

ICGR White Paper Series on the Regulation of Tribal Sports Wagering

What Tribal Sports Betting Looks Like Now

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Part I: Project Overview

Our goal in the *ICGR White Paper Series on the Regulation of Tribal Sports Wagering* is to help identify and understand emerging and best practices in the law, regulation, and public policy of tribal gaming.

This White Paper on “What Tribal Sports Betting Looks Like Now” caps our prior in-depth examination of how tribally owned and operated sports books are being regulated in three key markets: Arizona, New York, and Washington State. In this White Paper, we draw on all three state-specific studies to continue to build out methodology to identify and make accessible information for tribal operators, vendors, and others seeking to enter the tribal sports wagering market, or for regulators and policymakers looking to identify emerging practices that could be used in their jurisdictions. By summarizing and categorizing state regulatory approaches, we provide three distinct models to guide understanding of how the legalization, regulation, and implementation of tribal sports betting is occurring in rapidly expanding markets. Each regulatory model has implications for how regulatory authority is allocated and exercised among tribal, state, and the federal government, as well as practical considerations related to market access and competition within and across jurisdictions.

Part II: Regulation of Tribal Sports Wagering: What Tribal Sports Betting Looks Like Now

1. Executive Summary

As states continue to legalize sports wagering, more American Indian tribes are building out their business models and operational capacity to open sports books or offer mobile wagering. The regulatory structure in a particular state impacts tribes' sports betting operations in multiple ways: whether and where tribes can offer mobile wagering, what in-state commercial competition tribal operations will face, and to what extent state law and state regulations will apply to a tribe's sports betting operations. In a highly dynamic and increasingly competitive environment that already is reshaping the landscape for commercial and tribal gaming alike, it is notable that tribes, states, and commercial operators predominantly are taking a custom, market-driven approach to developing regulations. While some states and tribes are engaging in negotiation, there is little communication, coordination or consolidation with regard to emerging practices across jurisdictions that could benefit many stakeholders.

With three layers of regulation, overlapping regulatory jurisdiction, and shared public policy goals pursuant to the Indian Gaming Regulatory Act (IGRA), the tribal gaming industry has the greatest potential to lead in developing and implementing emerging best practices in sports wagering regulation.

Here, we provide a practical overview of what tribal sports wagering looks like now. We identify emerging empirical trends and specify three of the most-prevalent state regulatory approaches to tribal sports wagering on a national level, with state-specific examples and issues arising. We classify state approaches to legalizing tribal sports betting: the **Compact Model**, under which tribal sports betting is conducted and regulated according to IGRA and the tribal-state compact, and is confined to Indian lands; the **Commercial Model**, under which tribes may operate sports betting under state license and in direct competition with commercial operators; and the **Combined Model**, in which tribal sports betting is conducted and regulated through a combination of IGRA and the tribal-state compact (for tribal sports betting conducted on Indian lands), and state law (for tribal sports betting conducted outside of Indian lands but within the state's borders).

2. Overview of Legalized Sports Betting

While there are a number of sports-betting-law or bill-tracking websites available, only one attempts to track the legalization and operationalization of tribal sports betting: the ICGR's Tribal Sports Wagering Tracker Map. See Kathryn R.L. Rand & Steven A. Light, *Tribal Sports Wagering Tracker*, International Center for Gaming Regulation, <https://www.unlv.edu/icgr/tribal> (as of Sept. 22, 2022).

In the Tracker Map, we provide a visual overview of what the authorization or live, legal status of tribal sports wagering looks like across the U.S. We offer this snapshot with the caveat that state, tribal, and commercial authorization and operationalization of sports betting activities are dynamic. The data and information provided are current as of September 2022. Source authorities include the National Indian Gaming Commission (NIGC), state and tribal gaming commissions or similar regulatory agencies, and relevant tribal-state compacts adopted pursuant to IGRA as well as state law and tribal ordinances, as well as the American Gaming Association and other industry trade association or media outlets.

A. States (plus Washington, D.C.) with authorized and/or operational sports betting in any form (commercial, tribal, or both)

There is a total of 36 states (plus Washington, D.C.) in which sports wagering currently is authorized and/or operational, whether commercial, tribal, or both. Of these, 31 states (plus Washington, D.C.) currently have legal single-game sports wagering operations in some combination of retail (29 states) or mobile/online formats (21 states + D.C.), or both. (Five states have authorized sports wagering that is not yet operational. Thirteen states either have no current legislation pending or bills that have failed.) Pursuant to state law on such matters, one additional state, California, is slated for a public vote in November 2022, on at least two separate ballot initiatives legalizing tribal and/or commercial sports wagering in retail and/or mobile online formats. About one-third of the states currently taking bets offer only retail (i.e., in-person or physical) sports betting. About two-thirds offer full or limited mobile or online sports wagering.

B. States with tribal gaming operations and tribal sports betting

A total of 29 states have tribal gaming operations within their borders; of these, 25 states permit Class III or "casino-style" gaming (the Pamunkey Indian Tribe in Virginia has signed a development deal for a new casino but it is not yet operational; operational Class III gaming in Virginia under an approved tribal-state compact would raise this number to 26 states) and four permit only Class II or "bingo or games similar to bingo" gaming on tribal lands.

There is a total of 22 states in which tribal sports wagering is authorized and/or operational. One state (Florida) has authorized tribal sports wagering but is in the midst of protracted litigation and therefore is not yet operational. There are five states in which only tribal operators are authorized to offer sports wagering.

3. Compact Model

In our prior research, we initially looked at tribal sports betting in Washington state. There are 29 federally recognized tribes with lands within Washington state. All 29 tribes have Class III compacts pursuant to IGRA; of these, 22 tribes operate a total of 29 casinos under the compacts. In 2021, the state negotiated amended compacts to permit sports wagering. The 2021 compact amendments are uniform: each authorizes the tribe to engage in sports wagering at the tribe's Class III gaming facility. Washington also legalized online and mobile wagering within the premises of a tribe's casino.

The tribal-state compacts in Washington require concurrent state and tribal regulatory jurisdiction, including the tribes' consent to concurrent application of the state's gaming laws to Class III gaming on tribal lands. Thus, as tribal sports betting in Washington state is operated entirely on tribal lands under the terms of the tribal-state compacts, we categorized this regulatory approach as the **Compact Model**. Other states, such as New Mexico, North Dakota, Oregon, and Wisconsin, have utilized the Compact Model to authorize tribal sports betting. In short, the Compact Model follows the usual process and rules concerning tribal gaming on tribal lands: tribal sports betting is authorized by the terms of the compact; its operation is limited to tribal lands; and federal law, particularly IGRA and NIGC regulations, apply.

The terms of the compact may permit the tribe to operate mobile wagering; this would necessarily be limited to wagering on tribal lands and may be further limited, as in Washington state, to tribal casino premises. The regulatory authority of the tribe and the state depends on the terms of the compact. Some compacts assign primary regulatory authority to the tribe, such as in North Dakota and New Mexico; others give a more robust role to the state, such as in Washington.

A few tribes, like those in New Mexico, have compacts that broadly permit them to operate any Class III games. Those tribes were able to operationalize sports betting without having to negotiate an amended compact with the state. For tribes whose compacts need to be amended to permit sports betting, an increase in revenue sharing likely will be on the table.

4. Commercial Model

While our prior research did not focus on a state jurisdiction that permitted tribal sports betting solely under state regulation, a few states have done so. Typically, these states are not home to federally recognized tribes, so that the only entry into the state's market is through state licensure of commercial gaming operators. In a few states, however, this approach is available in addition to the Compact Model, at least for those tribes with Indian lands within the state's boundaries.

We call this model the **Commercial Model**. Here, tribes are simply commercial operators, operating sports wagering and other casino games entirely under state law and regulation. In Pennsylvania, for example, the Mohegan Sun Pocono operates entirely under state law. As there are no federally recognized tribes within Pennsylvania, all sports betting within the state is operated exclusively under state law, whether the operator is a tribal or commercial entity. In Las Vegas, the Mohegan Sun Casino at the Virgin Hotel and the Palms under the ownership of the San Manuel Band, both just off the Strip, operate entirely under Nevada law and regulation, as will the Mirage under the Seminole Tribe's Hard Rock brand. There are federally recognized tribes in Nevada that operate gaming on tribal lands under the Compact Model, so Nevada is an example of the Commercial Model and Compact Model functioning within the same state. For the time being, Nebraska also falls under the Commercial Model. Currently, tribal casinos in Nebraska offer only Class II games, as there are no existing tribal-state compacts permitting Class III gaming in Nebraska. The state recently legalized commercial casino gaming, including retail sports betting. The Winnebago Tribe was awarded two state licenses to operate casino games at horse racing tracks in Omaha and Lincoln. While the state's legalization of commercial casino gaming may lead to Class III compacts, tribal operation of sports betting currently falls under the Commercial Model.

5. Combined Model

In our prior research we also examined the regulatory approach to tribal sports betting in Arizona and New York.

Arizona legalized sports betting in 2021, through amendments to existing compacts as well as new state laws and regulations. The existing compacts were amended to allow both retail and mobile sports betting on Indian lands. At the same time, Arizona legalized both commercial and tribal sports betting state-wide, using a state licensing model. Arizona authorized 10 tribal licenses for state-wide mobile sports betting, and also 10 commercial licenses for both retail and mobile wagering.

Thus, tribes in Arizona can operate sports betting under two separate regulatory structures: for tribal sports betting on Indian lands, the 2021 amended compacts, as well as federal law and regulation, govern; for tribal sports betting outside of the tribe's reservation, state law and state regulations govern. We call this approach the **Combined Model**.

Under the Combined Model, the typical division is retail and/or mobile sports betting on tribal lands under the terms of the compact, and mobile sports betting statewide under state law and regulation. Often, the state will require or incentivize tribes to partner with commercial mobile sports betting platform providers in order to be eligible for a state license. The state's regulatory role with regard to gaming on tribal lands is determined by the compact; and the state fully regulates all gaming off of Indian lands, regardless of whether the gaming is operated by a tribe. Tribes generally must submit to state licensing to operate sports betting under the Combined Model. Under the Combined Model, increased tribal revenue sharing is likely outcome of negotiation over the introduction tribal sports betting on tribal lands. Tribes also must pay applicable state fees and taxes to operate gaming off of tribal lands.

The specifics of the Combined Model vary significantly from state to state. Typically, but not always, the Combined Model includes state authorization of commercial sports betting, so that tribal operations are in direct competition with commercial operators. This is the case in Michigan and Arizona, for example. In a few states, such as Connecticut, commercial competition is more limited, as tribes compete with the state lottery's operation of mobile sports wagering.

As another example of the Combined Model, in New York, three tribes operate seven Class III casinos: The Oneida Indian Nation, the Saint Regis Mohawk Tribe, and the Seneca Nation. New York legalized commercial casinos in 2013, and then legalized retail sports betting in 2019 for

both tribal and commercial casinos. The 2019 law permits retail betting by “persons physically present” in “a sports wagering lounge located at a casino.” The state’s four commercial casinos, along with the seven tribal casinos located in the state, all operate retail sports books. Thus, initially, tribal sports betting in New York operated under the Compact Model.

Then in 2021, New York authorized mobile sports betting. Under the new law, the server for mobile wagers must be physically located on the premises of one of the state’s commercial casinos. There has been some uncertainty about how the 2021 authorization of mobile wagering may or may not trigger the compacts’ automatic amendment provisions. While it appears that the new state law does not permit tribes to operate mobile wagering independently under the compacts, it does allow for the possibility of a tribe partnering with a commercial casino, either through a revenue-sharing arrangement (commercial operators who entered into an agreement with a tribe had an advantage in competing for a license) or to locate the tribe’s server on the commercial casino’s premises. Tribes also are eligible to seek an operator license under state law (that is, as a commercial gaming operator).

This approach, requiring tribes to either partner with licensed commercial casinos or seek a state license of their own in order to operate mobile sports wagers, transforms New York’s approach from the Compact Model to the Combined Model: tribes operate retail sportsbooks on Indian lands under the compacts, and can operate mobile under direct or indirect state licensure.

6. Conclusion

While the particular details may vary, state authorization and regulation of tribal sports betting may be categorized into the three models we identify here: the Compact Model, the Commercial Model, and the Combined Model. Each model is characterized by two key factors: the extent of state regulatory authority, and where tribal sports betting is conducted.

Under the Compact Model, state regulatory authority is determined by the terms of the applicable tribal-state compact as well as federal law and regulations, and tribal sports betting is confined to Indian lands under federal law. Under the Commercial Model, the state exercises exclusive regulatory authority, and tribal sports betting is conducted outside of Indian lands.

Under the Combined Model, the state's regulatory authority follows the Compact Model to the extent that it applies to tribal sports betting on Indian lands, and follows the Commercial Model to the extent that it applies to tribal sports betting outside of Indian lands.

The models have obvious implications with regard to regulatory authority and tribal sovereignty, but also have ramifications with regard to market access and competition. The Compact Model limits tribes' markets to tribal lands, but often is accompanied by limited or no legalization of commercial sports betting. The Commercial Model permits tribes to operate sports betting in any location deemed appropriate by the state, including state-wide mobile wagering if authorized, but puts tribal operators in direct competition with commercial operators. The Combined Model provides tribes with some exclusivity, at least on tribal lands, but typically puts tribes in competition with commercial operators for sports betting conducted outside tribal lands.

By categorizing and defining these regulatory models, we intend to assist tribal and state officials, as well as tribal and commercial operators and other interested parties, in understanding how each model may be implemented, identifying the implications of each model as well as variants within each model, and determining which model best serves the shared policy goals of tribes and states.