

indigenous sexual assault & abuse clearinghouse

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**MCGIRT V. OKLAHOMA:
WHAT IS INDIAN COUNTRY AND
WHO HAS JURISDICTION TO
INVESTIGATE AND
PROSECUTE CRIME IN
OKLAHOMA**

A PROJECT OF THE
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THIRD THURSDAY WEBINAR SERIES

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Third Thursday Webinar Series

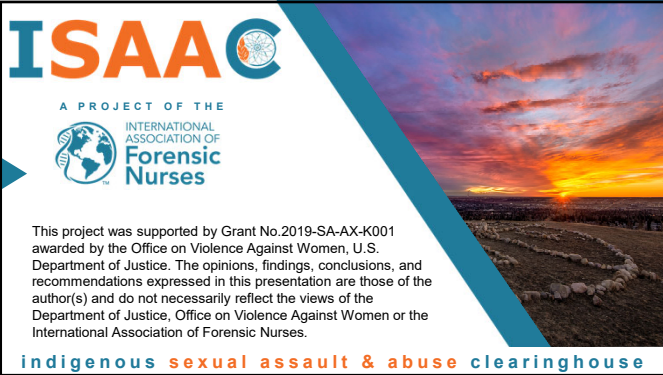
The webinar series will continue in 2022 on January 20. Visit www.isaaconline.org to learn more and register today.



PODCAST

This podcast highlights issues relating to sexual assault of American Indian and Alaska Native people. Tune in for insightful interviews with professionals responding to and within the tribal community.

Visit isaaconline.org/podcast or search for "Indigenous Sexual Assault and Abuse Clearinghouse" on Apple Podcasts, Spotify, or Google Podcasts.

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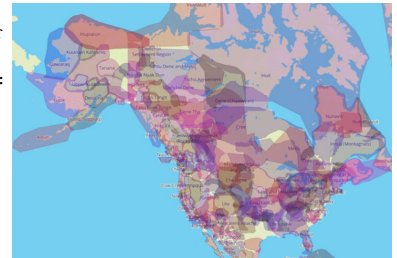
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Land Acknowledgment

Text your **zip code** or your **city and state** (separated by a comma) to:
1-907-312-5085

A bot will respond with the names of the **Native lands** that correspond to that region.



Today's Speaker



Leslie A. Hagen


Leslie A. Hagen serves as the Department of Justice's first National Indian Country Training Coordinator where she is responsible for planning, developing and coordinating training in a broad range of matters relating to the administration of justice in Indian Country. Previously, she served as the Native American Issues Coordinator for the Executive Office for United States Attorneys. In that capacity, she served as EOUSA's principal legal advisor on all matters pertaining to American Indian and Alaska Native issues.



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OKLAHOMA**

December 16, 2021

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National Indian Country Training
Coordinator
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Disclosure

The planners, presenters, and content reviewers of this course disclose no conflicts of interest.

Upon signing in on the attendance sheet, attending the course in its entirety (due to the criticality of the content) and completing the course evaluation, you will receive a certificate that documents the continuing nursing education contact hours for this activity.

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2



National Indian Country Training Initiative



3

Webinar Objectives

1. Participants will learn about federal Indian law and the analysis used to determine which criminal justice agencies have jurisdiction to investigate and prosecute crime in Indian country.
2. Participants will gain an understanding of the U.S. Supreme Court's ruling in *McGirt v. Oklahoma* and what it means for crime victims in Oklahoma.
3. Participants will learn about how the *McGirt* decision has impacted caseloads for federal and tribal prosecutors in Oklahoma.

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Topics to be covered

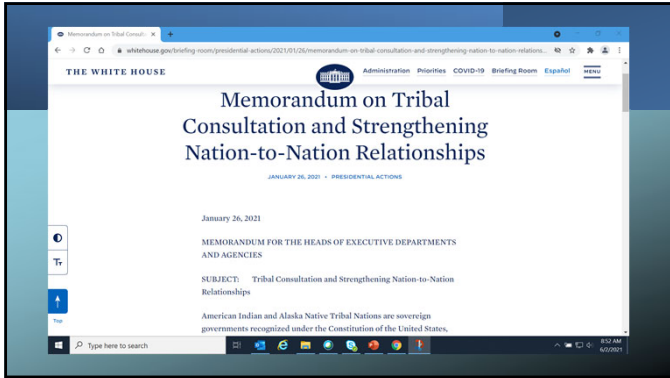
- Federal government relationship with Tribes
- AI/AN Victimization Rates
- Criminal Jurisdiction in Tribal Communities
- *McGirt v. Oklahoma*
- Effects of *McGirt*

5

Federal Government and Federally Recognized Indian Tribes

- 574 federally recognized tribes in U.S. today
 - Mix of PL 280 (state prosecutes a lot of cases) and non-PL 280 (federal government has responsibility to prosecute cases)
 - Tribes are sovereigns
 - Have their own governments
 - Have their own criminal and/or civil court systems (concurrent jurisdiction)
 - Determine who is a member (political designation and not racial or ethnic)
 - U.S. owes a trust responsibility to federally recognized tribes
 - U.S. has a government to government relationship with tribes

6

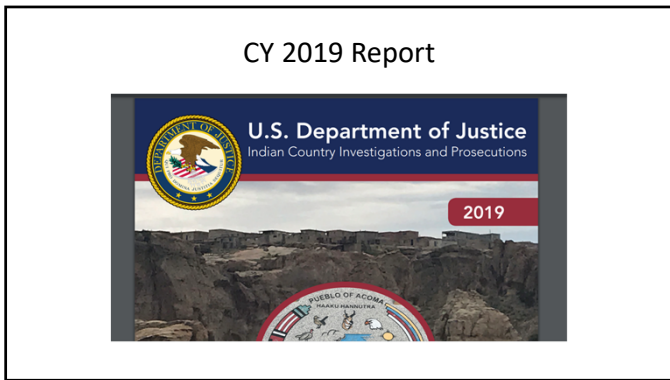


7

Tribal Law and Order Act

- Section 212 of TLOA requires the Attorney General to submit an annual report to Congress detailing investigative efforts by the Federal Bureau of Investigation (FBI) and dispositions of matters received by USAOs with Indian country responsibility.
- The data in the report covers only those offenses reported to the FBI and Federal prosecutors.
- Per the statute, the FBI and EOUSA compile four types of case-specific declination information:
 - The type of crime(s) alleged;
 - The status of the accused as Indian or non-Indian;
 - The status of the victim as Indian or non-Indian; and
 - The reason for deciding against referring the investigation for prosecution (FBI) or the reason for deciding to decline or terminate the prosecution (USAOs).

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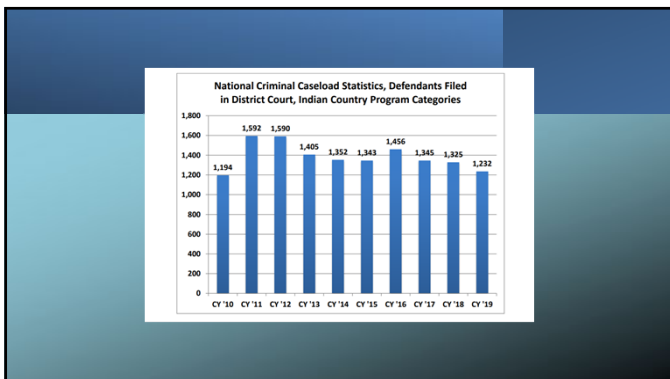


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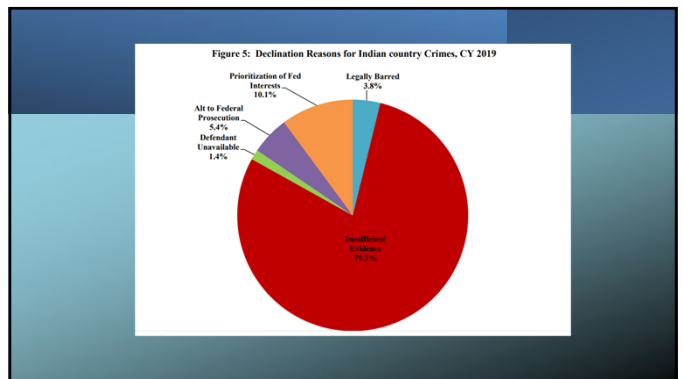
CY 19 Report Summary

- In CY 2019, the USAOs resolved 2,426 Indian country matters.
- The majority of Indian country criminal matters resolved by the USAOs in CY 2019 were prosecuted (charges filed in either Magistrate or District Court).
- The USAO declination rate remained relatively steady. USAO data shows that, in CY 2019, 32 percent (780) of all (2,426) Indian country matters resolved were declined. Of note, and as explained more fully below, in CY 2019, USAOs began tracking separately cases that were referred to another jurisdiction for prosecution (prior to CY 2019, these cases were tracked as declined cases). When adjusted to account for cases referred to another jurisdiction, USAOs declined cases at a similar rate in prior years: 39 percent (999) of all matters resolved (2,523) in 2018; 37 percent (891) of all Indian country matters resolved (2,390) in CY 2017; 34 percent (903) of all Indian country matters resolved (2,666) in CY 2016.
- The most common reason for declination by USAOs was insufficient evidence (79 percent) in CY 2019 (64.3 percent in CY 2018, 70.9 percent in CY 2017, 68.0 percent in CY 2016).
- The USAOs referred seven percent (180) of Indian country matters resolved (2,426) to another jurisdiction (i.e., tribe or state) for prosecution.

10



11



12

Table 11 reports declinations in CY 2019. It is organized by district, and provides a breakdown of the reason for the declination by suspect.²⁶

Table 11: Number of Suspects in Indian country Declinations by USAOs, by Reason, CY 2019

	Legally Barred	Insufficient Evidence	Defendant Unavailable	Alt to Federal Prosecution	Prioritization of Fed Interests	Total
AK	0	8	0	0	7	15
ALM	0	179	4	1	16	204
CAE	0	4	0	0	0	4
COJ	0	8	0	0	2	10
IAN	1	0	0	0	0	1
ID	1	8	1	2	0	12
ILN	0	0	1	0	0	1
INS	0	0	0	2	1	3
MH	2	24	0	0	13	39
MHW	0	29	0	0	1	30
MIN	0	3	0	1	0	4
MSS	0	1	0	0	0	1
MSS	0	3	0	1	0	4
MIT	2	42	1	3	3	51
NCW	1	2	0	0	0	3
ND	12	77	0	12	5	106
NE	0	11	1	0	0	12
NM	2	114	2	0	2	120
NV	0	11	0	0	0	11
NYN	0	7	0	0	0	7

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DOJ Tribal Justice & Safety Website

- <http://www.justice.gov/tribal/index.html>
- This Web site provides links to important information concerning available grants and TLOA and VAWA implementation efforts.

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National Intimate Partner and Sexual Violence Survey

- The work in this presentation was completed by André B. Rosay, Ph.D., Director, University of Alaska Anchorage Justice Center
- Dr. Rosay did the work during an Executive Visiting Research Fellowship at the National Institute of Justice from 2012 to 2016
- Rosay, André B., [Violence Against American Indian and Alaska Native Women and Men: 2010 Findings from the National Intimate Partner and Sexual Violence Survey \(pdf, 82 pages\)](#). Washington, D.C.: U.S. Department of Justice, National Institute of Justice, 2016, NCJ 249736.

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Violence Against American Indian and Alaska Native Women and Men

- National Intimate Partner and Sexual Violence Survey
- Lifetime and past-year prevalence rates for:
 - Psychological aggression
 - Physical violence
 - Stalking
 - Sexual violence
- Impact of violence
- Race of perpetrators

17

Fact Pattern

- AUSA Jane Doe is delivering training to Bay Mills Tribal Police Officers. During the lunch break, one of the officers disparages the Detroit Lions. Jane, outraged, picks up a steak knife and stabs the officer, killing him instantly.

18

Questions:

- Which court or courts have jurisdiction to charge AUSA Jane Doe?
- How would she be charged?
- Do you know enough to answer this question?
- What do you need to know?



19

Always Ask These 4 Questions, In This Order:

- Where did the crime occur?
 - Is it Indian Country or not?
- Who is the suspect?
 - Indian or Non-Indian?
- Who is the victim?
 - Indian or Non-Indian?
- What did they do?
 - Is it a Major Crime?



20

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Is it Indian Country?

- Indian Country defined in 18 U.S.C. § 1151
 - (a) all land w/in limits of Indian reservation under U.S. jurisdiction including patented lands & rights of way running through Indian reservation
 - (b) dependent Indian communities, and
 - (c) Indian allotments to which Indian title has not been extinguished, including rights of way through the allotment



22

Why is this Important?

- If it didn't happen in Indian Country, there's no tribal jurisdiction and there's no federal jurisdiction
- The case goes to the state
 - Unless Crime of General Application



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Crimes of General Application

- These offenses are federal crimes regardless of who commits the crime (Indian or non-Indian) and where the crime occurs:
 - Firearms offenses
 - Controlled Substances
 - Border crimes
 - Human Trafficking
 - Bank Robbery
 - Postal Offenses
 - Assault on a Federal Officer*



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Hypothetical

- Jim and Steve are members of the Tohono O'odham Nation who drive into Tucson for a night of drinking at a local bar. Both of them get extremely intoxicated. They get in their car and start back to Sells, with Steve driving. Half a mile before entering the T.O. Nation, Steve crosses the center line on the Ajo Highway and hits head-on a van coming the other way, killing the occupants.
- Who has jurisdiction over any prosecution ?



25

Are We in Indian Country?

• Not In Indian Country

No Tribal Criminal Jurisdiction

No Federal Criminal Jurisdiction, UNLESS Crime of General Applicability

• In Indian Country

There might be Tribal Criminal Jurisdiction

There might be Federal Criminal Jurisdiction

Need to answer more questions



26

Always Ask These 4 Questions, In This Order:

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– Indian or Non-Indian?
- Who is the victim?
– Indian or Non-Indian?
- What did they do?
– Is it a Major Crime?



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Indian or Non-Indian?

- No Federal Statutory Definition of "Indian"
- **Morton v. Mancari** (1974) test:
- 1) Some degree of Indian Blood – federally recognized tribe; **and**
- 2) Individual is recognized by the fed. government or tribe as an Indian



28

Hypothetical

- Brad and Angelina, members of the Navajo Nation, spend 3 years in the Peace Corps working at an orphanage in Uganda. They adopt a Ugandan orphan baby girl and bring her back to live on Navajo. The Navajo Nation passes a resolution recognizing the girl as a member. She grows up and is the victim of a shooting on Navajo. Is she an Indian for purposes of criminal jurisdiction?



29

Always Ask These 4 Questions, In This Order:

- Where did the crime occur?
– Is it Indian Country or not?
- Who is the suspect?
– Indian or Non-Indian?
- Who is the victim?
– Indian or Non-Indian?
- What did they do?
– Major Crime Act
– General Crimes Act
– Assimilative Crimes Act
– Crime of General Application



30

§ 1152 – General Crimes Act

- Passed by Congress in 1817
- Applies to cases where
 - 1) Either the offender is not Indian, but the victim is, or the offender is Indian but the victim is not;
 - 2) The crime falls outside of the Major Crimes Act; and
 - 3) The Indian offender has not already been punished by the tribe for that conduct.
- Makes available in Indian Country every crime generally available in United States federal territory and defined by federal statute



31

Assimilative Crimes Act – 18 U.S.C. § 13

- Gap filler
- When an act would be a crime under state law
- But, state has no jurisdiction because we are on federal or tribal territory
- And there is no federal law addressing the act
- Apply state criminal law
 - i.e., state drunk driving statute



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Major Crimes Act (MCA) 18 U.S.C. § 1153

- Passed by Congress in 1885
- Provides federal criminal jurisdiction over certain specified crimes if the offender is an Indian.
 - Murder, manslaughter, kidnapping, maiming, Chap. 109 offenses (sex crimes), incest, all felony assaults under §113, felony child abuse or neglect, assault against an individual who has not attained the age of 16, arson, burglary, robbery, and a felony under § 661 (larceny over \$1,000)



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Major Crimes Act (MCA) 18 U.S.C. § 1153 cont.

- No Federal Jurisdiction to prosecute attempts or conspiracies unless the language of the particular major crime permits (sex crimes, arson, strangulation)
- If the major crime is not defined in federal law, assimilate (borrow) state law definition and state law punishment (incest, felony child abuse and neglect, burglary)



34

Indian on Indian

- The MCA is the main source of federal jurisdiction for crimes in which both the offender and the victim are Indians.
- If the offense is not one of the enumerated crimes in the Major Crimes Act, tribal jurisdiction only
 - Gap in federal coverage as yet unaddressed by Congress



35

Does Double Jeopardy apply?

- Tribes retain jurisdiction for conduct that might be a Major Crimes Act (§1153) felony.
- An Indian defendant may be prosecuted concurrently in two jurisdictions for the same crime.
- Constitutional prohibition against double jeopardy does not apply since the US and the tribe are separate sovereigns.



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Sentencing Limits in Indian Country

- Indian Civil Rights Act (ICRA) (25 U.S.C. § 1302) extended certain federal rights to Indian in Indian Country
 - When passed in 1968, ICRA limited tribe's sentencing authority to 6 months/\$5,000 fine
 - 1986 amendment to ICRA increased the sentencing limit to 1 year in jail and a \$5,000 fine
 - Tribal Law and Order Act (TLOA) restored limited felony sentencing authority to tribes
 - Allows up to 3 years and \$15,000 fine per offense
 - Combined maximum of 9 years per criminal proceeding
 - Crime must qualify as a felony



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Defendants' Rights under ICRA pre-TLOA

- The right to the equal protection of the tribe's laws.
- The right not to be deprived of liberty or property without due process of law.
- The right at his own expense to have the assistance of counsel for his defense
- The right against unreasonable search and seizures.
- The right not to be twice put in jeopardy for the same tribal offense.
- The right not to be compelled to testify against oneself in a criminal case.
- The right to a speedy and public trial.
- The right to a trial by jury of not less than six persons.
- The right to be informed of the nature and cause of the accusation in a criminal case.
- The right to be confronted with adverse witnesses.
- The right to compulsory process for obtaining witnesses in one's favor.
- The rights against excessive bail, excessive fines, and cruel and unusual punishments.



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Post Conviction Right of the Defendant

Habeas Corpus - 25 U.S.C. § 1303 –
 "The privilege of the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of his detention by order of an Indian tribe."



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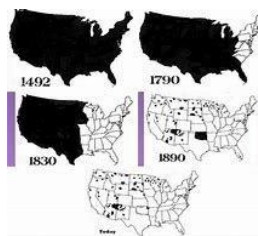
So, why does all this legal mumbo jumbo matter?



What was questions #1?

40

Indian Country – Then And Now



41

Murphy v. Royal, No. 07-7068 (10th Cir. 2017)



- A jury convicted Murphy of murder in OK state court and imposed the death penalty. In August 1999, Murphy lived with Patsy Jacobs; Jacobs was previously in a relationship with the victim, George Jacobs. Murphy had an argument with her about George, and said he was "going to get" George and his family. A passerby found George in a ditch with his face bloodied and slashes across his chest and stomach. His genitals had been cut off and his throat slit. Murphy allegedly confessed the killing to Ms. Jacobs, and he was later arrested and tried.
- On appeal, Murphy asserted he was tried in the wrong court contending he should have been tried in federal court because he was an Indian and the offense occurred in Indian country.
- The OK court applied a rule that was contrary to clearly established Supreme Court law. Congress has not disestablished the Creek Reservation; the crime in this case occurred in Indian country; Murphy was an Indian and because the crime occurred in Indian country, the federal court has exclusive jurisdiction. OK lacked jurisdiction. The 10th Cir. reversed the district court's judgment and remanded with instructions to grant Murphy's application for a writ of habeas corpus.

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McGirt v. Oklahoma Case Facts -

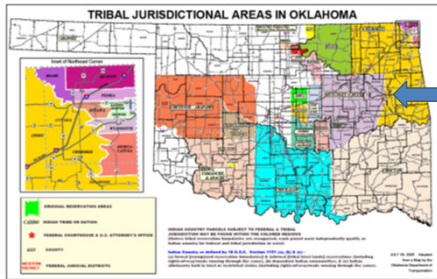
- Jimmy McGirt, a citizen of the Seminole Tribe of Oklahoma, had been tried and convicted in Oklahoma state court of perpetrating sex crimes against a child.
- In a series of cases, McGirt and other tribal members filed post-conviction challenges to the state's authority to prosecute, try and convict them, arguing that the 1866 treaty reservation had never been disestablished by Congress and remained subject to concurrent federal-tribal criminal jurisdiction.
- Writing for the majority, Justice Neil Gorsuch agreed with McGirt and the Creek Nation, which had intervened in the case, that the state lacked criminal jurisdiction. **Rejecting arguments from Oklahoma and the United States, which had also intervened, the Supreme Court ruled that only the federal government, the Creek Nation, or both could prosecute McGirt and other members of federally recognized Native American tribes for MCA offenses arising within the 1866 treaty area.** In reaching this result, Justice Gorsuch applied earlier precedent to hold that the 1866 reservation could only be disestablished if Congress did so in explicit terms.

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"On the far end of the Trail of Tears was a promise. Forced to leave their ancestral lands in Georgia and Alabama, the Creek Nation received assurances that their new lands in the West would be secure forever. **In exchange for ceding "all their land, East of the Mississippi river," the U. S. government agreed by treaty that "[t]he Creek country west of the Mississippi shall be solemnly guaranteed to the Creek Indians."** Treaty With the Creeks, Arts. I, XIV, Mar. 24, 1832, 7 Stat. 366, 368 (1832 Treaty). Both parties settled on boundary lines for a new and "permanent home to the whole Creek nation," located in what is now Oklahoma. Treaty With the Creeks, preamble, Feb. 14, 1833, 7 Stat. 418 (1833 Treaty). The government further promised that "[no] State or Territory [shall] ever have a right to pass laws for the government of such Indians, but they shall be allowed to govern themselves." 1832 Treaty, Art. XIV, 7 Stat. 368.

Today we are asked whether the land these treaties promised remains an Indian reservation for purposes of federal criminal law. Because Congress has not said otherwise, we hold the government to its word.

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18 U.S.C. § 1153 Offenses committed within Indian country

"(a) Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, kidnapping, maiming, a felony under chapter 109A, incest, a felony assault under section 113, an assault against an individual who has not attained the age of 16 years, felony child abuse or neglect, arson, burglary, robbery, and a felony under section 661 of this title within the Indian country, shall be subject to the same law and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States."

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U.S. Attorney's Office
Eastern District of Oklahoma
FOR IMMEDIATE RELEASE
Wednesday, August 25, 2021

Jimmy McGirt Sentenced To Life Imprisonment

MUSCOGEE, OKLAHOMA – The United States Attorney's Office for the Eastern District of Oklahoma announced today that Jimmy McGirt, age 72, of Holdenville, Oklahoma was sentenced to life imprisonment and five years supervised release for two counts of Aggravated Sexual Abuse In Indian Country, and one count of Abuse Sexual Contact in Indian Country in violation of Title 18, United States Code, Sections 1153, 1153, 2241(c) and 2241(c)(2). The life sentences on each count were ordered to run concurrently.

In 1997, Jimmy McGirt was tried and convicted of First Degree Rape by Instrumentation, Lewd Molestation, and Forcible Sodomy in the District Court of Wagoner County, While serving two 500 year sentences and a sentence of life without parole in the Oklahoma Department of Corrections, McGirt, an Indian, challenged his conviction, arguing the crimes occurred in the Muscogee (Creek) Nation Reservation and Congress had never disestablished the reservation, therefore, the State of Oklahoma did not have jurisdiction to prosecute him. On July 9, 2020, the United States Supreme Court agreed with McGirt and vacated his state conviction.

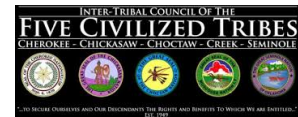
McGirt was subsequently charged in the United States District Court for the Eastern District of Oklahoma. Last November, McGirt was convicted by a federal jury after evidence was presented proving the defendant sexually assaulted a four-year-old child. The victim, who is now in her late twenties, testified the defendant touched and penetrated her genital opening, made contact with her vagina with his mouth, and caused her to touch his penis with her hand with the intent to arouse or gratify his sexual desires.



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How many Tribes are affected as of 12/1/2021?

- Muscogee Creek Nation
- Choctaw
- Cherokee
- Seminole
- Chickasaw
- Quapaw



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Issues Post-McGirt

- Caseload (Tribal, Federal, and State)
- Disagreements between tribal and state officials
- Staffing
- Contacting victims about old cases
- Does the physical evidence still exist?
- Statute of limitations

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<https://nondoc.com/2021/11/06/tribal-law-enforcement-officials-say-departments-strengthening/>

- OK Gov. Stitt and others have criticized the SCOTUS decision, saying it undermines law enforcement. Stitt and local prosecutors have focused on situations where criminal convictions have been invalidated and either the statute of limitations has expired for re-prosecution by a tribe and the federal government or the maximum penalty in those jurisdictions is a fraction of the original sentence.
- In a statement released after the Court of Criminal Appeals affirmed the Quapaw reservation under McGirt in October, Stitt wrote, "As I have said from the beginning, McGirt not only creates a public safety nightmare, but threatens the sovereignty of our state to its core. Oklahoma is being cobbled up piece by piece. This cannot stand."

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<https://www.oklahoman.com/story/news/2021/07/13/oklahoma-governor-kevin-stitt-tulsa-mcgart-ruling-forum-turns-contentious/7960557002/>

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Tribal Members Slam Okla.'s Fight To Overturn McGirt

By Joyce Hanson

Law360 (November 8, 2021, 7:47 PM EST) -- More tribal members have joined in criticizing Oklahoma's efforts to overturn the U.S. Supreme Court's landmark McGirt decision that the Muscogee (Creek) Nation's reservation still exists, urging the high court to deny certiorari to a number of criminal cases appealed by the state.

The Muscogee (Creek) Nation and two tribal members charged for crimes committed on reservation land told the Supreme Court in a series of briefs last week that there's no crisis of criminal jurisdiction on the Creek Reservation and that Oklahoma has wrongly filed more than 20 petitions to overrule McGirt even as state officials, the federal government and the Nation are working together to resolve cases on the reservation.

"Oklahoma advances the boldest of claims with the weakest of support," the Nation said in its Friday brief that supports Jeffrey Arch Jones, a Cherokee Nation member charged for alleged crimes committed within the Muscogee (Creek) reservation, and opposes the state's petition for a writ of certiorari to the Oklahoma Court of Criminal Appeals. "Oklahoma" urges the court to overrule itself just one term removed from rendering a seminal decision that thoroughly considered the status of the Creek Reservation."

<https://www.law360.com/nativeamerican/articles/1438401/tribal-members-slam-okla-s-fight-to-overturn-mcgart>

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Statute of Limitations

- Section 3282 of Title 18, United States Code, is the statute of general application.
- It states that, "(e)xcept as otherwise expressly provided by law," a prosecution for a non-capital offense shall be instituted **within five years after the offense was committed.**
 - So what about sexual assault cases with adult victims?

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Eastern district quadrupling staff to keep up with “Indian Country” cases

- “We had one of the smallest U.S. attorney’s offices in the country, one of the smallest districts in the country,” Wilson said. “We had only seven or eight criminal attorneys on our line.”
- The landmark decision determined all 26 counties of the Eastern District are Indian Country, falling under federal or tribal jurisdiction.
- To keep up with the influx of new cases and cases being transitioned over from the state, the Eastern District was authorized to hire 16 new attorneys.
- They were recently authorized to hire 17 more.
- “So, you go from an office of, say, a dozen criminal attorneys to nearly 50 criminal attorneys,” Wilson said.
- He said they’ve had assistant US attorneys, criminal attorneys and other support staff come from all over the country to assist with federal prosecution in Oklahoma.
- <https://app.verifiednews.network/articles/share/1726>

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Eastern District Continued.

- “We’ve always traditionally done all of our federal criminal violations, but we typically focused on large scale drug conspiracies,” Wilson said. “We dealt with felons and prohibited persons with firearms. We dealt with public corruption, large scale white-collar money laundering type investigations. Now we’re doing a tremendous amount of violent crime.”
- That includes more than a hundred murder cases and nearly a hundred violent crimes involving kids.
- “And so as we are seeking to increase our staffing, we’ve been looking for attorneys who have experience with violent crime, with experience, being able to evaluate a violent crime case, to lead them in violent crime investigation, but also to prosecute those kinds of cases.” Wilson said.
- “It’s also put a tremendous strain on our victim services because nearly every one of the cases that we’re looking at have victims, and that requires us to honor the Victims’ Rights Act, to notify those victims, to provide those victim services, to allow those victims a voice in those cases. So that’s caused quite a bit of strain as well, quite frankly. And we’ve gotten the opportunity to hire one additional term victim specialist and we’re hoping to get more assistance.”

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Eastern District Continued

- When asked about the concern that some cases might not be evaluated and prosecuted due to their massive caseload, Wilson said it was valid.
- “We are unable to evaluate and prosecute every crime that is committed by a Native American,” Wilson said. “We are having to focus on the worst and most violent. Fortunately, we’re able to refer many of those to our tribal partners for tribal prosecution, for Native Americans who commit crimes.”
- “There’s not enough judicial staff. There’s not enough probation officers, aren’t enough law enforcement officers, quite frankly, to do all of those cases.”

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Five additional federal judges requested to handle increased post-McGirt caseload in Oklahoma

The Judicial Conference of the United States is requesting five additional judges for Oklahoma’s federal court to handle the increased caseload created by the U.S. Supreme Court’s *McGirt v. Oklahoma* decision last year.

The court found that state courts no longer had jurisdiction to hear some cases in which crimes were committed by or against Native Americans in much of Eastern Oklahoma, and these cases now must be heard in tribal or federal courts.

In the year since the decision, criminal felony cases per judge jumped from 70 to 208 in the Northern District of Oklahoma and from 76 to 277 in the Eastern District.

U.S. District Judge Claire Eagan, chair of the executive committee of the Judicial Conference, says they are handling the backlog from the *McGirt* decision and the pandemic by prioritizing cases in which the accused has been in jail for the longest time.

<https://www.kgo.org/politics-and-government/2021-10-01/five-additional-federal-judges-requested-to-handle-increased-post-mcgirt-caseload-in-oklahoma>

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Eastern District of Oklahoma
 FOR IMMEDIATE RELEASE
 Wednesday, July 7, 2021
United States Attorney’s Office For The Eastern District Of Oklahoma Obtains Thirty-Five Indictments From Federal Grand Jury

MUSKOGEE, OKLAHOMA – The United States Attorney’s Office for the Eastern District of Oklahoma announced federal grand juries sitting in Muskogee recently completed two separate June sessions and returned thirty-five felony indictments, including five superseding indictments.

The Eastern District of Oklahoma has experienced a dramatic increase in Indian Country cases for federal prosecution due to the U.S. Supreme Court decision of *McGirt v. Oklahoma* and recent Oklahoma Court of Criminal Appeals rulings. These opinions determined the reservations of the Five Civilized Tribes were never disestablished by Congress and, therefore, the United States has primary federal jurisdiction to prosecute major crimes committed by—or against—Native Americans occurring within the 26 counties of the Eastern District of Oklahoma. In response to the caseload rise, a second grand jury was empaneled in the Eastern District. This is a first for the Eastern District.

From the two grand jury sessions in June, thirty-three indictments were publicly filed and two remain sealed pending arrest of the charged defendants. All but two of the unsealed charges involve crimes arising out of Indian Country. Eleven of the unsealed indictments are for murder or involuntary manslaughter, eleven are for sex crimes, and the balance contain allegations of assault with a dangerous weapon or resulting in serious bodily injury, and robbery. The two unsealed non-Indian Country indictments involve possession with intent to distribute cocaine and rioting in a federal detention facility, assaulting a federal officer, and possessing contraband.

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https://www.enidnews.com/news/state/en-rules-committee-focuses-on-curbing-domestic-violence/article_9c6a6242-8632-591e-a691-a170900469aa.html

- During her report to the committee, AG Sara Hill said the tribe has now filed more than 2,500 criminal cases within its justice system, up from 2,300 cases roughly two weeks. The number of referrals for juvenile offenses has gone up from 216 in September to 310. Hill’s office recently added another attorney, giving the tribe eight full-time prosecutors. The juvenile justice system also has nine employees now.
- Hill said Oklahoma has now filed an excess of 35 cert petitions in an effort to overturn the Supreme Court’s *McGirt* decision, and that the tribe continues to file amicus briefs in response. Whether the high court will choose to hear any of the cases is unclear, though.
- “They may decide to reject all of these cases and take none of the 35-plus that have been filed; they may decide to take Castro-Huerta, they may decide to take some other case,” Hill said. “We just have no way of knowing, and I can’t predict now what the court’s timing might be, but we keep a close eye on the court’s orders and on the court’s conferences so we can track how these cases are moving through.”

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Tribal law enforcement officials: Public safety systems growing in Indian Country

- <https://nondoc.com/2021/11/06/tribal-law-enforcement-officials-say-departments-strengthening/>
- Choctaw Public Safety has hired 30 additional public safety. The nation now employs 80 officers to patrol its 11,000-square-mile reservation. The Choctaw Nation has also entered into cross-deputization agreements with 68 state, federal and local law enforcement agencies.
- MCN has increased the Lighthorse tribal police department budget, doubled our officers, included more facilities in their master plan and added a mobile command unit used in collaborative efforts with fellow agencies for work in the field. The MCN now has more than 75 officers on patrol. Before McGirt, the number was closer to 40. Cross-deputization agreements with neighboring police agencies by the MCN have gone from 39 to more than 60.

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'How can we do this better?': Tulsa City Council looks to partner with tribes

by James King, KTUL Staff | Tuesday, November 30th 2021

TULSA, Okla. (KTUL) — One city council member is looking to mend and bolster the relationship between the tribes and the City of Tulsa.

It comes after recent tension between the city and tribal leadership after the mayor filed a friend of the court briefing in support of the McGirt ruling being overturned.

District 4 Councilor Kara Joy McKee says that now more than ever she's excited about the opportunities that could come from the city and tribes working together and she wants tribal leadership to know that they can be partners.

"We at least need to be ready if anyone of the tribes, or the Greater Tulsa Area Indian American Affairs Commission come to us," said McKee. "If any of them come to us with a policy that they'd like us to put forward or collaborate on, we need to have that base of knowledge where we know what's going on and we can step right to it."

<https://ktul.com/news/local/mckee-how-can-we-do-this-better-as-council-looks-to-partner-with-tribes>

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Criminal Jurisdiction in Indian Country Training

- Needed for tribal, state and local officers to get their Special Law Enforcement Commission (SLEC) from BIA
- TLOA transferred training responsibility to DOJ
- A SLEC Officer acting under the authority granted by a Deputation Agreement, and within the scope of his or her duties, shall be considered an employee of DOI for purposes of:
 - 5 U.S.C. § 3374(c)(2) – coverage under FTCA
 - 18 U.S.C. §§ 111 and 1114 – assault and protection of officers
 - 5 U.S.C. §§ 8191-8193 - compensation for work injuries

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CJIC Online Training Information

Course Number	Training Dates	Total Attendees	Total Oklahoma Attendees
103452	August 26-27, 2020	406	332
104304	October 5-6, 2020	640	244
105336	January 12-13, 2021	763	465
106511	March 23-24, 2021	585	387
107596	June 15-16, 2021	682	459
108753	September 27-28, 2021	271	119
	Total	3,347	2,006

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THE WHITE HOUSE

BRIEFING ROOM

Executive Order on Improving Public Safety and Criminal Justice for Native Americans and Addressing the Crisis of Missing or Murdered Indigenous People

NOVEMBER 15, 2021 • PRESIDENTIAL ACTIONS

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Sec. 2. Coordination of a Federal Law Enforcement Strategy to Prevent and Respond to Violence Against Native Americans.

- The Attorney General, working with the Secretary of the Interior and the heads of other executive departments and agencies (agencies) as appropriate, shall assess and build on existing efforts to develop a coordinated and comprehensive Federal law enforcement strategy to prevent and respond to violence against Native Americans, including to address missing or murdered indigenous people where the Federal Government has jurisdiction.
- The strategy shall set out a plan to address unsolved cases involving Native Americans; provide for coordination among the Department of Justice, the Department of the Interior, and the Department of Homeland Security in their efforts to end human trafficking; seek to strengthen and expand Native American participation in the Amber Alert in Indian Country initiative; and build on and enhance national training programs for Federal agents and prosecutors, including those related to trauma-informed and victim-centered interview and investigation techniques.
- The strategy shall also include protocols for effective, consistent, and culturally and linguistically appropriate communication with families of victims and their advocates, including through the creation of a designated position within the Department of Justice assigned the function of serving as the outreach services liaison for criminal cases where the Federal Government has jurisdiction.
- The Attorney General and the Secretary of the Interior shall report to the President within 240 days of the date of this order describing the strategy developed and identifying additional resources or other support necessary to implement that strategy.

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Questions?

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