

Tribes, County, and City Cooperate to Ensure Public Safety Following *McGirt v. Oklahoma*

The United States Supreme Court's decision in *McGirt v. Oklahoma*, 591 U.S. ___, 140 S. Ct. 2452 (2020) brought profound changes to public safety, from law enforcement to prosecution, defense, adjudication, and detention in Ottawa County. In *McGirt*, the Supreme Court decided whether the State of Oklahoma had jurisdiction over a criminal prosecution of an Indian where the crime occurred on the Muskogee Creek Reservation. The State argued that it had jurisdiction because the Reservation no longer existed; the Supreme Court told the State it was wrong.

As courts in Ottawa County have recognized, and we in Ottawa County have long known, the entire county is Indian country. The nine Tribes' Reservations are all contiguous and create over 200,000 acres of continuous Indian country. While the Governor battled with tribes elsewhere in the State, here in Ottawa County, the County, City of Miami, and the Tribes, relying on their long relationship and trust with one another, came together and started working on joint efforts to ensure public safety in the County. To the Tribes, the County, and the City, the *McGirt* decision presented an *opportunity* to combine resources and to perform better together. Together, we have taken that opportunity and implemented it in several important ways.

Organization – Tribes form a Consortium. First, the Ottawa Tribe of Oklahoma, Wyandotte Nation, Miami Tribe of Oklahoma, Seneca Cayuga Nation, Shawnee Tribe of Oklahoma, and Eastern Shawnee Tribe of Oklahoma came together to form a Consortium, recognizing that their joint efforts will be more effective in promoting public safety than a series of uncoordinated individual efforts.

Their first step was to define the interests and goals that they share, resulting in a formal Statement of Shared Interests and Goals, which describes their goals for the full and cooperative exercise of criminal jurisdiction, and describes the pursuit of those goals. The Tribes then started to take action in an organized and sensible way, with the County and City, to address the following key public safety elements.

Law Enforcement – Intergovernmental Cross-Deputation. The Tribes have engaged in cross-deputation agreements among each of the Tribes, as well as between the Tribes and the County, the Tribes and the City, and each of these law enforcement agencies and the BIA. These agreements authorize Tribal, County, City, and BIA police officers to carry out law enforcement activities across jurisdictions, which effectively increases the number of officers available within each jurisdiction and ensures that any officer responding to an incident has legal authority to handle all aspects of the situation without needing to check the Indian status of the individuals involved in the incident.

Law – Uniform Tribal Criminal Codes. The Miami Tribe of Oklahoma has developed and adopted a Criminal Code that can serve as a uniform intertribal criminal code, such that officers from every cross-deputized jurisdiction will be familiar with the applicable code provisions regardless of the Reservation. The Code also implements enhanced jurisdiction and sentencing authority under the federal Tribal Law and Order Act and the Violence Against Women Act, so that a tribe can sentence felony-level defendants to up to 3 years and levy a \$15,000 fine for a single offense, can stack those sentences, and can prosecute non-Indians with ties to the tribe's community for domestic violence, dating violence, and violation of protection orders.

Tribal Criminal Courts. The Miami Tribe of Oklahoma has received and is reviewing files and preparing charges in 120 cases from Ottawa County and will refer federal crimes to the US Attorney's Office. The Tribe will conduct criminal court proceedings in the Ottawa County Courthouse, using Tribal criminal judge, prosecutor, defense counsel, appellate justices, staff, and equipment. The Miami and Ottawa Tribes have also established the Intertribal Criminal Court of Northeast Oklahoma, which is organized to accept and exercise criminal jurisdiction from all participating tribes, applying each tribe's criminal law, while sharing judicial staff and infrastructure.

Federal Prosecutor. Late last year, the United States Department of Justice awarded the Consortium Tribes five years of funding to engage a Special Assistant United States Attorney (SAUSA) to prosecute federal crimes arising on the Consortium Tribes' Reservations. The Tribes posted for the position, interviewed many great candidates, and unanimously selected an exceptionally talented and experienced prosecutor, a Choctaw member from the Tulsa area. The Tribes are awaiting the final steps that the United States Attorney's Office must take to clear the way for the Tribes' SAUSA to begin prosecuting cases.

Detention Facility Improvements and Replacement. The increase in criminal jurisdiction responsibility is an opportunity for the Consortium's members to reshape the justice system in their jurisdictions into a safer and more rehabilitative experience for offenders and the community. We have cooperated on efforts to improve the conditions in the Ottawa County Jail and to pursue a new shared detention facility. To that end, the Miami Tribe donated \$2 million to make needed improvements to the Ottawa County Jail. In the meantime, the Tribes and County are seeking federal appropriations and grants to fund a new permanent modular detention facility that will serve as an intergovernmental, regional facility that can accommodate both short- and long-term detention, designed to be safe and cost-effective, capable of segregating multiple classes of inmates and housing men and women out of sight and sound of each other. This new facility will comply with the Bureau of Justice Administration's minimum standards for permanent modular structures and will offer chemical dependency and mental health treatment space in order to address two large gaps in the current system.

Outsiders Frustrating Our Progress. The County, City, and Tribes have come a very long way in a very short time. That is the direct result of their long experience with and trust in one another and a shared goal of ensuring that Ottawa County is a safe and secure place to live and raise a family. We only ask that the federal government live up to its responsibility by quickly approving the SAUSA and letting that person do the job he was hired to do. We also ask the Attorney General to give up the Governor's fights that are stuck in the past, get in the way of effective public safety, and frustrate the local vision for law enforcement that we have worked long and hard to implement. If these outsiders cannot get on board, we ask that they get out of the way.

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