2454 (Model Indian Juvenile Code); MODEL TRIBAL SEX OFFENDER REGISTRATION CODE (U.S. DEP'T INTERIOR & U.S. DEP'T JUST. 2017); NAT'L INDIAN GAMING COMM'N, BULL. NO. 2018-1, REVISED MODEL GAMING ORDINANCE § 8(E) (2018), https://www.nigc.gov/images/uploads/bulletins/Bulletin_2018-1_Revised_Model_Ordinance.pdf [<https://perma.cc/4KPJ-8XEQ>].

157. For instance, the U.S. Secretary of the Interior must approve tribal liquor ordinances and publish them in the Federal Register. See 18 U.S.C. § 1161. The Chairman of the National Indian Gaming Commission must approve tribal gaming ordinances. 25 U.S.C. § 2705(a)(3). The U.S. Attorney General can require tribes to join state sex offender registries if they do not implement their own. See 34 U.S.C. § 20929(a)(2)(C).

158. See Pippa Browde, *Sacrificing Sovereignty: How Tribal-State Tax Compacts Impact Economic Development in Indian Country*, 74 HASTINGS L.J. 1, 5-6 (2022); Kevin Gover & Tom Gede, *The States As Trespassers in A Federal-Tribal Relationship: A Historical Critique of Tribal-State Compacting Under IGRA*, 42 ARIZ. ST. L.J. 185, 186 (2010); Adam Creppelle, *Tribal Law: It's Not That Scary*, 72 BUFF. L. REV. 547, 549-50 (2024) (on lawyer licensing); Oliver Kim, *When Things Fall Apart: Liabilities and Limitations of Compacts Between State and Tribal Governments*, 26 HAMLINE L. REV. 48, 50 (2002) (on cross-deputization of police officers).

159. See Tomasz G. Smolinski, *A Proposal for A Model Indigenous Intellectual Property Protection Tribal Code*, 22 TRIBAL L.J. 3, 4, 22 (2023) (noting that model codes can promote best practices and provide customizable provisions to account for tribal diversity).

appointment of tribal gaming commissioners.¹⁶⁰ At Section 8(E) of the Revised Model Gaming Ordinance, non-tribal members are ineligible to serve as gaming commissioners if they have a previous conviction for a felony or certain misdemeanors, including embezzlement, theft, or any offense related to money or honesty.¹⁶¹ Tribal members have the same exclusion, but with the option for a waiver by the tribal council.¹⁶² At least 32 tribes use some version of Section 8(E).¹⁶³ Another influential model ordinance is the Model Indian Juvenile Code, which Congress required from the U.S. Secretary of the Interior in 1986.¹⁶⁴ This model code provides, among other things, for expungement of juvenile delinquency records when a juvenile turns 25.¹⁶⁵ The Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) in the Office of Justice Programs, U.S. Department of Justice, provides a model tribal sex offender ordinance to ensure that eligible tribes comply with the Sex Offender Registration and Notification Act (SORNA).¹⁶⁶ This model ordinance allows tribes to choose whether to have a procedure to reduce a sex offender registration period (15 years to 10 for a Tier 1 registrant or life to 25 years for a juvenile Tier 3 registrant) by maintaining a clean record.¹⁶⁷ Some tribes have declined to include an option for sex offender registration reduction, such as the Shoshone-Bannock Tribes of the Fort Hall Reservation and the Sault Ste. Marie Tribe of Chippewa Indians.¹⁶⁸

Another way in which federal law can influence collateral consequences in tribal law is through direct review by the Bureau of Indian Affairs or other

160. See generally NAT'L INDIAN GAMING COMM'N, BULL. NO. 2018-1, REVISED MODEL GAMING ORDINANCE § 8(E) (2018) (regarding eligibility of Commissioners), https://www.nigc.gov/images/uploads/bulletins/Bulletin_2018-1_Revised_Model_Ordinance.pdf [<https://perma.cc/4KPJ-8XEQ>].

161. *Id.*

162. See *id.*

163. NOVAK, *supra* note 16, at 98.

164. See generally 25 U.S.C. § 2454.

165. See MODEL INDIAN JUV. CODE § 1.04.230 (U.S. DEP'T INTERIOR & U.S. DEP'T JUST. 2016).

166. See generally MODEL TRIBAL SEX OFFENDER REGISTRATION CODE (U.S. DEP'T INTERIOR & U.S. DEP'T JUST. 2017).

167. *Id.* § 4.02(C) (mirroring the language of 34 U.S.C. § 20915(b), except for tribes it is not mandatory).

168. See, e.g., LAW AND ORDER CODE OF THE SHOSHONE-BANNOCK TRIBES OF THE FORT HALL RESERVATION § 13-1-30 (2025), https://library.municode.com/tribes_and_tribal_nations/shoshone-bannock_tribes/codes/the_law_and_order_code [<https://perma.cc/KQ5Q-JD5H>]; SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS TRIBAL CODE § 72-407 (2011), <https://www.saulttribe.com/government/tribal-code/download-files/download-file?path=chaptr72.pdf> (listing the "Frequency and Duration" provisions of § 4.02 of the model code but not explicitly including stating a "reduction" provision).

government agencies. Federal law requires the U.S. Secretary of the Interior to approve tribal liquor sales ordinances.¹⁶⁹ Although federal law does not require excluding persons with certain criminal convictions from alcohol sales, the Interior Secretary has approved ordinances with such exclusions.¹⁷⁰ Sometimes, federal law requires tribes to impose collateral consequences; this is the case with industrial hemp production. The 2018 Farm Bill requires the U.S. Department of Agriculture to approve tribal hemp programs.¹⁷¹

The U.S. Department of Agriculture requires tribal hemp cultivation programs to exclude persons with previous drug-related felony convictions in the previous 10 years.¹⁷² However, a pardon, expungement, or subsequent revocation of a conviction restores eligibility.¹⁷³ Some tribes exceed what federal law requires. For instance, the Standing Rock Sioux Tribe excludes from a hemp cultivation license anyone with a felony or drug-related misdemeanor conviction in the preceding 10 years.¹⁷⁴

Another federal law that expands tribal collateral consequences is the federal Indian Child Protection and Family Violence Prevention Act.¹⁷⁵ The regulations promulgated under this Act require tribes to perform background checks and deny employment to any applicant with a felony conviction or two misdemeanor convictions “involving crimes of violence; sexual assault, sexual molestation, sexual exploitation, sexual contact or prostitution; crimes against persons; or offenses committed against children.”¹⁷⁶ This law also provides discretion to an employer to deny employment or terminate an employee with a conviction for any offense involving a child victim, a sex crime, or a drug felony, though the employer is also able to consider pardons,

169. See 18 U.S.C. § 1161.

170. See, e.g., STANDING ROCK SIOUX TRIBAL CODE OF JUSTICE § 8-104(g) (2006), [https://www.standingrock.org/wp-content/uploads/mdocs/Title%20VIII%20-%20\(8\)%20Liquor.pdf](https://www.standingrock.org/wp-content/uploads/mdocs/Title%20VIII%20-%20(8)%20Liquor.pdf) [<https://perma.cc/WT6L-W5Y4>]; CHICKASAW NATION CODE § 3-201.7(C) (2015), <https://code.chickasaw.net/Title-03> [<https://perma.cc/LT7K-FL2G>]; PONCA TRIBE LAW AND ORDER CODE § 16-3-11(2)(d) (2024), https://poncatribes-ne.gov/wp-content/uploads/2022/04/law_codetitle_v16_220301.pdf [<https://perma.cc/3LVF-SL3Y>].

171. Ryan B. Stoa, *Tribal Cannabis Agriculture Law*, 2023 UTAH L. REV. 1075, 1097-98 (2023); see also Agriculture Improvement Act of 2018, Pub. L. No. 115-334, §§ 10113-10114, 132 Stat. 4490 (codified at 7 U.S.C. §§ 1639o-1639s).

172. 7 C.F.R. § 990.6(e)(1)-(2) (2021).

173. See Establishment of a Domestic Hemp Production Program, 86 Fed. Reg. 5596, 5606 (Jan. 29, 2021).

174. STANDING ROCK SIOUX TRIBAL CODE OF JUSTICE § 43-501(c) (2021), <https://www.standingrock.org/wp-content/uploads/2021/09/TitleXLIIIIndustrialHempRegulationCode.pdf> [<https://perma.cc/P2R8-X34D>].

175. See generally Indian Child Protection and Family Violence Prevention Act, § 408, 25 U.S.C. § 3207.

176. See 25 C.F.R. § 63.19(a) (2025).

expungements, set asides, or other restoration of rights.¹⁷⁷ Here too tribes have laws that are harsher than what federal law requires. The Fond du Lac Band of the Minnesota Chippewa Tribe adds to its exclusions for employment involving children any conviction within the previous five years for gross misdemeanor crimes of theft, fraud, or misrepresentation, not including refusal to submit to a drug test.¹⁷⁸

Though less direct than federal law, state law can also influence tribal collateral consequences. This may occur through legal borrowing, reciprocal licensing, or intergovernmental agreements known as tribal-state compacts.¹⁷⁹ In 1983, the U.S. Supreme Court held that state liquor control authorities can require liquor licenses on tribal lands, so tribal liquor licenses may need to be compliant with state law, including exclusions for criminal convictions, if any.¹⁸⁰ Reciprocal lawyer licensing or cross-deputizing police officers might import collateral consequences from state law into tribal law.¹⁸¹ Although tribal-state compacts have been used in many areas, such as law enforcement, taxation, natural resource use, and sharing of social services,¹⁸² their influence is greatest in the gaming and casino industry because tribal-state compacts are required under the IGRA.¹⁸³ Under the IGRA, states must negotiate with tribes in good faith to legalize gaming, which ordinarily results in a tribal-state compact to share revenue and oversight that must be approved by the NIGC.¹⁸⁴ These tribal-state compacts may include eligibility prohibitions for persons with certain criminal convictions. One example is Wisconsin, where the compacts with the state's eleven tribes prohibit gaming employees, including employees of contractors, from having a felony

177. *Id.* § (b)-(c).

178. Non-Gaming Character Investigations and Employment Prohibitions, Ordinance 13-94 § 107(1)(h) (1994) (Fond du Lac Band of the Minnesota Chippewa Tribal Council), <https://cms3.revize.com/revize/fonddulac/Documents/Government/Ordinance/13-94NonGamingCharInvestigationEmploymentProhibitions2025.04.01.pdf> [<https://perma.cc/ZZ8E-ZYWD>].

179. Tribal-state compacts are intended to be intergovernmental agreements between tribes and state governments that share tax revenues or harmonize regulations (for instance, by avoiding double taxation). *See, e.g.*, Browde, *supra* note 158, at 5; Gover & Gede, *supra* note 158, at 186 (describing how states can intrude into tribal sovereignty through tribal-state compacts). State law also influences tribal law through legal borrowing and reciprocity, such as lawyer licensing. *See* Crepelle, *supra* note 158, at 549.

180. *See* Rice v. Rehner, 463 U.S. 713, 715 (1983); Phillip May, *Alcohol Beverage Control: A Survey of Tribal Alcohol Statutes*, 5 AM. INDIAN L. REV. 217, 220 (1977).

181. Cross-deputizing police officers may occur where a tribal tax base is too small to sustain a law enforcement agency, leading to cooperative arrangements with state government. Kim, *supra* note 158, at 50; *see also* Crepelle, *supra* note 158, at 549 (for lawyer licensing).

182. *See* Browde, *supra* note 158, at 21-23.

183. *See* 25 U.S.C. §§ 2710(d)(1)(C), 2710(d)(3)(A)-(B).

184. *See generally* STEPHEN L. PEVAR, THE RIGHTS OF INDIANS AND TRIBES 275 (4th ed. 2012).

conviction in the preceding 10 years or a conviction involving gaming, fraud, or misrepresentation.¹⁸⁵ However, the compacts also authorize the tribal gaming commissions or tribal councils to waive this restriction if the employee demonstrates sufficient evidence of rehabilitation.¹⁸⁶

IV. RESTORATIONS OF RIGHTS UNDER TRIBAL LAW

Although the pardon power descends from Anglo-American law,¹⁸⁷ many indigenous legal systems emphasized values such as conciliation and restoration of harmony, often expressed through specific rituals that involved apology or acknowledgment.¹⁸⁸ In addition, tribes that had early contact, such as the so-called Five Civilized Tribes in the southeastern United States, have a long and well-documented history of American-style written constitutionalism, including the conception of executive power.¹⁸⁹ This context contained early examples of tribal pardons. As early as 1839, the Principal Chief of the Cherokee Nation could grant pardons in death penalty cases, exercising this power in consultation with the Assistant Chief and Executive Council.¹⁹⁰ Among the Muscogee (Creek) Nation, pardons were common for capital theft and the tribal archives hold more than 130 pardon applications dated between 1870 and 1896.¹⁹¹ The 1893 Muscogee Constitution provided an elaborate procedure for restoration of rights, in which any citizen convicted of a felony who lived an exemplary life for five years could apply to the Principal Chief

185. See generally *Tribal Compacts and Amendments*, *supra* note 142 (§ 9(A)(1) of any of the Wisconsin Tribal-State Gaming Compacts).

186. See generally *id.* (§ 9(A)(1)-(2) of any of the Wisconsin Tribal-State Gaming Compacts).

187. The pardon power descends from the royal prerogative of mercy at English common law, which dates at least to Edward the Confessor in the eleventh century, on the theory that the sovereign possessed the grace to mitigate or remove criminal punishment. See David Caruso & Nicholas Crawford, *The Executive Institution of Mercy in Australia: The Case and Model for Reform*, 37 UNIV. NEW S. WALES L.J. 312, 314 (2014). In the Massachusetts Bay Colony, as in other former British colonies, this royal power was delegated to colonial governors to exercise on behalf of the King. See Norman D. Lattin, *The Pardoning Power in Massachusetts*, 11 B.U. L. REV. 505, 507-09 (1931). The drafters of the U.S. Constitution adopted the broad royal conception of the pardon power, despite their own reservations about the function of such a power in a democracy. KATHLEEN DEAN MOORE, *PARDONS: JUSTICE, MERCY, AND THE PUBLIC INTEREST* 25 (1989).

188. Bruce Granville Miller, *Bringing Culture In: Community Responses to Apology, Reconciliation, and Reparations* 30 AM. INDIAN CULTURE RSCH. J. 1, 9-10 (2006).

189. See Arrell M. Gibson, *Constitutional Experiences of the Five Civilized Tribes*, 2 AM. INDIAN L. REV. 17, 17 (1974). The so-called Five Civilized Tribes (Cherokee, Choctaw, Chickasaw, Seminole, and Muscogee (Creek)) had advanced European-style political institutions prior to their removal from the Southeastern United States in the 1830s. The Choctaws were the first to establish a government based on a written constitution in 1820. The Cherokee followed in 1827, even including a bill of rights. See *id.* at 17, 24-25, 28.

190. See ACT FOR THE PUNISHMENT OF CRIMINAL OFFENSES, LAWS OF THE CHEROKEE NATION § 1 (1839).

191. SIDNEY L. HARRING, *CROW DOG'S CASE: AMERICAN INDIAN SOVEREIGNTY, TRIBAL LAW, AND UNITED STATES LAW IN THE NINETEENTH CENTURY* 87-88 (1994).

for a pardon with the support of at least ten respectable citizens.¹⁹² After the Indian Reorganization Act of 1934, which advocated a tribal constitutional structure analogous to the U.S. federal system, the influential lawyer Felix S. Cohen included a pardon power in his memorandum containing model provisions for tribal constitutions.¹⁹³

Today, tribal law contains a diverse array of restoration of rights mechanisms. The simplest pardon structure is an executive acting alone, paradigmatic of the Anglo-American tradition.¹⁹⁴ Jurisdictions such as the Chickasaw Nation, Big Lagoon Rancheria, and Shawnee Tribe grant to their chief executives discretion to grant pardons on their own prerogative.¹⁹⁵ A more complex structure is where an executive makes a pardon decision but the tribal council or full tribal membership can overturn it, a device known as an “Executive Order for Relief from Judgment.”¹⁹⁶ The Absentee-Shawnee Tribe, for instance, allows the Chief Executive Officer to grant pardons or commutations, but any member of the tribal supreme court or legislature may object within 60 days, in which case the pardon may be placed on the ballot for the full tribal membership at the next scheduled election.¹⁹⁷ Other jurisdictions with this structure include the Cheyenne and Arapaho Tribe, Kaw Nation, and Seminole Nation of Oklahoma.¹⁹⁸ The Muscogee (Creek) Nation has a modified version of this structure, in which the Principal Chief can “recommend” to the National Council to pardon or commute any sentence,

192. CONST. AND LAWS OF THE MUSKOGEE NATION of 1892 ch. XXIX, § 407.

193. FELIX S. COHEN, ON THE DRAFTING OF TRIBAL CONSTITUTIONS 126 (David E. Wilkins ed., 2020).

194. This conception is closest to the royal prerogative of mercy at English common law, as codified in the U.S. Constitution. See Stanley Grupp, *Some Historical Aspects of the Pardon Power in England*, 7 AM. J. LEGAL HIST. 51, 51, 56 (1963); Meah Dell Rothman, *The Pardoning Power: Historical Perspective and Case Study of New York and Connecticut*, 12 COLUM. J.L. & SOC. PROBS. 149, 152 (1976).

195. CHICKASAW NATION CODE §§ 5-701.9, 5-701.10, 5-701.11 (2025), <https://code.chickasaw.net/Title-05> [<https://perma.cc/N5KR-PHAH>]; CONST. OF THE BIG LAGOON RANCHERIA art. 10, § 1(e), https://narf.org/nill/constitutions/big_lagoon/biglagconst.html#art10 [<https://perma.cc/BU9E-TE62>]; SHAWNEE NATION TRIBAL LAWS §§ 3.04.060, 3.04.070 (2022), https://shawnee.municipalcodeonline.com/book?type=Laws#name=3.04.060_Authority_To_Grant_Pardons [<https://perma.cc/FP5B-G2EU>].

196. NOVAK, *supra* note 16, at 177 (listing at least ten tribal jurisdictions have this structure).

197. See ABSENTEE-SHAWNEE TRIBE TRIBAL CODE OF CRIMINAL PROCEDURE, § 606 (1993), <https://thorpe.law.ou.edu/codes/absshaw/Criminal.html#606> [<https://perma.cc/TRB2-5L6G>].

198. See *generally* CHEYENNE AND ARAPAHO TRIBE LAW AND ORDER CODE § 2-C-606 (1988), <https://www.narf.org/nill/codes/cheyaracode/criminalprocedure.html> [<https://perma.cc/ZZ29-R35K>]; KAW NATION TRIBAL CODE § 8-606, <https://www.kawnation.gov/wp-content/uploads/2023/05/CP.pdf> [<https://perma.cc/55EA-6VLY>]; SEMINOLE NATION CODE OF LAWS § 7-606 (2013), https://www.sno-nsn.org/docs/Seminole_Nation_Code_PDF_September_2019_Update.pdf. Interestingly, these tribal codes are numbered the same, which may indicate legal sharing among jurisdictions.

which then is distributed to each justice of the tribal supreme court and members of the National Council.¹⁹⁹ Any justice or a *majority* of the National Council may object to the proposed pardon, in which case it dies without a vote of the tribal membership.²⁰⁰ Still another model, especially for systems that do not fully separate executive from legislative power, is for the tribal council to make the pardon decision. For the Menominee Tribe of Wisconsin, the Tribal Legislature reviews and approves pardon petitions.²⁰¹ Another variation is that of the Blackfeet Tribe, which appoints three members of the Tribal Business Committee as the Board of Pardons.²⁰²

Some tribal jurisdictions create a standalone board to consider applications. Among the Turtle Band of Chippewa Indians in North Dakota, the Pardon Board provides a recommendation to the Tribal Chairman, who then makes the ultimate decision.²⁰³ For the Oneida Tribe of Wisconsin, the Pardon and Forgiveness Screening Committee holds hearings and makes recommendations to the tribal Business Committee, which grants pardons by majority.²⁰⁴ Yet another structure is for a pardon board alone to make the clemency decision. The five-member Tribal Pardon Commission of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation can consider applications five years after a misdemeanor or ten years after a felony conviction, which includes a public hearing.²⁰⁵ The Standing Rock Sioux Tribe has a similar structure, with a four-member commission that holds hearings and approves pardons with three-member majority.²⁰⁶ The Lummi Tribe of Washington has a traditional council of elders to make decisions on legal forgiveness through “*Ch’qi’n’txw* of an Offender’s Record of Conviction

199. 14 MUSCOGEE (CREEK) NATION CODE § 1-703(A), <https://www.creek-supremecourt.com/wp-content/uploads/title14.pdf> [<https://perma.cc/V7QM-EFCS>].

200. *See id.* § 1-703(B).

201. *See* MENOMINEE INDIAN TRIBE TRIBAL CODE §§ 81-3 to 81-5 (2022), <https://ecode360.com/11986446#1198646>.

202. *See* BLACKFEET TRIBAL LAW AND ORDER CODE § 4-4 (1974), <https://www.narf.org/nill/codes/blackfeetcode/ch04.pdf> [<https://perma.cc/6SCA-MGFX>].

203. *See* 26 TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS TRIBAL CODE §§ 26.07.060-26.07.080, [https://law.tmchippewa.com/us/nsn/tmchippewa/council/code/26.07.080#\(h\)\(10\)](https://law.tmchippewa.com/us/nsn/tmchippewa/council/code/26.07.080#(h)(10)) [<https://perma.cc/V8BT-7CFG>].

204. *See* ONEIDA CODE OF LAWS §§ 1-126.1 to 126.10, <https://oneida-nsn.gov/wp-content/uploads/2022/10/Chapter-126-Pardon-and-Forgiveness-BC-01-22-14-B-Updated-Footer.pdf> [<https://perma.cc/X58H-NDS5>].

205. 6 FORT PECK TRIBES COMPREHENSIVE CODE OF JUSTICE §§ 906-07 (2025), <https://fptc.org/comprehensive-code-of-justice-ccoj> [<https://perma.cc/8ZCF-KLQU>].

206. STANDING ROCK SIOUX TRIBAL CODE OF JUSTICE §§ 4-401 to -406 (2021), <https://www.standingrock.org/wp-content/uploads/2021/09/TitleIVCriminalOffensesSexOffender-sOrdinance2020-4-001ResolutionNo176-21.pdf> [<https://perma.cc/W3EU-G7R5>].

(Expungement).”²⁰⁷ Four elders are randomly chosen from the 12-member Judgment *Ch’qi’n’txw* Pool.²⁰⁸ The three-member *Ch’qi’n’txw* Panel holds a public hearing on a forgiveness application and makes a unanimous decision, which cannot be appealed.²⁰⁹

In some tribal jurisdictions, an applicant seeking reduction or cancellation of a sentence must apply to the tribal court.²¹⁰ Several jurisdictions, such as the Omaha Tribe, Seminole Nation of Oklahoma, and the Pueblo of Zuni have an “Order Removing Disqualification or Disability Based on Conviction,” which can restore an applicant’s rights after completing a sentence without another conviction.²¹¹ The Hannahville Indian Community requires an applicant seeking an order setting aside a conviction to apply to the tribal court, which will notify the victims and refer the case for a recommendation by a committee composed of the tribal prosecutor, defense counsel, chief of police, and probation officer.²¹² For the Sault Ste. Marie Tribe of Chippewa Indians, the applicant applies to the tribal law enforcement office, which then forwards the application and the results of a background investigation to the tribal prosecutor for notice to the victims and to the tribal court for a decision.²¹³ The Southern Ute Indian Tribe has an expungement that requires an application to the tribal court and a hearing with the prosecutor and victim.²¹⁴ This provision has significant limitations. An offender may only apply once every two years and must wait 10 years after completing the sentence; in

207. LUMMI NATION CODE OF LAWS §§ 5.12.010 to -060 (2022), https://www.lumminsn.gov/userfiles/994_Title5CodeofOffensesLIBCResolution2022-031.pdf [<https://perma.cc/JY4R-UUDK>].

208. *See id.* § 5.12.050.

209. *See id.* § 5.12.060(c)(1)-(3).

210. *See, e.g.,* HOPI CODE § 2.12.6 (2012), <https://www.hopi-nsn.gov/wp-content/uploads/2013/05/Hopi-Code.pdf> [<https://perma.cc/KY7L-2QBT>] (referring to this process as an “expungement”); 4 PASCUA YAQUI TRIBAL CODE § 211 (2022), <https://www.pascuayaqui-nsn.gov/tribal-code-v1> [<https://perma.cc/B6GS-HQDD>] (referring to this process as a “commutation”).

211. *See* OMAHA TRIBAL CODE § 5-3-17 (2013), https://www.omahatribe.com/wp-content/uploads/2024/05/Title-5-Current-OTN-Tribal-Code-2013-Title-05-Crimes-v1.4.rev8_17.2023-by-resolution.pdf [<https://perma.cc/GH3R-DSCY>]; 8 SEMINOLE NATION CODE OF LAWS § 807 (2013), https://www.sno-nsn.org/docs/Seminole_Nation_Code_PDF_September_2019_Update.pdf; PUEBLO OF ZUNI TRIBAL CODE § 4-3-16 (2022), <https://www.ashiwi.org/Documents/ZuniTribalCodeRevised14SEP2022-FINAL.pdf> [<https://perma.cc/TUW8-GXTV>].

212. *See* HANNAHVILLE LEGAL CODE § 1.1608(5)-(8) (2023), <https://hannahville.net/wp-content/uploads/2023/06/Title-1-Criminal-Law-and-Procedure-Code-2023.pdf> [<https://perma.cc/5HPZ-GGY2>].

213. *See* SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS TRIBAL CODE §§ 77.101-77.104, <https://www.saulttribe.com/government/tribal-code>.

214. *See* SOUTHERN UTE INDIAN TRIBAL CODE §§ 28-1-103 to 28-1-105, <https://www.southernute-nsn.gov/wp-content/uploads/sites/15/2023/05/Title-28-Expungement-official-final-version-16May2023.pdf> [<https://perma.cc/9T8N-3RB2>].

addition, many serious crimes are excluded, including many violent crimes, crimes of dishonesty, and all alcohol- and drug-related driving offenses.²¹⁵ The rapidly-changing area of tribal marijuana regulation has also inspired new expungement procedures. The Arapaho Tribe of the Wind River Reservation expunged all marijuana convictions automatically, while the Mashantucket Pequot Tribe used a petition process.²¹⁶

Finally, some jurisdictions have considered whether the tribal constitution creates an implied pardon power even when no explicit provision exists. In 2006, the Rosebud Sioux Tribal Court found that the tribal president had no authority under the constitution or tribal codes to exercise the pardon power.²¹⁷ The tribal prosecutor objected to a pardon and the tribal court performed a searching analysis of tribal and comparative laws to determine that no pardon power was implied in the tribal president's power to manage or administer tribal affairs.²¹⁸ The Supreme Court of the Navajo Nation also ruled that no implied pardon power existed in a political standoff in which the tribal council attempted to pardon and reinstate several election supervisors who failed to remove an ineligible candidate from the ballot.²¹⁹ The Court reasoned that the Navajo Nation code did not provide a pardon power and the equivalent concept in traditional *Diné* law was inapplicable as it required the wrongdoer to acknowledge harm and seek forgiveness.²²⁰ The Appellate Court of the Hopi Tribe, however, did apply a traditional forgiveness concept in a case involving collateral consequences.²²¹ In that case, the plaintiff pled guilty to a series of crimes and completed his sentence; eight years later, he was terminated from his job due to the conviction.²²² The Appellate Court found that the Hopi concept of *ookwalni* (forgiveness and mercy) applied and the plaintiff had shown sufficient evidence of rehabilitation.²²³ Read together, these cases suggest that searching for a forgiveness or mercy

215. *See id.* § 28-1-105(1)-(2).

216. *See* 24 NORTHERN ARAPAHO CODE § 205 (2021), <https://www.northernarapaho.com/DocumentCenter/View/113/Title-24-Marijuana-Type-PDF> [https://perma.cc/G6KE-QA8A]; 2 MASHANTUCKET PEQUOT TRIBAL LAWS § 2-1(d)(iii) (2021), <https://law.mptnnsn.gov/globalassets/laws/title-2-criminal-law.pdf> [https://perma.cc/G5B8-J4HU].

217. *See generally* Rosebud Sioux Tribe v. Horse Looking, No. CR 03-255 (Rosebud Sioux Tribal Ct. Aug. 21, 2006).

218. *See generally id.*

219. *See generally* Tsosie & Whitethorne v. Navajo Bd. of Election Supervisors, No. SC-CV-68-14 (Navajo Nation Sup. Ct. Feb. 20, 2015), <https://www.courtlistener.com/opinion/8928316/tso-sie-v-navajo-board-of-election-supervisors/> [https://perma.cc/736U-CZUH].

220. *See generally id.*

221. *See generally* Timms v. Hopi Tribe, No. 00AC000011 (Hopi App. Ct. Mar. 23, 2001), <https://case-law.vlex.com/vid/thomas-v-hopi-tribe-921903821> [https://perma.cc/89H2-25ZL].

222. *See generally id.*

223. *See generally id.*

process in indigenous law is more fruitful than attempting to read a pardon power into an executive's general powers of management or administration.

V. POLICY RECOMMENDATIONS FOR REDUCING COLLATERAL HARM

The narrower a collateral consequence is and the more well-tailored it is to the job, license, or benefit, the better. Collateral consequences are usually justified based on the risk of future harm, rather than as punishment for a previous offense; as a result, the more closely they are tailored to the risk of future harm, the more justifiable they are.²²⁴ One positive example is that used by the Pueblo of Acoma, which has a tribal code provision that spells out which civil rights are lost due to a criminal conviction and the procedures for restoring those rights.²²⁵ This provision specifically allows persons with criminal convictions to seek tribal employment or receive occupational licenses unless a "reasonable relationship" exists between the conviction and the duties of the position.²²⁶ Another positive example comes from the Cherokee Nation, which specifically protects the "right to make employment contracts, during confinement...when this benefits the vocational training or release preparation of the prisoner," subject to the approval of the tribal court.²²⁷

Collateral consequences that have a sunset date or that automatically restore eligibility after a time are preferable to perpetual or lifelong exclusions. Once again, the best practice is the Pueblo of Acoma, which has automatic restoration of rights for a first offense under the tribal code if the offender has completed the entire sentence.²²⁸ Requiring disclosure of previous criminal convictions is preferable to outright exclusion, but the decision whether to hire, grant a permit, or award a benefit should not be purely discretionary in the absence of pre-defined criteria. We may also critique the degree to which

224. See generally Milena Tripkovic, *Collateral Consequences of Conviction: Limits and Justifications*, 18 CRIMINOLOGY, CRIM. JUST., L. & SOC'Y 18, 19 (2017); Sandra G. Mayson, *Collateral Consequences and the Preventative State*, 91 NOTRE DAME L. REV. 301, 303 (2015).

225. See generally PUEBLO OF ACOMA LAWS 2003 (2019 REPLACEMENT) § 5-5-3 (2019), <https://www.puebloofacoma.org/wp-content/uploads/2021/07/Title-05-Criminal-Procedure.2019-Edition.pdf> [https://perma.cc/XSQ8-UV8F] (disqualifying persons with felony convictions from the right to hold public office of trust or profit or serve as a juror, but specifically protecting their legal competency to testify in court or convey property, among others).

226. *Id.*

227. See 21 PENAL CODE OF CHEROKEE NATION § 65 (2019), <https://attorneygeneral.cherokee.org/media/5upcrg3j/word-searchable-full-code.pdf> [https://perma.cc/3Z84-VQHY].

228. PUEBLO OF ACOMA LAW AND ORDER CODE § 5-5-10 (2019), <https://www.puebloofacoma.org/wp-content/uploads/2021/07/Title-05-Criminal-Procedure.2019-Edition.pdf> [https://perma.cc/QG5J-WTV3].

collateral consequences really are a cost- or time-saving alternative to background checks or discretionary hiring policies, given that they are often difficult to enforce as hiring officials and candidates may both be unaware of the eligibility rules and must interpret legal phrases such as “crimes of moral turpitude” in ways that risk excluding eligible persons.²²⁹

Similarly, categorical exclusions from restoration of rights, such as rendering certain types of convictions unpardonable or making a person ineligible even with a pardon “deny many even the opportunity to present their case, no matter how persuasive or redemptive.”²³⁰ This is the case for several tribes that have waivers for gaming licenses. For instance, the Habematolel Pomo of Upper Lake allows a pardon to restore eligibility for gaming licenses, except for gaming offenses, fraud, or misrepresentation.²³¹ Sometimes, a tribe will refuse to recognize a pardon at all for certain positions. Membership on the Oneida Tribe and Red Cliff Band of Lake Superior Chippewa Indians, both in Wisconsin, prohibit individuals from serving as police commissioners with felony convictions or felony arrests that result in misdemeanor convictions, even if the offense was later pardoned.²³² In some jurisdictions, the general pardon power excludes sex offenses, regardless of the circumstances. The Tohono O’odham Nation makes ineligible for pardons, paroles, or sentence commutations any convictions for sexual assault, sexual abuse, or failing to register as a sex offender, among others.²³³ The Pascua Yaqui Tribe and White Mountain Apache Tribe, also both in Arizona, exclude certain types of sexual assault convictions from the pardon power, to include sexual assault with a deadly weapon or dangerous instrument or the

229. Horn, *supra* note 15, at 323-24.

230. MARGARET COLGATE LOVE, COLLATERAL CONSEQUENCES RES. CTR., THE MANY ROADS FROM REENTRY TO REINTEGRATION: A NATIONAL SURVEY OF LAWS RESTORING RIGHTS AND OPPORTUNITIES AFTER ARREST OR CONVICTION 34 (2022), <https://static1.squarespace.com/static/5b7ea2794cde7a79e7c00582/t/67566dd04a928a48947b71c5/1734180034650/the+many.pdf> [<https://perma.cc/D6TL-K97V>].

231. See GAMING CODE OF THE HABEMATOLEL POMO OF UPPER LAKE, Res. No. 06-12-01 § 5.16.4(B)-(C) (2012) (Habematolel Pomo of Upper Lake Executive Council), <https://www.nigc.gov/images/uploads/gamingordinances/habematolel-20120706ltrtoTribereApprvdAmdTrbGagCode.pdf> [<https://perma.cc/DE3Y-RNJD>].

232. See ONEIDA CODE OF LAWS § 3-301.6-3(c), <https://oneida-nsn.gov/wp-content/uploads/2022/01/Chapter-301-Oneida-Nation-Law-Enforcement-Ordinance-02-25-15-C.pdf> [<https://perma.cc/QB8D-4PMJ>]; RED CLIFF BAND OF LAKE SUPERIOR CHIPPEWA INDIANS CODE OF LAWS § 42.4.3(c), <https://cms9files.revize.com/redcliffband/Document%20Center/Government/Code%20of%20Laws/Chapter%2042%20-%20LAW%20ENFORCEMENT-Current%2010-17-2023.pdf> [<https://perma.cc/4VV6-GMAL>].

233. See TOHONO O’ODHAM CODE §§ 7-9.1(C) (2020), 7-9.2(D), 7-9.11(C), <https://tolcnsn.org/docs/Title7Ch1.pdf> [<https://perma.cc/6VCX-M5Y8>]; *id.* § 17-12(A)(1) (2003), <https://tolcnsn.org/docs/Title17Ch1.pdf> [<https://perma.cc/GA2H-AR8P>].

intentional or knowing infliction of serious physical injury with a previous conviction for sexual assault.²³⁴

Collateral consequences should depend on an adult's own criminal conviction. A retributive rationale based on the offender's own conduct provides a stronger justification for preventing future harm through collateral consequences than deterrence or utilitarian approaches that emphasize the public welfare.²³⁵ Alcohol sales ordinances sometimes include a spousal exclusion. The Mohegan Tribe of Connecticut excludes applicants and their spouses from liquor sales licenses for all felony convictions and misdemeanor convictions involving moral turpitude.²³⁶ Fishing regulations sometimes render ineligible an applicant with a spouse who has a prior conviction.²³⁷ Provisions that attach collateral consequences to juvenile convictions conflict with the rehabilitative ideals of juvenile court and impact a population that may be vulnerable and unaware of the consequences of delinquency.²³⁸ An example of a generous provision is that of the Spirit Lake Tribe, where juvenile delinquency proceedings are not criminal proceedings and a finding of guilt is not a conviction; therefore, collateral consequences do not attach.²³⁹ Not all jurisdictions view juvenile convictions in this way. The Colorado River Indian Tribes exclude sex offenses under tribal law from routine expungement and record sealing when a juvenile turns 18.²⁴⁰ Sometimes, tribal banishment and exclusion ordinance can also consider juvenile offenses. For the Utu Utu Gwaitu Paiute Tribe, a juvenile may be excluded from the reservation if she or he is required to register as a sex offender or if she or he is a

234. See generally 4 PASCUA YAQUI TRIBAL CODE §§ 525, 530 (2022), <https://www.pascuayaqui-nsn.gov/tribal-code-v1/> [<https://perma.cc/N2SU-ESU4>]; WHITE MOUNTAIN APACHE CRIMINAL CODE §§ 4.6(C) (2022), 4.7, <http://www.wmat.us/Legal/00%20-%20Criminal%20Code%20-%20IN%20EFFECT%20-%20May%2017,%202022.pdf> [<https://perma.cc/93KS-H6KR>].

235. See Brian M. Murray, *Are Collateral Consequences Deserved?*, 95 NOTRE DAME L. REV. 1031, 1051, 1058-60, 1062, 1075 (2020).

236. See CODE OF ORDINANCES OF THE MOHEGAN TRIBE OF INDIANS OF CONNECTICUT § 3-278(a)(6) (2025), https://library.municode.com/tribes_and_tribal_nations/mohegan_tribe/codes/code_of_laws [<https://perma.cc/9XHC-HEHY>].

237. See, e.g., NOOKSACK INDIAN TRIBE LAWS AND ORDINANCES § 30.10.050 (1990), <https://nooksacktribe.org/wp-content/uploads/2020/03/Title-30-Fishing-Ordinance.pdf> [<https://perma.cc/3N2H-2T3C>].

238. Jennica Janssen, *Collateral Consequences for Justice-Involved Youth: A Model Approach to Reducing the Number of Collateral Consequences*, 20 MARQ. BENEFITS & SOC. WELFARE L. REV. 25, 36, 39 (2018).

239. See generally SPIRIT LAKE TRIBE LAW AND ORDER CODE § 23-6-119(C) (2020), https://www.spiritlakenation.com/data/upfiles/media/Title_23_Childrens_Code.pdf [<https://perma.cc/34QQ-GPE5>].

240. See COLORADO RIVER INDIAN TRIBES TRIBAL CODE § 1-902 (2016), https://www.crit-nsn.gov/crit_contents/ordinances/C_Sex%20Offender%20Registration_eff-0911_2016%20rev_08112016.pdf [<https://perma.cc/9B89-X9BW>].

habitual offender who has committed three or more specific kinds of crimes in the previous three years; if excluded, the juvenile's parents are also excluded.²⁴¹

Similarly, collateral consequences based on arrests alone without a conviction or based on a finding of civil rather than criminal liability are also overbroad. In the Pinoleville Pomo Nation's low income rental units, an arrest for any drug-related offense results in immediate termination of a tenant's lease and ineligibility for tribal housing, though eviction can occur for drug use even without an arrest.²⁴² In another example, the Klamath Tribes of Oregon deny a gaming license to defendants in civil lawsuits if the act alleged satisfies the elements of the excluded crimes.²⁴³ A better policy is the so-called "Ban the Box" initiatives that prohibit employment discrimination based on prior arrests or that discourage disclosure of arrests on an initial employment application.²⁴⁴ The tribal code of the Poarch Band of Creeks prohibits employers from requiring disclosure of prior arrests unless the applicant is facing charges that "substantially relate to the circumstances of the particular job or licensed activity."²⁴⁵ However, an exclusion may be "hidden" in a tribal insurance policy, because an insurer may deny coverage or charge a higher rate to an employer who knowingly hires an ex-offender.²⁴⁶ For this reason, the Poarch Band of Creeks does not apply its "Ban the Box" policy to employment that requires a fidelity bond to protect business from financial losses caused by employees.²⁴⁷

Tribal legislative drafters should be aware of the risk of wrongful convictions. Provisions that create burdensome petition processes or lengthy waiting periods for restoration of rights could extend harm to persons who

241. See generally UTU UTU GWAITU PAIUTE EXCLUSION ORDINANCE § 7-10-010(a) (2007), (c), <https://www.bentonpaiuterreservation.org/docs/ExclusionOrdinance.pdf> [<https://perma.cc/KV3G-T9D7>].

242. See generally PINOLEVILLE POMO NATION HOUSING DEPARTMENT ELIGIBILITY AND OCCUPANCY POLICY § XI(K) (2018), <https://pinoleville-nsn.gov/wp-content/uploads/2020/10/Eligibility-and-Occupancy-Policy.pdf> [<https://perma.cc/3QT5-VTG3>].

243. See 7 KLAMATH TRIBAL CODE § 45.14(e)(1) (1995), https://ktj-live-8df4857580a04c80b1ece864d3d589-cd4fbe8.divio-media.com/documents/Title_7_Chapter_45_-_Gaming_Ordinance.pdf [<https://perma.cc/9BT5-8P7P>].

244. See generally Steven Raphael, *The Intended and Unintended Consequences of Ban the Box*, 4 ANN. REV. CRIMINOLOGY 191 (2021).

245. POARCH BAND OF CREEK INDIANS TRIBAL CODE § 33-4-6(a)-(b) (2024), https://library.municode.com/tribes_and_tribal_nations/poarch_band_of_creek_indians/codes/code_of_ordinances [<https://perma.cc/ZG8B-FW46>].

246. Joni Hersch & Erin E. Meyers, *The Gendered Burdens of Conviction and Collateral Consequences on Employment*, 45 J. LEGIS. 171, 184-85 (2018).

247. See generally POARCH BAND OF CREEK INDIANS TRIBAL CODE § 33-4-6(a) (2024), https://library.municode.com/tribes_and_tribal_nations/poarch_band_of_creek_indians/codes/code_of_ordinances [<https://perma.cc/ZG8B-FW46>].

are factually and legally innocent.²⁴⁸ The Kickapoo Traditional Tribe of Texas has a provision that allows the tribal council to grant a free pardon to any person seven years after conviction upon receiving new evidence “which proves beyond a reasonable doubt that the offender was never guilty of the crime.”²⁴⁹ The waiting period in this case lacks sufficient justification, because the person wrongfully convicted will suffer the burdens of conviction in the meantime.

Restorations of rights provisions are normatively good, and the more open and transparent they are with the fewest exclusions, the better. To this end, a general restoration of rights mechanism like a pardon or expungement that is available to everyone, even non-tribal members, is the most equitable and administratively efficient way of resolving collateral consequences. The Tunica-Biloxi Indian Tribe’s exclusion from running for tribal office is an example of an overbroad provision: it renders ineligible for life any persons with any felony conviction or any misdemeanor conviction involving financial crime, sex crime, fraud, violent crime, or crimes of moral turpitude, even if these crimes were later pardoned or expunged, even if the laws were later repealed, even if the crimes were committed as a juvenile, and even if the felony crime was later reduced to a misdemeanor.²⁵⁰

VI. CONCLUSION

The literature on collateral consequences of criminal convictions, including the loss of core civil rights, access to social services, and opportunities for economic advancement, has not to this point been in conversation with tribal law. Yet the vast scope of tribal collateral consequences rivals that of a typical U.S. state jurisdiction and indeed is cumulative on the burdens imposed by federal, state, and municipal law. Despite their limited criminal jurisdiction over non-members, tribal legal systems can contribute to over-criminalization by excluding low risk persons with criminal convictions from positions of authority, regulated occupations, or even political participation. This article laid out a typology of collateral consequences in tribal law,

248. Barriers to expungements for exonerees can include, for instance, affirmatively requiring a convicted person to show that she or he was “factually innocent” and not simply “not guilty” of the offense (as in California) or a showing that failure to expunge will result in “manifest injustice” (as in Delaware). Amy Shlosberg et al., *Expungement and Post-Exoneration Offending*, 104 J. CRIM. L. & CRIMINOLOGY 353, 358 (2014).

249. See 18 KICKAPOO TRADITIONAL TRIBE OF TEXAS PENAL CODE § 3, <https://kickapootexas.org/wp-content/uploads/2017/05/KTTT-Ch-18-Penal-Code.pdf> [<https://perma.cc/Q578-V57V>].

250. See generally TUNICA-BILOXI INDIAN TRIBE OF LOUISIANA CODE OF ORDINANCES § 2.24.230(b)(1)-(2) (2020), https://library.municode.com/tribes_and_tribal_nations/tunica-biloxi_tribe_of_louisiana/codes/code_of_ordinances [<https://perma.cc/W2J8-LC4P>].

emphasizing the ways in which federal and state law exacerbate both the existence and the harms of collateral consequences. By narrowing collateral consequences to only the most pertinent convictions and only to the offenders at greatest risk of causing future harm, tribal governments can reduce stigma around criminal convictions and assist in postconviction reintegration.