



CHOCTAW NATION

SOVEREIGNTY FOR STRONG
COMMUNITIES



COMMISSION REPORT

APRIL 2021



TIMELINE

- **JULY 9, 2020** — U.S. Supreme Court rules in favor of Jimcy McGirt and that the Muscogee (Creek) Nation's treaty territory reservation was never disestablished.
- **JULY 20, 2020** — Chief Batton establishes taskforce on post-McGirt ruling sovereignty impacts.
- **AUGUST 2020** — CNO signs updated agreement with Oklahoma State DHS for exclusive tribal jurisdiction in Indian Child Welfare cases.
- **SEPTEMBER 2, 2020** — Sovereignty for Strong Communities Commission formally announced, and \$2 million in tribal funding approved to increase capacity in Indian Child Welfare, Public Safety, Judicial, and Legal staff to prepare for post-McGirt jurisdiction shift.
- **OCTOBER 9, 2020** — Tribal leaders of the Choctaw, Cherokee, Chickasaw, Muscogee (Creek) and Seminole Nations unanimously pass a resolution opposing any efforts to disestablish Indian reservations at the Inter-Tribal Council of the Five Civilized Tribes (ITC) on Friday, Oct. 9. The tribes were united in their view that “the recent McGirt decision affirmed that a reservation was established for the Muscogee (Creek) Nation and never disestablished by Congress, and given their shared legal histories the reservations of all Five Tribes remain intact today.”
- **OCTOBER 10, 2020** — October legislative session for the Choctaw Nation Tribal Council passes laws to strengthen tribal sovereignty and the nation's justice system. Codes dedicated to tribal prosecution, jury selection, criminal law, and a public defender's office were enacted.
- **NOVEMBER 2020** — CNO Tribal Prosecutor's Office and Department of Public Safety offer first virtual training to state and local law enforcement regarding post-McGirt policing in Indian Country.
- **APRIL 1, 2021** — Oklahoma Court of Criminal Appeals rules that McGirt Supreme Court ruling applies to the Choctaw Nation of Oklahoma reservation boundaries.

Halito,

When the U.S. Supreme Court ruled that the Muskogee Creek Nation's reservation had never been disestablished in the *McGirt v. Oklahoma* case, it set in motion a series of significant changes for some Native American tribes, including the Choctaw Nation of Oklahoma. While we know these changes will positively affect the Choctaw Nation and its people, we also know that being prepared to execute new codes, policies and protocols will be crucial to the success of the Tribe moving forward.

Matters of tribal jurisdiction will be the most directly impacted by the *McGirt* ruling. With this in mind, I established the Sovereignty for Strong Communities Commission (SSCC), a taskforce to address sovereignty issues arising from the decision. The SSCC is made up of representatives from departments most likely to be affected by the *McGirt* changes. I also authorized tribal funding to increase the staff of our Indian Child Welfare, Public Safety, Judicial and Legal teams, as well as provide extra training in tribal jurisdiction for our community partners in law enforcement.

Since the establishment of the SSCC, taskforce members and sub-committees have met on a regular basis to develop plans, put those plans into action and report on those actions, making any necessary changes along the way. This report is an executive summary of the preparations and actions of those sub-committees.

This is certainly an exciting and busy time for the Choctaw Nation, but we share our excitement with our local communities who will also benefit from the expanded sovereignty of the Choctaw Nation. We look forward to continuing and strengthening our relationships with community partners throughout the Choctaw Nation's reservation for the future of all Oklahomans.

Yakoke,

A handwritten signature in white ink, reading "Chief Gary Batton". The signature is fluid and cursive, with the first name "Chief" written in a smaller, more formal script than the last name "Batton".

CHIEF GARY BATTON

LEGAL SUB-COMMITTEE

LEAD: BRIAN DANKER, EXECUTIVE DIRECTOR OF LEGAL OPERATIONS

The Choctaw Nation of Oklahoma's Tribal Prosecutor's Office and the creation of a Public Defender's Office became top areas of focus as the Sovereignty for Strong Communities Commission took on Chief Batton's guidance to prepare for a major shift in criminal jurisdiction within its reservation boundaries. Fortunately, some advantages already existed. In January 2020, Cory Ortega, Assistant Prosecuting Attorney for CNO, was appointed as a Special Assistant United States Attorney (SAUSA) for the Eastern District Court of Oklahoma. The goal of the SAUSA appointment is to increase the likelihood that every criminal offense occurring within the Choctaw Nation is prosecuted in tribal court, federal court or both.

The Legal Department has also secured federal grant funding to hire four additional attorneys in its Prosecutor's Office and two attorneys to establish a Public Defender's Office. Tribal funds were requested and allocated by Chief Batton to support administration and operational costs of the two offices.

Ortega and Kara Bacon, CNO Lead Prosecutor, worked in partnership with the U.S. Attorney's Office to develop training for tribal, state and local law enforcement about criminal jurisdiction on the reservation. The one-hour virtual trainings launched in November 2020.

The CNO Tribal Prosecutor's Office met with all District Attorneys within the reservation boundaries to develop a system of case identification and correspondence between agencies. The Choctaw Nation has reviewed more than 500 cases involving self-identified Native American defendants from the State of Oklahoma, with a focus on incarcerated defendants. Thanks to the tireless and efficient work of the Choctaw Nation's court clerks and administrative staff, the CNO Tribal Prosecutor's Office was immediately able to file 125 cases with the Choctaw Nation District Court when the Oklahoma Court of Criminal Appeals ruled to extend the McGirt decision to the Choctaw Nation of Oklahoma on April 1, 2021.

The Legal Department also invested considerable time and effort reviewing and providing recommended amendments to Choctaw Nation's criminal, juvenile and traffic codes; partnering with the Judicial Branch to develop a fee schedule to divide court costs among all agencies (tribal and non-tribal) involved in the justice system; and assisting other sub-committees with McGirt preparations.

JUDICIAL SUB-COMMITTEE

LEAD: DAVID BURRAGE, CHIEF JUSTICE

The Choctaw Nation's judicial system within its reservation boundaries has a history dating back to the 1800s, and the Judicial Branch is established as one of three branches of government by the Choctaw Nation's Constitution. The modern-day Judicial Branch is headquartered in a state-of-the-art Judicial Center in Durant, Okla., that opened in March 2019.

On July 20, 2020, the Judicial Center hosted its first jury trial, which ended in conviction for grand larceny theft. With the McGirt ruling, the judicial system has been preparing for a sharp increase in cases, hearings and trials. The Choctaw Nation's investments in capital infrastructure and e-filing technology put the Judicial Branch on solid footing for the shift in criminal jurisdiction.

As a sub-committee of the SSCC, the Judicial Branch requested and was approved for budget to expand staffing capacity in August 2020 and has partnered with the CNO Legal Department to ensure adequate criminal and juror codes are adopted and court fee schedules are in place.

The Judicial Sub-Committee is preparing recommendations and funding requests for the addition of both full and part-time judges to ensure a timely and efficient judicial process as cases increase; and investigating federal funding opportunities to expand court locations within the reservation.

PUBLIC SAFETY SUB-COMMITTEE

LEAD: JOHN HOBBS, EXECUTIVE DIRECTOR OF PUBLIC SAFETY

Law enforcement in the Choctaw Nation of Oklahoma goes back to the 1830s with the establishment of the Choctaw Lighthorse. Sworn to protect and serve their communities, Lighthorsemen were trusted not only to keep law and order but also to lend a hand when someone in the community needed help. Today, our Department of Public Safety (DPS) continues to live out the promise of the Lighthorsemen through community engagement, cultural awareness and rigorous training.

In preparation for the expansion of tribal jurisdiction, the DPS requested funding for 10 new positions, as well as equipment and training for the department. This request was granted, and all 10 positions have been filled. The DPS has also ordered more vehicles.

On the heels of the McGirt decision, the Choctaw Nation recognized the need to work closely with other law enforcement agencies throughout the reservation boundaries to ensure that jurisdictional issues did not prevent officers, tribal or non-tribal, from keeping citizens safe. The DPS already had many cross-deputization agreements in place, but through the efforts of the SSCC, more have been established or are in progress.

To address any confusion about tribal jurisdiction among non-tribal law enforcement agencies, attorneys for the Choctaw Nation created WebEx professional development sessions explaining the issue. These trainings began in November 2020 and will continue as long as they are necessary.

As an additional resource for non-tribal law enforcement, the DPS has created a 24-hour hotline officers can call to verify a person's tribal citizenship status.

The DPS has established agreements with all county jails, and will ensure each passes all required inspections. For offenders who require longer incarcerations, the DPS has begun working with a prison in the area.

Inevitably, the number of cases involving people who are currently incarcerated will increase. The DPS is working with the CNO Prosecutor's Office to ensure all paperwork is completed ahead of time in order to prevent any offenders from being released.

Moving forward, the SSCC will request an increase in federal funding based on the BIA's Total Resident Service Area Indian Population (TRSAIP) numbers. This request will bring the Choctaw Nation in line with the funding already allotted to other tribes with similar data.

ICW/JUVENILE SUB-COMMITTEE

**LEAD: LARI ANN NORTHCUTT, EXECUTIVE DIRECTOR OF SPECIAL SERVICES,
AND KEVIN HAMIL, REINTEGRATION PROGRAM DIRECTOR**

The Office of Indian Child Welfare (ICW) at the Choctaw Nation ensures the safety and protection of Choctaw children. With child safety as its top priority, ICW works closely with the Oklahoma Department of Human Services (DHS) to maintain open communication and good working relationships. A new Indian Child Welfare Act (ICWA) agreement between the Choctaw Nation and the State of Oklahoma acknowledges and expands CNO's sovereignty over cases involving Indian children within the reservation while allowing concurrent jurisdiction with the state's DHS. This agreement also prevents cases from being dismissed for lack of State Court jurisdiction and allows Choctaw Nation ICW to use state services for cases in which the state may be better equipped.

In light of the new ICWA agreement, the SSCC ICW Sub-Committee asked for, and was granted, funding for seven new staff positions to handle the increase in caseload resulting from our expanded jurisdiction. New policies and procedures related to this agreement have been developed, and training for internal ICW staff has begun. The SSCC ICW/Juvenile Sub-Committee is also working with the Office of Juvenile Affairs (OJA) to increase the amount of grant funding awarded to the Choctaw Nation for housing juvenile offenders who are on probation or in custody. In addition, the ICW and Juvenile Departments are working with detention centers and mental health facilities to process possible costs.

TAXATION SUB-COMMITTEE

**LEAD: JOSH RILEY, SENIOR POLICY ANALYST-CONGRESSIONAL RELATIONS
AND TAMMYE GWIN, SENIOR EXECUTIVE OFFICER FOR STRATEGIC DEVELOPMENT**

The topic of taxation on the reservation is one that is complex and multi-faceted. As such, questions about how Choctaw tribal members will be affected by the potential changes in taxation have become a priority in our post-McGirt plans. At first, OTC agreed that tribal members who live and work on their reservations were exempt from income tax. As a result, some tribal members filed amended tax returns and were issued refunds. Those refunds have since been recalled because OTC has changed its position on the issue. The Choctaw Nation maintains that the original decision by OTC is the correct one, but a resolution will most likely require litigation.

Income tax is only one part of the taxation discussion, however. Sales tax is another significant revenue generator that could be affected by the McGirt decision. The SSCC Taxation Sub-Committee has also begun looking into other fees, fines and taxes to see how they affect tribal members and non-tribal citizens. In some cases, such as car tags and hunting and fishing licenses, the Choctaw Nation shares revenue with the state. This research is ongoing and will require further planning and discussion.

REGULATORY SUB-COMMITTEE

LEAD: TYE BAKER, SENIOR DIRECTOR OF ENVIRONMENTAL PROTECTION SERVICES

The SSCC Regulatory Sub-Committee's main concern has been environmental oversight of the reservation area. To begin planning for expanded sovereignty in this realm, the committee identified parts of the Choctaw Nation that might be directly affected by a shift in regulatory oversight. This includes looking closely at agreements the Nation already has with state and federal entities in areas such as commerce, education and environmental control. The Regulatory Sub-Committee developed and distributed a questionnaire designed to pinpoint obstacles and benefits for the Tribe.

A significant challenge for the team has been the state's overreach in environmental matters. In October 2020, the EPA granted the State of Oklahoma's request to be the regulatory agency governing environmental controls throughout Indian Country. In an act of unity, Chief Batton and 15 other tribal leaders throughout the state signed a letter to the EPA to address regulation issues brought about by the state's request, and there are plans to develop a Choctaw-specific letter to the EPA.

Ultimately, the Choctaw Nation wants to remain consistent with the state on regulatory matters. Keeping businesses operating safely and under fair regulations is also a priority. In this way, the Choctaw Nation can draw more business to the area. The committee does not anticipate any disruption in business because of shifts in regulatory oversight.

The SSCC Regulatory Sub-Committee has also begun talks with the Office of Surface Mining, Remediation, and Enforcement (OSMRE). The laws governing their work are different from environmental laws, so it is important to be familiar with those operations. The OSMRE is experienced in working with sovereignties and Native American governments and is looking forward to working with the Choctaw Nation to ensure all coalmines are operated within established regulations.

MOVING FORWARD

The Choctaw Nation has been preparing for the possibility of a landmark U.S. Supreme Court ruling that would uphold its reservation territory and shift criminal jurisdiction for well over two years. In July 2020, the U.S. Supreme Court's ruling in *McGirt v. Oklahoma* made those preparations a necessity, and with the April 1 ruling in the *Sizemore v. Oklahoma* case, the impact felt first by the Muscogee (Creek) Nation became a reality for the Choctaw people as well.

The Choctaw Nation is proud of the work the Sovereignty for Strong Communities Commission (SSCC) has done to research, plan, prepare and weigh the pros and cons of how the Choctaw Nation can exercise its sovereignty while also continuing to uphold our commitment to be a good neighbor in local communities. This group of subject matter experts and leaders has advised senior executives and elected officials on necessary actions, resource needs and recommendations for next steps. The SSCC has not just held meetings, however. They have also taken steps to prepare our government for upholding the responsibilities of sovereignty.

The work is far from finished. Guided by the work of our Commission, the Nation will continue to explore tribal environmental policy; opportunities in broadband, telecom, and electricity service on the reservation; research the sources of tax revenue generated on the reservation and how that tax revenue is re-invested within the reservation; lobby for the federal government to fulfill its trust responsibility through increased funding for public safety, criminal justice, and children and family services; and pursue cooperative agreements and greater responsibility for lands currently managed by federal agencies within the reservation.

The future for the Choctaw Nation, its reservation and the State of Oklahoma holds both challenges and opportunities. The realities of modern times can be balanced without re-writing the laws or breaking promises between nations. Tribal leaders have a vision for a reservation that cares for everyone who lives there, provides public safety and a fair justice system, and offers unique opportunities and advantages for a prosperous future.

The Choctaw Nation is looking at ways to expand its sovereignty, while meeting the needs of its citizens and the communities in which they reside. We consider each opportunity with the greater good of all in mind, and a commitment to invest more into our reservation than we ever take from it.



Choctaw Nation of Oklahoma

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