



NATIVE  
ALLIANCE  
AGAINST  
VIOLENCE

# Post McGirt FAQ

Sarah Deer • MK Nagle • October 19, 2020

## What exactly did the Supreme Court decide in *McGirt v. Oklahoma*?

The Court ruled that Congress has never disestablished the Muscogee (Creek) Nation Reservation, and consequently, the MCN Reservation continues to exist as it was described in the 1866 treaty between the United States and the MCN. Because the Reservation still exists, land located within the borders of the Reservation constitutes “Indian Country” under 18 U.S.C. 1151(a), which in turn means that Oklahoma does not have criminal jurisdiction over Indians who commit crimes against Indians within the border of the Reservation. Instead, only the federal government and MCN have criminal jurisdiction over these crimes.

## I heard that dangerous criminals are escaping punishment because of *McGirt*. Is this true?

Absolutely not. Every crime committed in Oklahoma (including the Reservation) can still be prosecuted by one of three governments: (the Tribal Nation, the United States, or the State). The only thing that has changed is which government prosecutes which crimes. After *McGirt*, the state of Oklahoma no longer has jurisdiction to prosecute crimes involving Indians on the MCN Reservation. Instead, that authority now lies with the federal government and the tribal government. This is the framework for almost all other Tribal Nations in the lower 48 states.

And of course, even if Oklahoma no longer has prosecutorial criminal authority over a crime committed by an Indian on the Reservation, State Police have the authority to detain an individual they reasonably suspect is committing a crime until the authority with full jurisdiction arrives on the scene. *McGirt* does not create jurisdictional gaps. Instead, the decision answers legal questions and conflicts that have existed for over one hundred years, since Oklahoma became a state.

Although which sovereign may exercise criminal jurisdiction over a crime committed in Indian Country involves a series of questions and analysis, it is an analysis that tribal, state, and federal authorities already undertake on reservations across the United States. Here is a general summary from the DOJ:

## FOR INDIAN OFFENDERS

Who is the victim?	What was the crime?	Jurisdiction
Indian	Major Crimes Act crimes (e.g., murder, manslaughter, kidnapping, sexual assault, incest)	Federal/Tribal
	All other crimes in tribal code	Tribal
Non-Indian	Major Crimes Act crimes or other federal crimes including crimes contained in state code under the Assimilative Crimes Act	Federal/Tribal
	All other crimes in tribal code	Tribal
Victimless	Crimes contained in state code under the Assimilative Crimes Act	Federal/Tribal
	All other crimes in tribal code	Tribal

## FOR NON-INDIAN OFFENDERS

Who is the victim?	What was the crime?	Jurisdiction
Indian	Indian Country Crimes Act crime or other federal crimes of general applicability	Federal
	Crimes contained in state code (where there is no federal statute for the category of offense) under the Assimilative Crimes Act	Federal
	Domestic violence, dating violence, or violation of protection order offenses, as defined by VAWA 2013	Tribal
Non-Indian	All crimes contained in state code	State
Victimless		State

This chart is based on a chart from the Department of Justice, Indian Country Criminal Jurisdictional Chart, <https://www.justice.gov/usao-wdok/page/file/1049076/download>.

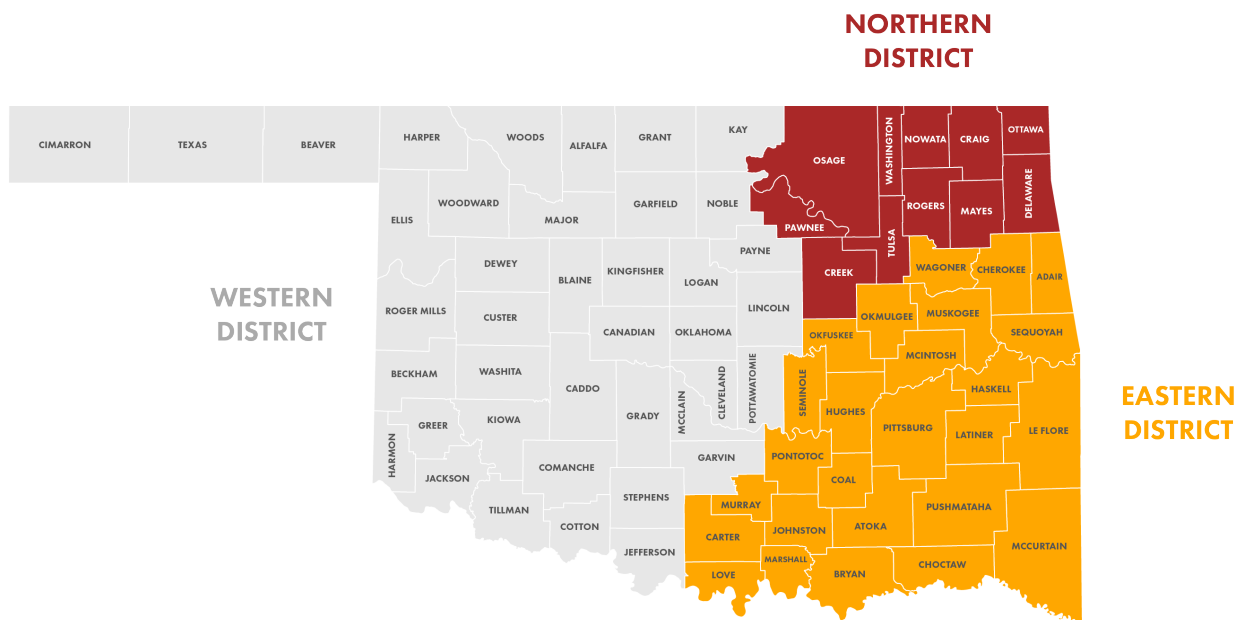
## What does McGirt mean for Native women living on the Muscogee (Creek) Nation Reservation?

MCN can do even more to protect Native women now. Prior to McGirt, the state only recognized MCN authority over crimes that took place on restricted or trust land. After McGirt, the MCN exercises criminal authority over the entire Reservation, bringing more victims under the protection of the MCN. This also includes the Special Domestic Violence Criminal Jurisdiction exercised by Muscogee (Creek) Nation pursuant to the 2013 Reauthorization of the Violence Against Women Act. MCN retains tribal criminal jurisdiction over non-Indian perpetrated domestic violence crimes on the Reservation, regardless of the legal status of the land where the crime is committed.

Ultimately, the Court's decision in McGirt ensures greater safety for Native women living within the Muscogee Reservation borders. Because the Court declared that the Reservation still exists, the Lighthorse Police have jurisdiction to arrest and prosecute anyone who commits an act of domestic violence on the MCN Reservation.

## Does McGirt change the role of victim advocates?

Your role remains the same – to provide support and guidance to victims. If you work within the MCN Reservation, you will likely see an increased caseload. We urge advocacy programs to track the increase in caseload so that you can apply for additional OVW or OVC grants using this data.



You may find that you are involved with more crimes that “go federal” due to the recognition of the MCN Reservation. There are two federal districts within the MCN Reservation – the Northern District and the Eastern District. Each district has victim-witness coordinators. They are not advocates per se, but they do provide support and guidance for victims in a federal criminal case. If you are working with a Native woman whose crime is being investigated by federal authorities, she should

be put into contact with the victim-witness coordinator from that United States Attorney Office. These victim-witness coordinators have experience with federal prosecution and can provide support to the victim if the case goes forward.

You should also familiarize yourself with the federal victim right laws which can be found at: <https://www.justice.gov/usao/resources/crime-victims-rights-ombudsman/victims-rights-act>

Victims you work with might have other questions about jurisdiction. Assure them that you can still provide services whether their case ends up in tribal or federal court.

If you are a Native victim of a major crime perpetrated by a non-Indian, you are entitled to the victim services provided by the advocate at the U.S. Attorney's Office. Your tribal DV program coordinator should be able to help you connect with this person at the USAO, or you can always look to NAAV for assistance.

## **What about other Tribal Nations in Oklahoma? Is it true that the entire eastern half of Oklahoma is going back to the Tribes?**

No. In a fundamental sense, nothing about the land itself has changed in Oklahoma following the Supreme Court's decision in *McGirt*. These reservations have always existed. The Supreme Court held in *McGirt* that Oklahoma has been unlawfully exercising criminal jurisdiction over crimes involving Indians on the Muscogee (Creek) Reservation in the years since 1866. Because the treaties and history of four other Tribes—the Cherokee Nation, Seminole Nation, Chickasaw Nation, and Choctaw Nation—are similar to the Muscogee (Creek) Nation's treaty and history, the implication of the *McGirt* ruling is that those four Tribes' reservations still exist as well, but the Supreme Court did not decide that issue as the status of the other four Tribes' reservations was not before the Court. This map shows where in Oklahoma these reservations are located:

